courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(1977) 03 MAD CK 0036

In the Madras High Court

Case No : Tax Case No. 245 of 1974 (Reference No. 121 of 1974)

Additional Commissioner of Income Tax — APPELLANT

Vs

Kwality Spinning Mills (Private) Ltd. — RESPONDENT

Date of Decision : 14-03-1977

Acts Referred:
Income Tax Act, 1961 — Section 33, 43(1), 43A(1), 43A(2)

Citation : (1977) 109 ITR 646

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : A.N. Rangaswami and Nalini Chidambaram, for the Appellant; S. Swaminathan, K. Ramgopal and S.A. Balasubrahmanian, for the Respondent

Judgement

This Judgment has been overruled by : Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd., AIR 1992 SC 718 : (1992) 101 CTR 91 : (1992) 193 ITR 255 : (1991) 5 JT 341 : (1991) 2 SCALE 1320 : (1992) 2 SCC 190 Supp : (1991) 3 SCR 303 Supp : (1992) 60 TAXMAN 192

Ismail, J.—The assessee, which is a private limited company, claimed development rebate of Rs. 2,63,015 for the assessment year 1967-68 on the value of newly added plant and machinery. The Income Tax Officer while assessing the assessee for the said year, noticed that the value of the machinery, namely, Rs. 13,15,074, included an amount of Rs. 48,342 being the increase in the cost of Russian machinery on account of the devaluation of Indian currency. The assessee''s claim was based on the fact that its actual cost of the said machinery had increased consequent on the increase in the rate of exchange on the devaluation as they were acquired before the date of devaluation. The Income Tax Officer negatived the assessee''s claim in view of the express provisions of Section 43A(2) of the Income Tax Act, 1961, which according to him clearly prohibited the changes in actual cost for the purpose of granting development rebate u/s 33. In that view of the matter, he reworked the computation for development rebate and arrived at a development rebate of Rs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/additional-commissioner-of-income-...

2,53,346.

2. The Appellate Assistant Commissioner to whom the assessee preferred an appeal confirmed the conclusion of the Income Tax Officer. The assessee took up the matter further to the Tribunal. Before the Tribunal it was contended that Section 43A(2) had no application where the actual cost was to be determined with reference to Section 43(1) of the Act." The contention of the department before the Tribunal was that when there was a specific and special provision granting depreciation consequent to changes in the rate of exchange and similarly when there existed specific provision denying computation for development rebate, there was no scope for falling back on Section 43(1) in support of the assessee''s case. However, the Tribunal held that it was only the expression "actual cost" as defined in Section 43(1) that applied to the present case and, therefore, the assessee was entitled to include the sum of Rs. 48,342 as part of the actual cost for claiming development rebate. The correctness of this conclusion of the Tribunal is challenged by the Additional Commissioner of Income Tax, Madras-II, Madras, by applying for and obtaining a reference of the following question for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, it has been rightly held that the assessee is entitled, in law, to development rebate on the increased price of Rs. 48,342 payable on the imported machinery as a result of fluctuation in the exchange rate on the devaluation of Indian currency for the assessment year 1967-68 ? "

3. For the purpose of answering this question, a reference has to be made only to four statutory provisions. It is Section 33 of the Income Tax Act, 1961, which deals with the grant of development rebate. That section provides for the grant of development rebate to the assessee in respect of new machinery or plant acquired by the assessee and wholly used for the purpose of the business carried on by him of a particular percentage of the actual cost of the machinery. Section 43 of the Act defines certain terms relevant to income from profits and gains of business or profession and states that the expression "actual cost" in Sections 28 to 41 and in Section 43, unless the context otherwise requires, meant the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. After Section 43, comes Section 43A which is itself enacted in two sub-sections. Sub-section (1) deals with the addition to or deduction from the actual cost of the difference resulting from changes in the rate of exchange. It is not necessary to extract the sub-section in full for the simple reason that subsection (2) of Section 43A states that the provisions of Sub-section (1) shall not be taken into account in computing the actual cost of an asset for the purpose of the deduction on account of development rebate u/s 33. The effect of Sub-section (2) of Section 43A is to exclude the applicability of Section 43A(1) to the computation of the actual cost for the purpose of deduction on account of development rebate u/s 33. Therefore, for the purpose of computing the actual cost of an asset for the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/additional-commissioner-of-income-…

purpose of deduction on account of development rebate u/s 33, the only statutory provision relevant is Section 43(1) defining the expression " actual cost " to which we have already made reference. The Tribunal in paragraph 6 of its order points out as follows:

" In the instant case, the department''s case is not that it (the amount of Rs. 48,342) will not go to the actual cost. "

4. Consequently, the case of the department before the Tribunal was that this sum of Rs. 48,342 will go into the actual cost as contemplated in Section 43(1). That was also the case before us. Pursuant to Section 33, the assessee will be entitled to development rebate on the actual cost as defined in Section 43(1) which, admittedly, included this sum of Rs. 48,342. In view of this obvious position, having regard to the express provisions contained in Section 43A(2), it is rather difficult to appreciate as to how the department contended before the Tribunal that the actual cost should not be computed as provided for in Section 43(1). Under these circumstances, we answer the question referred to this court in the affirmative and in favour of the assessee. The assessee is entitled to its costs of this reference. Counsel''s fee Rs. 500.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/additional-commissioner-of-income-…