AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.615 of 2001

M/s. Bharat Cycle Stores, Through Partner Iqbal Ali, S/o Late Abdul Aziz, aged about 42 years, Juni Hatari, Rajnandgaon (C.G.)

---- Petitioner

Versus

1. Union of India, Through Secretary, Ministry Finance, New Delhi.
2. Commissioner of Income Tax, Jabalpur (M.P.)
3. Income-Tax Officer, B-Ward, Rajnandgaon (Chhattisgarh)

---- Respondents

For Petitioner:	Mr. V.G. Tamaskar, Advocate.
For Respondents:	None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/04/2017

1. M/s. Bharat Cycle Stores, the petitioner herein, calls in question legality, validity and correctness of the notice of demand issued under Section 156 of the Income Tax Act, 1961.
2. Essential facts necessary for disposal of the instant writ petition are as under: -
3. The petitioner assessee is a registered firm. The assessee carries on the business in cycles and cycle parts at Rajnandgaon. The petitioner filed return on 30-6-1984 showing income of ₹ 96,140/-. The petitioner also filed

estimate of advance tax showing income of ₹ 1,00,000/- but this estimate income was held to be untrue and incorrect by the Income Tax Officer on the point of sales tax. The Income Tax Officer has observed that the assessee had debited to accounts the entire sales tax liability of ₹ 1,07,346/- to the trading account though an amount of ₹ 35,270-73 ps. was not paid and it was shown as liability in the balance sheet. The Income Tax Officer added sales tax of ₹ 35,220/- and debited to the trading account. Against the order of the Income Tax Officer, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals), Jabalpur which was registered as Appeal No.Rjn.B-17/84-85 and by order dated 15-9-1987, the appeal was partly allowed. Feeling aggrieved against the order of the Commissioner of Income Tax (Appeals), the Income Tax Officer filed appeal before the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur and by order dated 29-6-1992, the appeal was dismissed. Against the order of the Income Tax Appellate Tribunal, Nagpur, the Commissioner of Income Tax, Jabalpur (M.P.) moved a reference under Section 256 (1) of the Income Tax Act, 1961 by making three questions of law before the High Court of Madhya Pradesh. The High Court of Madhya Pradesh registered the reference as M.C.C.No.201/1994 and by order dated 3-7-1996, answered the questions so referred in favour of the revenue.

4. Thereafter, in the matter of **Allied Motors (P) Ltd. v.**

Commissioner of Income Tax, Delhi[1], interpretation of Section 43-B of the Income Tax Act, 1961 came up for consideration. Their Lordships of the Supreme Court considered Section 43-B of the Income Tax Act, 1961 and answered that first proviso to Section 43-B is retrospective and sales tax for the last quarter paid before the filing of the return for the assessment year is deductible.

5. Learned counsel for the petitioner would submit that the petitioner's case is covered by the decision of the Supreme Court in **Allied Motors (P) Ltd.** (supra) and as such, the impugned demand notice deserves to be quashed.

6. None appeared for the respondents, though notices have been served, to support the impugned order.

7. The Supreme Court in **Allied Motors (P) Ltd.** (supra) has clearly held that Section 43-B of the Income Tax Act, 1961 is retrospective and observed as under in paragraph 14: -

> "14. This view has been accepted by a number of High Courts. In the case of CIT v. Chandulal Venichand[2], the Gujarat High Court has held that the first proviso to Section 43-B is retrospective and sales tax for the last quarter paid before the filing of the return for the assessment year is deductible. This decision deals with Assessment Year 1984-85. The Calcutta High Court in the case of CIT v. Sri Jagannath Steel Corpn.[3] has taken a similar view holding that the statutory liability for sales tax actually discharged after the expiry of accounting year in compliance with the relevant stature is entitled to deduction under Section 43-B. The High Court has held the amendment to be clarificatory and, therefore, retrospective. The Gujarat High Court in the above case held the amendment to be curative and explanatory and

1 (1997) 3 SCC 472
2 (1994) 209 ITR 7 (Guj)
3 (1991) 191 ITR 676 (Cal)

> hence retrospective. The Patna High Court has also held the amendment inserting the first proviso to be explanatory in the case of Jamshedpur Motor Accessories Stores v. union of India[4]. It has held that amendment inserting first proviso to be retrospective. The special leave petition from this decision of the Patna High Court was dismissed. The view of the Delhi High Court, therefore, that the first proviso to Section 43-B will be available only prospectively does not appear to be correct. As observed by G.P. Singh in his Principles of Statutory Interpretation, 4th Edn. at p. 291: "It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended." In fact the amendment would not serve its object in such a situation unless it is construed as retrospective. The view, therefore, taken by the Delhi High Court cannot be sustained."

8. Applying the ratio laid down by the Supreme Court in **Allied Motors (P) Ltd.** (supra), the impugned demand notice is quashed and the writ petition is allowed to the extent indicated herein-above with no order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

4 (1991) 189 ITR 70 : (1991) 91 CTR 19 (Pat)