* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 31.01.2011
% Date of decision: 24.02.2011

\+ ITA No.82 of 1999

Commissioner of Income Tax
Central-II, New Delhi …APPELLANT
*Through*: Mr. Sanjeev Sabharwal, Advocate.

*Versus*

SHRI NARENDER ANAND ...RESPONDENT
*Through*: Mr. P.N. Monga & Mr. Manu Monga, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

SANJAY KISHAN KAUL, J.

1. The following question of law was framed vide order dated 7.9.2000 to be answered by this Court:

> "Whether on the facts and circumstances of the case, the Tribunal was justified in holding that where time for filing return is extended in terms of proviso to Section 139 (1) it automatically means extension of the due date for the purpose of Section 43B of the Income Tax Act?"

2. The respondent/assessee was required to file returns for the year ending 31.3.1988 by 31.7.1988. The assessee, however, filed an application on 29.7.1988 praying for extension of time up to 30.9.1988 to file the return and this request was accepted by the Assessing Officer (for short 'AO') vide letter dated 11.8.1988. The return was filed by the assessee on 6.11.1990 declaring an income of ₹48,64,920.00 for the relevant assessment year.

3. It is during the assessment proceedings while scrutinizing the return that the AO noticed that the assessee had not paid the sales tax within time. The assessee's stand was that the sales tax in the sum of ₹1,24,058.00 on 11.8.1988 and ₹18,63,682.00 was paid on 11.8.1988 while sales tax amounting to ₹17,680.00 was paid on 8.9.1988 . The assessee, thus, contended that the amount should be considered to have been paid within time allowed for filing of return and thus none of these amounts should be disallowed under Section 43B of the Income Tax Act, 1961 (hereinafter referred to as the 'IT Act'). This plea was, however, not accepted by the AO, who disallowed the amount and added the same to the income of the assessee along with other additions vide order dated 27.3.1991.

4. The respondent/assessee filed an appeal before the Commissioner of Income Tax (Appeals), [in short 'CIT(A)], who confirmed the order of the AO on 5.3.1992. The order of the CIT (A) is predicated on the reasoning that it is for mitigating hardships experienced by the taxpayers in respect of sales tax which was due for the last quarter of the accounting year but was payable only in

the next quarter after the completion of the accounting year, that an amendment was brought in as a proviso for excluding the applicability of provisions of Section 43B of the IT Act in respect of payment made before due date of filing of return. Since the due date for filing of return of return for purposes of Section 43B of the IT Act was 31.7.1988 for the year in question, the period of extension granted by the AO has to be excluded from the purview of Section 43B of the IT Act.

5. The assessee being aggrieved filed an appeal before the ITAT, which found in favour of the assessee vide order dated 28.1.1999. The order of the ITAT records that if the amount of sales tax stood paid within the extended period as granted by the AO, then the amount could not be disallowed for making addition. Consequently, the ITAT directed the AO to verify the payment of outstanding sales tax, and if that stood paid by the assessee within the extended period of time for filing return, not to make the addition on this account to the total income of the assessee.

6. In order to appreciate the controversy, it is necessary to reproduce the provisions which have to be considered in this behalf and the same are as under:

> "**Section 43 B**
>
> 43B. Certain deductions to be only on actual payment.-- Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of--
>
> (a) any sum payable by the assessee by way of tax or duty under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employee,

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him.

Provided that nothing contained in this section shall apply in relation to any sum referred to in clause (a) or clause (c) or clause (d) which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return:

Provided further that no deduction shall, in respect of any sum referred to in clause (b), be allowed unless such sum has actually been paid during the previous year on or before the due date as defined in the Explanation below clause (va) of sub-section (1) of section 36."

…. …. …. …. …. …. …. …. ….

**Section 139 (1)**

139. Return of income.--(1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed--

(a) in the case of every person whose total income, or the total income of any other person in respect of which he is assessable under this Act, includes any income from business or profession, before the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the

assessment year, or before the 30th day of June of the assessment year, whichever is later;

(b) in the case of every other person, before the 30th day of June of the assessment year:

Provided that, on an application made in the prescribed manner, the Assessing Officer may, in his discretion, extend the date for furnishing the return, and notwithstanding that the date is so extended, interest shall be chargeable in accordance with the provisions of sub-section (8).

…. …. …. …. …. …. …. …. ….

(8) (a) Where the return under sub-section (1) or sub-section (2) or sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the Assessing Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay simple interest at fifteen per cent. per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source:

Provided that the Assessing Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section.

(b) Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount of tax on which interest was payable under this sub-section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and--

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly ;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded."

6.1 We have also extracted relevant portion of Section 80 of the IT Act, even though it was not relied upon before the authorities below, since arguments were advanced before us based on the said provision.

**"Section 80**

80. Submission of return for losses.--Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed within the time allowed under sub-section (1) of section 139 or within such further time as may be allowed by the Assessing Officer, shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) or sub-section (3) of section 74 or sub-section (3) of section 74A."

7. It is the plea of the appellant/department that since Section 43B of the IT Act starts with a non-obstante clause as per scheme of that Section the deductions allowable under the IT Act are permissible only in computing the income under Section 28 of the IT Act of the previous year in which such sum is actually paid by the assessee. The assessee has followed the mercantile system of accounting. The sums payable by the assessee on account of certain liabilities mentioned in Section 43B of the IT Act in the accounting year will be allowed in which such sums are actually paid. It is only the proviso which carved out the exception to the main clause. As per the proviso if the same, as mentioned in the proviso, is payable during the accounting year but is not paid during that period and is actually paid on or before the due date for

furnishing the return of income under Section 139(1) of the IT Act in respect of such period in which liability was incurred, then the same is allowable in computing the income of that accounting year. It is, thus, the submission of the department that since the due date for filing of returns of the relevant year under consideration was 31.7.1988 and undisputedly the respondent/ assessee had not discharged his sales tax liability within that period as per facts found but the amounts having been paid on 11.8.1988 and 8.9.1988, the assessee was not entitled to deductions of such amounts as per provisions of Section 43B of the IT Act.

8. It is the submission of the department that authorization bestowed on the Assessing Officer (in short 'AO') on account of a proviso to Section 139(1) of the IT Act to extend the date for furnishing the return in its discretion does not empower the AO to change the due date for filing the return as mentioned in the main clause of Section 139 of the IT Act and, that is the reason that as per the proviso interest has to be paid by the assessee in accordance with Section 139(8) of the IT Act mandatorily even if the date for filing of return is extended by the AO. The proviso to Section 43B was, thus, contended not to be applicable where the amount is not paid as per the due date as specified in the main provision of Section 139(1) of the IT Act.

9. It was emphasized that the object with which the proviso to Section 43B was inserted must be kept in mind. This was a

sequitur to the department finding out that certain assessees were claiming a liability on the basis of accrual following the mercantile system of accounting but were disputing the payment of such liabilities or not paying such liabilities altogether. Thus, the benefit was extended to the assessees only if they had actually paid the amount within the dates specified for filing of the return as per the main proviso of Section 139(1) of the IT Act.

10. To support the aforesaid interpretation learned counsel also referred to the provisions of Section 80 of the IT Act providing for submission of return for losses to contend that where the legislature wanted the benefit to be extended not only to a return filed within the time allowed under sub-section (1) of Section 139 of the IT Act or within such further time as may be allowed by the AO a specific provision has been made as in case of Section 80 of the IT Act. Thus, it has been specifically stipulated "in pursuance of a return filed within time allowed under sub-section (1) of Section 139 or within such further time as may be allowed by the Assessing Officer". To appreciate the submission we asked learned counsel to set forth as to how these provisions stood at different intervals of time. The provision as it stood at different periods of time shows that the phraseology "or within such further time as may be allowed by the Assessing Officer" did not exist till 1.4.1985 when it was so introduced and continued so till 31.3.1989. From 1.4.1989 the provision provided for "in accordance with the provisions of sub-section (3) of Section 139".

11. Form No.6 under Rule 13 of the Income Tax Rules, 1962, which gives the format for the application for extension of date for furnishing of return of income under Section 139(1) of the IT Act has also been referred to where the request made is for "time for furnishing the return may be extended up to ……..".

12. To support his plea learned counsel referred to various judgements. In Krishna Chandra Dutta (Cookme) Private Limited Vs. CIT (1993) 204 ITR 23 the return for the assessment year 1983-84 was filed belatedly on 2.7.1985 claiming loss on account of premature encashment of Cash Certificates for paying of debt to bank. The amendment to Section 80 of the IT Act effective from 1.4.1984 requiring the return of losses to be filed within time for benefit of carry forward and set off was held not to be a retrospective in character but effective in respect of assessment years subsequent to the assessment year 1983-84.

13. The objective of introducing the proviso to Section 43B of the IT Act has been explained in Allied Motors (Private) Limited Vs. CIT (1997) 224 ITR 677. The question which was examined was whether the proviso clarifying the sums paid after the accounting year but before the due date of submission of return was retrospective in character. The principle of reasonable construction was applied since the proviso inserted was to remedy unintended consequences, it was treated as retrospective. The budget speech of the Finance Minister for the year 1983-84

reported in (1983) 140 ITR (St.) 31 was referred to where in para 60 it is stated as under:

> "60. Several cases have come to notice where taxpayers do not discharge their statutory liability such as in respect of excise duty, employer's contribution to provident fund, Employees' State Insurance Scheme, etc., for long periods of time, extending sometimes to several years. For the purpose of their income-tax assessments, they claim the liability as deduction on the ground that they maintain accounts on mercantile or accrual basis. On the other hand, they dispute the liability and do not discharge the same. For some reason or the other, undisputed liabilities also are not paid. To curb this practice, it is proposed to provide that deduction for any sum payable by the assessee by way of tax or duty under any law for the time being in force (irrespective of whether such tax or duty is disputed or not) or any sum payable by the assessee as an employer by way of contribution to any provident fund, or superannuation fund or gratuity fund or any other fund for the welfare of employees shall be allowed only in computing the income of that previous year in which such sum is actually paid by him."

14. In view of the aforesaid it was observed as under:

> "Section 43B was, therefore, clearly aimed at curbing the activities of those taxpayers, who did not discharge their statutory liability of payment of excise duty, employer's contribution to provident fund, etc., for long periods of time but claimed deductions in that regard from their income on the ground that the liability to pay these amounts had been incurred by them in the relevant previous year. It was to stop this mischief that section 43B was inserted. It was clearly not realised that the language in which section 43B was worded, would cause hardship to those taxpayers who had paid sales tax within the statutory period prescribed for this payment, although the payment so made by them did not fall in the relevant previous year. This was because the sales tax collected pertained to the last quarter of the relevant accounting year. It could be paid only in the next quarter which fell in the next accounting year. Therefore, even when the sales tax had in fact been paid by the assessee within the statutory period prescribed for its payment and prior to the filing of the income tax return, these assessees were unwittingly prevented from claiming a legitimate deduction in respect of the tax paid by them. This was not intended by section 43B. Hence, the first

proviso was inserted in section 43B. The amendment which was made by the Finance Act of 1987 in section 43B by inserting, inter alia, the first proviso, was remedial in nature, designed to eliminate unintended consequences which may cause undue hardship to the assessee and which made the provision unworkable or unjust in a specific situation."

The departmental circular No.550 dated 1.1.1990 was also extracted, which is as under:

"Amendment of provisions relating to certain deductions to be allowed only on actual payment.

15.1. Under the existing provisions of section 43B of the Income-tax Act, 1961, a deduction for any sum payable by way of tax, duty, cess or fee, etc., is allowed on actual payment basis only. The objective behind these provisions is to provide for a tax disincentive by denying deduction in respect of a 'statutory liability' which is not paid in time. The Finance Act, 1987, inserted a proviso to section 43B to provide that any sum payable by way of tax or duty, etc., liability for which was incurred in the previous year will be allowed as a deduction, if it is actually paid by the due date of furnishing the return under section 139(1) of the Income-tax Act, in respect of assessment year to which the aforesaid previous year relates. This proviso was introduced to remove the hardship caused to certain taxpayers who had represented that since the sales tax for the last quarter cannot be paid within the previous year, the original provisions of section 43B will unnecessarily involve disallowance of the payment for the last quarter.

15.2. Certain courts have interpreted the provisions of section 43B in a manner which may negate the very operation of this section. The interpretation given by these courts revolves around the use of the words 'any sum payable'. The interpretation given to these words is that the amount payable in a particular year should also be statutorily payable under the relevant statute in the same year. Thus, the sales tax in respect of sales made in the last quarter was held to be totally outside the purview of section 43B since the same is not statutorily payable in the financial year to which it relates. This is against the legislative intent and, therefore, by way of inserting an Explanation, it has been clarified that the words 'any sum payable', shall mean any sum, liability for which has been incurred by the taxpayer during the previous year

irrespective of the date by which such sum is statutorily payable . . .”

15. It was, thus, observed as under:

> “Therefore, in the well known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of R. B. Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570, this court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole.”

16. In Harmanjit Trust Vs. CIT, Patiala-I (148) 1984 ITR 214 it was held that once the assessee in the prescribed form delivers to the AO a request for extension of time to file the return, a duty is cast on the AO to intimate the assessee whether his request for extension of time for furnishing the return has been granted or refused and if there is no reply within a reasonable time from the AO, the assessee could presume that his request for extension of time has been granted.

17. Learned counsel for the respondent/assessee naturally supported the conclusions arrived at by the ITAT to contend that once it is found that extension has been granted or deemed to be granted for filing of return up to a particular date, then the sales tax paid prior to that date has to be taken into account as deductible and cannot be added back. The effect of such extension is pleaded to be that

the date for filing of the return stands shifted to the date up to which extension is granted with all natural consequences.

18. We may refer to two judgements cited in this behalf, which are germane to the issue. The first is in the case of Mehsana Ice & Cold Storage P. Ltd. Vs. CIT (2005) 275 ITR 601 by the Division Bench of the Gujarat High Court. For the assessment year 1985-86 the assessee sought extension of time up to 31.12.1985 and tendered the return within that time. The application seeking extension of time was neither rejected nor granted and it was held that in view of the pronouncements the extension application was construed to have been granted and thus the return was within time, and as a sequitur to that, the assessee could not be denied the benefit of carrying forward the business losses. In that context it was observed as:

> "Under section 139(3) of the Act a return of loss has to be furnished within the time allowed under sub-section (1) or within such further time which, on an application made in the prescribed manner, the Assessing Officer may, in his discretion, allow. The assessee being a limited company, under normal circumstances the time to furnish a return under section 139(1) of the Act would be before the expiry of four months from the end of the previous year, i.e., July 31, 1985. However, under the proviso to section 139(1) of the Act an Assessing Officer is granted discretion to extend the date for furnishing the return on an application made in the prescribed manner. Therefore, the scheme of the Act envisages that the due date is either the one stated under clause (a) or clause (b) of sub-section (1) of section 139 of the Act, or the extended date which may be fixed on exercise of discretion by the Assessing Officer on an application moved by an assessee under the proviso. However, as to what is the effect in a case where an application is made in time before the Assessing Officer under the proviso to sub-section (1) of section 139 of the Act, and where such application is not dealt with by the

Assessing Officer, i.e., it is neither rejected nor granted, is no longer *res integra*."

19. The Calcutta High Court in Amin Chand Payarelal Vs. Inspecting Assistant Commissioner of Income Tax Range-1 (Central), Calcutta & Ors. (1989) 180 ITR 330 dealing with the issue of imposition of penalty in case the return was filed within the extended time allowed. The effect of the AO extending the date for filing the return under Section 139(1) of the IT Act was, as contended by the assessee, is as under:

"When the Income-tax Officer extends the date for furnishing the return under proviso (iii) to section 139(1), he does so in exercise of the authority conferred by the statute and the additional time available to the assessee consequent upon such extension is, for all relevant purposes, of the same character and as effective as the statutory period specifically enacted by Parliament. It constitutes an integral part of the time allowed for furnishing a return. Therefore, where the Income-tax Officer extends the date, then all the time up to that date is the time allowed for furnishing the return. The additional period consequent upon such extension falls within the expression "the time allowed" in clause (a) of section 271(1) and the penalty provisions do not come into play during the period of extension of time by the Income-tax Officer. It has also been observed that, from the language of proviso (iii) to section 139(1), it is apparent that interest becomes payable only upon the Income-tax Officer acting, on an application made by the assessee for the purpose and extending the date for furnishing the return. The ratio of the said decision is (i) that in the ordinary course of things, the Income-tax Officer could have extended the date only upon being satisfied that there was good reason for doing so, and that would have been on the grounds pleaded by the assessee and that in the circumstances of this case, a presumption could validly be raised that all that was done ; (ii) that, on the facts, the extension was a matter falling within section 139(1) and the returns furnished by the assessee must be attributed to that provision ; they were not returns furnished within the contemplation of section 139(4) ; (iii) that, therefore, the penalty provisions did not come into play at all."

The stand of the department was:

> "Learned lawyer appearing for the income-tax authorities has, however, submitted that the acts done and/or caused to have been, done by the respondent are well-justified and in accordance with law and the acts complained of are neither contrary to and/or inconsistent with the provisions of the Income-tax Act and the allegations in the writ petition are otherwise unwarranted and uncalled for."

On the basis of the submissions, it was observed as under:

> "With all anxiety, this court has heard the arguments advanced on behalf of the respective parties. Undisputedly, the petitioner has paid all income-tax dues and the grievance of the petitioner is only against the imposition of penalty and the notice of demand in this behalf The question to be decided in this writ petition is as to whether the steps taken by the respondents to impose penalty are without jurisdiction or not. Regard being had to the facts of this case and applying the test laid down by the Supreme Court, this court finds that the Inspecting Assistant Commissioner of Income-tax has no jurisdiction to impose penalty. Time is already extended to file the return and the assessed amount being paid should be deemed to have been paid within the extended time and there cannot be any further demand for penalty in the manner sought to be done in the instant case."

20. Learned counsel for the Department also referred to the judgement in Orissa State Warehousing Corporation Vs. Commissioner of Income Tax (1999) 237 ITR 589 to contend that while dealing with the question of exemption under Section 10(29) of the IT Act, it was observed that a fiscal statute should be interpreted on the basis of the language used therein and not *de hors* the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. It was also observed that the court is to ascribe the natural and ordinary meaning to the words used by the legislature

and the court ought not, under any circumstances, substitute its own impression and ideas in place of the legislature intent as it is available from a plain reading of the statutory provisions.

21. We have given our thoughtful consideration to the matter in issue. To answer the question of law framed we feel the following aspects have to be taken into account:

i. The object with which Section 43B was inserted.

ii. The object with which the proviso was inserted in Section 43B of the IT Act.

iii. The effect of extension granted by the AO to the assessee under proviso (iii) of Section 139(1) of the IT Act.

iv. The factum of the sales tax having been actually paid within the extended period of time.

22. It has already been held in Allied Motors (Private) Limited case (supra) while making the proviso applicable retrospectively that Section 43B of the IT Act was introduced to curb the activities of those tax payers who did not discharge the statutory liability of payment of excise duty, provident fund, etc. for a long period of time but claimed deductions in that regard from their income on account of the liabilities to pay these amounts having been incurred by them in the relevant previous years. Thus, to cure the mischief, Section 43B was inserted.

23. However, when Section 43B was so worded it was not realized that it would cause hardship to those tax payers who had paid sales tax within statutory period prescribed for payment although the

payment made by them did not fall within the relevant year. This was so because the same pertains to the last quarter of the relevant accounting year and could be paid only in the next quarter which fall in the next accounting year. Thus, even the assessee's who paid sales tax within the statutory period prescribed for its payment and prior to the filing of the income tax return were prevented from claiming legitimate deductions in respect of tax paid by them. This resulted in the first proviso to eliminate unintended consequences.

24. The principles for applying the mischief rule was set out in CIT, Madhya Pradesh & Bhopal Vs. Sodra Devi (1957) 32 ITR 615 (SC) wherein it was observed as under:

> "22. ….we must of necessity have resort to the state of the law before the enactment of the provisions; the mischief and defect for which the law did not provide; the remedy which the legislature resolved and appointed to cure the defect and; the true reason of the remedy…."

25. The judgement in Amin Chand Payarelal case (supra) explains the effect of extension of date for furnishing of return under proviso (iii) to Section 139(1) of the IT Act. Thus, what the assessee was required to do up to a particular date under Section 139(1) of the IT Act is permitted to be done by a subsequent date. It is in view thereof it was held that penalty could not be imposed if the assessee had paid all the income tax dues.

26. If we apply the aforesaid principles we find that the extended date as granted by the AO was 30.9.1988. The return was, of course, filed belatedly for which the assessee suffered necessary penalties.

The benefit is, however, sought to be extended only on account of the actual payment of sales tax within that extended period of time of 30.9.1988. The ITAT, in fact, has asked that the payment of this amount can be verified by the AO. It is not a case where some deduction is being claimed twice, once on the basis of accrual; and second on the basis of payment. We have in ITA No.3/1999 titled Friends Clearing Agency (P) Ltd. Vs. Commission of Income Tax-II decided on 4.1.2011 examined the issue of deduction claimed by an assessee being interest payable on loan raised by it from a bank accrued and ascertained liability in respect of the year in question and while examining the same considered this very aspect of the deduction not being claimed twice.

27. We find that once neither penalty can be imposed nor any other such negative consequences follow to the assessee by reason of filing his returns late, so long as there is an extended period of time granted or deemed to be granted by the AO, all acts done within the extended period must, thus, be deemed to have been done within the prescribed period of time as originally stipulated.

28. We also find that the mere fact that Section 80 is worded differently would not come to the aid of the department. This is so as the mischief which was sought to be cured by introduction of Section 43B will not arise in the present case as the deduction is permissible only if the amount is actually paid and that too within the extended period of time which was of three months. The introduction of proviso was to cure unintended consequences and

thus the benefit was available even for sales tax paid up to the date of filing of the return. This was so as the assessing authority would then know that the payment had actually flowed before the return was filed. The payment in the present case would actually have flowed before the date of filing of the return, the only consequence being that such date is extended by three months as a consequence of the order passed by the assessing authority on the application of the assessee filed within time.

29. We are, thus, in agreement with the view taken by the ITAT for all the aforesaid reasons and thus answer the question in favour of the assessee and consequently dismiss the appeal.

SANJAY KISHAN KAUL, J.

FEBRUARY 24, 2011 RAJIV SHAKDHER, J.
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