

**Cit Vs. Electro Controls**

**Cit Vs. Electro Controls**

**SooperKanoon Citation :** [sooperkanoon.com/748063](http://sooperkanoon.com/748063)

**Court :** Gujarat

**Decided On :** Jun-20-2002

**Reported in :** [2002]123TAXMAN824(Guj)

**Appeal No. :** IT Reference No. 206 of 1989 20 June 2002

**Appellant :** Cit

**Respondent :** Electro Controls

**Advocate for Pet/Ap. :** Ms. Mona Bhatt, *for the Revenue* R.K. Patel, *for the Assessee*

**Judgement :**

**M.S. Shah, J.**

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of the assessment year 1984-85:

'Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs. 35,272 on account of unpaid sales tax under section 43B of the Income Tax Act, 1961?'

2. We have heard Ms. Mona Bhatt, the learned counsel for the revenue and Mr. R.K. Patel, the learned counsel for the respondent- assessee.

3. The controversy pertains to the amount which was collected by the respondent-assessee as sales tax in the last quarter of the previous year but payable statutorily in the subsequent year. The Tribunal had held in favour of the assessee in view of the decision of the Andhra Pradesh High Court in *Srikakollu Subba Rao & Co. v. Union of India* : [1988]173ITR708(AP) .

4. At the hearing today, our attention is invited to the decision of the Supreme Court in *Allied Motors (P) Ltd. v. CIT* : [1997]224ITR677(SC) . The Apex Court has held that as per the first proviso added to section 43B of the Income Tax Act, 1961 by the Finance Act, 1987, the main part of section 43B will not apply in relation to any sum which was actually paid by the assessee in the next accounting year if it was paid on or before the due date for furnishing the return of income in respect of previous year, in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with the return. Explanation 2 was, therefore, added by the Finance Act, 1989 with retrospective effect from 1-4-1984 for the purpose of removing any ambiguity about the term 'any sum payable' under clause (a) of section 43B.

5. Following the aforesaid decision, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

6. The reference, accordingly, stands disposed of.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**