

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2nd DAY OF JULY 2003

PRESENT

THE HON'BLE MR JUSTICE P VISHWANATHA SHETTY

AND

THE HON'BLE MR JUSTICE AJIT J GUNJAL

ITA NO.235/2003

BETWEEN:

1 The Commissioner
of Income Tax,
C R Building,
Queens Road,
Bangalore

2 The Assistant Commissioner
of Income-tax,
Central Circle-IV,
C R Building,
Queens Road,
Bangalore

APPELLANTS

(BY Sri M V Seshachala, Adv)

AND:

M/s Distillers Company Ltd,
Brewery House,
7th Mile,
Kanakapura Road,
Bangalore-61

RESPONDENT

This ITA is filed under Sec 260A of the Income Tax Act, 1961 arising out of order dt 30 12 2002 passed in ITA No 556/Bang/2001 for the assessment year 1997-98 praying to allow the appeal and set aside the orders passed by the Income Tax Appellate Tribunal in ITA No 556/Bang/2001 dated 30 12 2002 and confirm the order passed by the Commissioner of Income Tax Appeals, Bangalore and confirm the assessment order passed by the Deputy Commissioner of Income Tax, Central Circle-I, Bangalore

This ITA coming on for admission this day, P Vishwanatha Shetty J , made the following:

JUDGMENT

In this appeal, filed under Sec 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act), the appellants have called in question the correctness of the order dated 30 12 2002 passed by the Income Tax Appellate Tribunal, Bangalore

2 Heard Sri Seshachala, learned Counsel appearing for the appellants on merits



3 The substantial question of law that arises for our consideration in this appeal is as hereunder:

"Whether the amount of 'kist' payable by the assessee to the State Government can be allowed as a deduction even when this sum has not been actually paid by the assessee in view of the restriction imposed under Section 43B of the Act?"

4 The learned Counsel for the appellants is unable to dispute that the above substantial question of law is covered by the earlier decision of this Court in the case of COMMISSIONER OF INCOME TAX Vs. BALAJI AND COMPANY reported in 246 ITR 750 against the appellants. In the said decision, the Division Bench of this Court has taken the view that it is only the statutory liability which is in the nature of Tax, Duty, Cess or Fee, to which the provisions of Section 43B of the Act are attracted. In the said decision it is held that the provisions of Section 43B of the Act cannot be attracted in



respect of the Kist/Rental amount payable to the Government by the Assessee It is useful to refer to the observations made by the Division Bench of this Court in the said case which reads as hereunder:

"If the Legislature has used specific language then it cannot be stretched to include certain sums which are not in the nature of payment mentioned by the Legislature. Payment of lease money/rental may be a statutory liability but however any statutory liability does not come within the purview of Section 43B It is only that statutory liability which is in the nature of tax, duty, cess or fee to which the provisions of section 43B are attracted Since the kist/rental could not be considered as following under either of the items, the provisions of section 43B cannot be attracted and as such we are of the view that the Tribunal was justified in law in holding that the kist amount payable to the Government by the assessee could not be brought within the purview of the provisions of section 43B of the Income-tax Act, 1961 It is a different matter that the licensees are not paying the rent



in time for which it is only the Legislature which could intervene and not the courts"

Therefore, in the light of the decision of this Court in the case of COMMISSIONER OF INCOME TAX Vs BALAJI AND COMPANY referred to supra, we are of the view that there is no merit in this appeal and the same is liable to be rejected as one devoid of any merit Accordingly, it is rejected. However, no order is made as to costs

Sd/-
Judge

Sd/-
Judge

sm/-