

(1992) 07 CAL CK 0041

Calcutta High Court

Case No: IT Reference No. 256 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Ericsson India Ltd.

RESPONDENT

Date of Decision: July 20, 1992**Acts Referred:**

- Income Tax Act, 1961 - Section 256, 43B

Citation: (1993) 71 TAXMAN 25**Hon'ble Judges:** Shyamal Kumar Sen, J; Ajit K. Sengupta, J**Bench:** Division Bench

Judgement

Ajit K. Sengupta, J.

In this reference u/s 256 of the income tax Act, 1961 ("the Act") for the assessment year 1984-85 the following questions of law have been referred to this Court:

1. Whether, on the facts and in the circumstances of the case, and on a correct interpretation of section 43B of the income tax Act, 1961, read with the Explanation 2 thereof, the Tribunal was justified in law in holding that the sales tax not paid within the previous year but paid within the time allowed under the relevant Sales-tax Law cannot be disallowed under the said section 43B?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the provisions of the first proviso to section 43B of the income tax Act, 1961 introduced by the Finance Act, 1987 effective from 1-4-1988 would be applicable to the assessment year 1984-85?

Shortly stated, the facts are that the assessee collected the sales-tax of Rs. 37,592 during the relevant accounting year for the assessment year in question but did not pay the same during the current year on the ground that the assessee maintained its sales-tax account separately. The Assessing Officer held that the same was revenue receipt and taxable. He further held that the benefit of deduction of the

said sales-tax amount is liable on payment basis in future as per the provisions of section 43B of the Act.

The assessee being aggrieved by the said order agitated the dispute before the Commissioner (Appeals). The assessee submitted before him that it did not make any claim for deduction of sales-tax in computing the total income chargeable to tax and, therefore, the provisions of section 43B would not be applicable under said circumstances. It was further submitted by the assessee that the sales-tax has neither accrued nor became due for payment during the relevant accounting year and the provisions of section 43B would not be applicable where the time for discharge of tax was not over by the end of the account in the year. The Commissioner (Appeals) did not accept the assessee's contention on both the pleas. He held that section 43B was not concerned with the reasons why the liability was not discharged at the end of the previous year and as long as the liability was not discharged, disallowance was to be made under the said section. Accordingly, the Commissioner (Appeals) upheld the disallowance of Rs. 37,592.

2. The assessee being further aggrieved by the order of the Commissioner (Appeals) preferred a second appeal before the Tribunal. The Tribunal agreed with the Commissioner (Appeals) 's observation that the claim of sales-tax created by the assessee would not make any difference so far as the trading was concerned. The Tribunal further held that not discharging the liability at the end of the year as a ground against the assessee was ridiculous. The Tribunal observed that if the assessee collected the sales-tax in the last quarter of the accounting year or in the last month of the accounting year, then the assessee had to collect tax in the evening of the last day of the month of the accounting year or after the evening of the last day of last part of the accounting year. In that case, the Tribunal held that the assessee was not expected to deposit the sales-tax collected till the last evening of the accounting year on the same day. The Tribunal came to the conclusion that such sales-tax collected during the last month or last part of the accounting year and paid within the prescribed time limit was allowable and the provisions of section 43B did not apply. The Tribunal in holding so followed the Tribunal's order in the case of (1989) 31 ITD 305 The Tribunal finally held that the amount of sales-tax payable for the last quarter, which was duly paid well before the due date for furnishing the return of income of the relevant previous year, cannot be disallowed u/s 43B. Thus, the Tribunal allowed the assessee's claim and reversed the Commissioner (Appeals) 's order. It is not in dispute that these two questions are now concluded by the decision of this Court in the case of [Commissioner of Income Tax Vs. Sri Jagannath Steel Corporation](#), Following the said decision we answer both the questions in the affirmative and in favour of the assessee. There will be no order as to costs.

Sen, J. -

I agree.