

DELHI HIGH COURT

Escorts Ltd

Vs.

Union Of India (Delhi)

CWP 2361 of 1989.

(B.N. Kirpal & Santosh Duggal, JJ.)

10.01.1991

JUDGEMENT

B.N. Kirpal, J.

1. The challenge in this writ petitions to a notice issued under Section 154 of the Income-tax Act to the petitioner whereby the Commissioner of Income-tax seeks to withdraw the deduction which was allowed under section 43B of the Income-tax Act.

2. In respect of the assessment year 1985-86, the petitioner had claimed in appeal before the Commissioner of Income-tax (Appeals) that the Income-tax Officer ought not to have included in its income the amounts collect by the petitioner by way of sales tax and disallowed the amount payable to the sales tax authorities by the petitioner. At that time, the Commissioner of Income-tax followed the decision of the Andhra Pradesh High Court in *Srikakollu Subba Rao v. Union of India*¹ and held that, as there was no contrary decision of the Delhi High Court, he was bound by the observations of the Andhra Pradesh High Court and he directed that the amount of sales tax which was payable though not actually paid should be allowed as a deduction under section 43B. After this order was passed by the Commissioner of Income-tax in appeal, the Income-tax Act was amended and Explanation 2 was inserted and it was given retrospective effect from April 1, 1984. It is, thereafter, that the present notice under section 154 has been issued seeking to withdraw the deduction which has been allowed by the Commissioner of Income-tax while deciding the appeal.

3. It is contended by learned counsel for the petitioner that there are two views possible with regard to the interpretation of section 43B and that the Patna High Court (*Jamshedpur Motor Accessories Stores v. Union of India* :² decided on

November has interpreted this provision to mean that even though payment has not actually been made, the provisions of section 43B are applicable.

4. A question with regard to the interpretation of section 43B came up for consideration before us in the case of *Sanghi Motor v. Union of India*³ Vide our judgment dated August, 22, 1990, we held that section 43B, as it now stands, is clear and unambiguous and all that it provides is that the deduction on account of sales tax would be allowed when the money is actually paid and not when the liability is incurred. It is true that the decision of the Patna High Court (*Jamshedpur Motor Accessories Stores v. Union of India* :⁴ was not brought to our notice but we have examined the said decision and, with respect, we cannot agree with the same. What has weighed with the Patna High Court is (p.74) : "On the face of section 43B of the Act, the same appears to be harsh and manifestly unjust.

5. In this situation, it would be permissible and necessary to consider the object of insertion of section 43B of the Act as stated by the Finance Minister in his Budget Speech which is as follows :...." In our opinion, merely because a provision of the Act is harsh, and we dare say that all provisions which levy tax are harsh, this is no ground for discarding one of the cardinal principles of interpretation of statutes which is that if the language is clear and unambiguous, then resort cannot be had to the aims and objects or to the Minister's speech with a view to interpret the provisions of an Act. It is only if there is any ambiguity in the language that, in order to understand the intention of the legislature, aid can be taken of the proceedings in Parliament including the aims and objects of the Act. Where, however, as in the present case, the language is plain, clear and unambiguous, the question of referring to the Finance Minister's speech in an effort to find out what is the intention of the Legislature does not arise.

6. The intention Legislature is evident from the section itself. The intention is that deduction is to be allowed only when payment is actually made. By verbal gymnastics, we cannot seek to interpret the said provision in a manner to negate the purpose of the section itself.

7. We also cannot agree with the Patna High Court case in *Jamshedpur Motor Accessories Stores v. Union of India*⁵ that the proviso has to be given retrospective effect especially when the legislature has categorically stated that

it is with effect from April 1, 1984.

8. It was contended that Explanation 2 is ultra vires. It was submitted by Dr. Pal that, under section 43B, if the sales tax is not payable, then the said provision does not apply. The example which is given is that, for the last quarter, sales tax is usually paid after the end of the financial year. Section 43B, it was contended, contemplates a situation where sales tax is payable within the financial year and if sales tax is payable after the financial year, then section 43B does not apply. It is precisely in order to plug this loophole that Explanation 2 was inserted with retrospective effect. Merely because Explanation 2 plugs a loophole and brings the case of the petitioner within the ambit of section 43B cannot be a reason for us to hold that Explanation 2 is ultra vires. Parliament has the legislative competence to enact the said provision and it is open to Parliament to see that the loopholes, if any, in a fiscal enactment, are blocked. We do not find this provision as being arbitrary or discriminatory and is not violative of any of the fundamental rights and is not in conflict with any provision of the Constitution.

9. As we have already observed in the case of Sanghi Motors [1991] 187 ITR 703 (Delhi), we have interpreted this section and we see no reason to disagree with the view which we have already taken.

10. In our opinion, notice under section 154 was validly issued. It is not possible for us to agree with the contention of learned counsel for the petitioner that two views were possible. Two views may have been possible at the time when Explanation 2 had not been inserted but once Explanation 2 has been inserted with effect from April 1, 1984, the ambiguity, if any, stood removed. We find no jurisdictional error in the issuance of the notice under section 154. Further more, with regard to the interpretation of section 154 and the merits of the case, it is open to the petitioner to raise such contentions before the authority itself and we see no reason why the petitioner should be allowed to abandon the proceedings under the Act and be allowed to taken recourse to the proceedings under article 226 of the Constitution.

11. For the aforesaid reasons, this petition is dismissed.

Petition dismissed.

Cases Referred.

1. (1988) 173 ITR 708
2. C.W.J.C. No. 942 of 1987, 6, 1990 [1991] 189 ITR 70)
3. (C.W. No. 2692 of 1990-[1991] 187 ITR 703 (Delhi)).
- 4 C.W.J.C. No. BFXC 942 of 1987 decided on November 6, 1990[1991] 189 ITR 70)
5. [1991] 189 ITR 70,