(2005) 03 AHC CK 0242

In the Allahabad High Court

Case No : ITR No. 209 of 1992 3 March, 2005

Commissioner of Income Tax APPELLANT

Vs

Adarsh Sheet Grih RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:
Income Tax Act, 1961 — Section 256, 43

Citation : (2006) 155 TAXMAN 155

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, for the Revenue, for the Appellant;

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') for opinion to this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was in law legally justified in confirming the Commissioner (Appeals)''s finding that the amount of subsidy received or receivable from the U.P. State Government is not deductible from W.D.V. of the various assets for the purpose of calculation of depreciation on the same ?"

2. The reference relates to the assessment year 1983-84.

3. Briefly, stated the facts giving rise to the present reference are as follows:

The respondent-assessee is a firm and is running a cold storage. The State Government had sanctioned a capital subsidy of Rs. 1,96,300. The Income Tax Officer deducted the sum of capital subsidy of Rs. 19,300 from the written down value of various assets for the purpose of calculating depreciation. The respondent feeling aggrieved, preferred an appeal before the Commissioner (Appeals), who had accepted the contention that the amount of capital subsidy is not be deducted from the written down value, which order has been upheld by the Tribunal.

4. We have heard Sri A.N. Mahajan, learned standing counsel for the revenue. Nobody has appeared on behalf of the respondent-assessee.

5. We find that the Apex Court in the case of Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., has held that the amount of capital subsidy is not be deducted while determining the actual cost u/s 43(1) of the Act for the purpose of depreciation, etc.

6. Respectfully following the aforesaid decision, we are of the considered opinion that the Tribunal has not committed any illegality in upholding the order of the CIT (Appeals). We, accordingly, answer the aforesaid question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.