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**(2001) 01 DEL CK 0135**

**Delhi High Court**

**Case No:** Income-tax Reference No. 111 of 1981

Commissioner of  
Income Tax

APPELLANT

Vs

Trading Engineers

RESPONDENT

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**Date of Decision:** Jan. 8, 2001

**Acts Referred:**

- Income Tax Act, 1961 - Section 154, 256(1), 37

**Citation:** (2001) 249 ITR 515

**Hon'ble Judges:** Dr. Arijit Pasayat, C.J; D.K. Jain, J

**Bench:** Division Bench

**Advocate:** Sanjiv Khanna and Ajay Jha, for the Appellant; None, for the Respondent

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### **Judgement**

Arijit Pasayat, C.J.

The following question has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (in short the "Act"), by the Income Tax Appellate Tribunal, Delhi Bench "C", New Delhi (in short the "Tribunal") :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the sum of Rs. 71,390 is allowable as sales tax liability in computing the assessed"s income for the assessment year 1977-78 ?"

2. The dispute relates to the assessment year 1977-78.

3. The factual position as indicated in the statement of case is as follows :

The assessed, a registered partnership firm, derived income from several agencies and also earned income by providing technical know-how for installation of pumping plants. It followed the mercantile system of accounting and its accounting year ended on September 30, 1976. For the relevant assessment year, the assessed declared income of Rs. 5,75,596. Subsequently, a letter was filed claiming deduction of Rs. 71,390 on

account of provision made for additional sales tax levied for the assessment year 1971-72, in respect of goods worth Rs. 14,27,786.62, transferred by the assessed to its branch offices outside Delhi. A copy of the order of assessment dated November 28, 1975, passed by the Sales Tax Officer was also filed. The said demand was disputed by the assessed before the Additional Commissioner of Sales Tax. The appeal was dismissed on June 30, 1976. The assessed filed further appeal before the Sales Tax Tribunal on July 27, 1976. A writ petition was also filed before the Supreme Court, which set aside the sales tax assessment order by judgment dated February 20, 1978, and directed the assessing authorities to pass a fresh order in the light of the judgment. In the meantime, the Income Tax Officer passed the assessment order on January 25, 1978. The claim of Rs. 71,390 as made by the assessed was rejected subject to the condition that the assessed could come up u/s 154 of the Act after disposal of the writ petition by the Supreme Court. The matter was carried in appeal by the assessed before the Commissioner of Income Tax (Appeals) (in short "the CIT(A)"). The said authority held that the assessed would be entitled to a deduction for the additional liability for payment of sales tax only in the year in which such liability arose. The claim was, however, not allowed for the reason that the assessment order of the Sales Tax Officer had been set aside by the Supreme Court. In further appeal before the Tribunal the assessed contended that it could claim deduction in the assessment year 1977-78 on the basis of the assessment order dated November 28, 1975. The Tribunal held that the assessed was entitled to claim deduction even if such liability had not been quantified or paid or even when such liability was being disputed. Accordingly, it held that the assessed's claim was to be allowed as a deduction. On being moved for a reference, the question as set out above has been referred.

4. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice.
5. Learned counsel for the Revenue submitted that since the liability itself has been wiped out on the basis of the judgment of the apex court, the question of allowing it as a liability in a particular year does not arise.
6. We find that the Tribunal's approach was erroneous since the liability itself has been subsequently wiped out by the order of the apex court. The question of a liability being allowed in respect of any particular assessment year does not arise. However, as has been rightly conceded by learned counsel for the Revenue, if on the Sales Tax Officer passing an order, complying with the directions of the Supreme Court, any liability is created, the same has to be allowed as a liability in the year in which it is crystallised.
7. Our answer to the question, Therefore, is in the negative, in favor of the Revenue and against the assessed. Reference accordingly stands disposed of.