(1995) 08 GAU CK 0019

In the Gauhati High Court

Case No : Civil Rule No. 5 (M) of 1995

Commissioner of Income Tax — APPELLANT

Vs

Assam Asbestos Ltd. — RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:
Income Tax Act, 1916 — Section 256, 37, 37(3A), 37(3B)

Citation : (1995) 215 ITR 847

Hon'ble Judges : V.K. Khanna, C.J;D.N. Baruah, J

Bench : Division Bench

Advocate : G.K. Joshi and U. Bhuyan, for the Appellant; A.K. Maheshwari, for the Respondent

Judgement

D.N. Baruah, J.—In this application u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), the Department has prayed for a direction to the respondent to submit the statement of the case and to refer the questions of law for the opinion of this court, which the Tribunal refused to do by order dated September 8, 1993, passed in Reference Application No. 345/(Cal) of 1993 in Income Tax Appeal No. 421/(Gauhati) of 1988, relating to the assessment year 1985-86 rejecting the reference application filed by the petitioner u/s 256(1) of the Act by holding that there involved no question of law to refer for the opinion of this court out of the order passed by the Tribunal dated December 4, 1992, in Income Tax Appeal No. 421/(Gauhati) of 1988. For the purpose of determination of this case, the following facts may be stated.

2. The respondent-assessee is a company which filed its return of income on September 25, 1985, for the assessment year 1985-86 showing a loss of Rs. 14,06,640. The said return was revised on May 28, 1987, showing a total loss of Rs. 21,60,030 on the ground that the claim of Rs. 7,37,757 which was shown as income was written off in 1986, and therefore, the respondent claimed the deduction in the assessment year 1985-86. The said return was subsequently again revised on July 30, 1987, showing a loss of Rs. 46,99,920 on the ground

that the transport subsidy which was shown in the original return as income was not taxable in the year as the same was a capital receipt and not a revenue receipt. Notices were served under Sections 143(2) and 142(1) of the Act. The assessee appeared and after the hearing, the Inspecting Assistant Commissioner of Income Tax (Assessment), Range I, Gauhati, completed the assessment by order dated March 30, 1988, passed u/s 143(3) of the Act. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Gauhati. The said appeal was disposed of on October 6, 1988. A second appeal was preferred before the Income Tax Appellate Tribunal, "A" Bench, Calcutta (for short, "the Tribunal"). The appeal was partly allowed by the Tribunal by its order dated December 4, 1992, on the grounds and reasons mentioned in the said order. The Tribunal held that the subsidy is a generous act of the State, or rather a grant or gift to the assessee for the sole purpose of assisting the assessee for the growth of industries and therefore, cannot be considered as a trading or revenue receipt liable to be taxed. The Tribunal, therefore, held that the lower appellate authority committed an error in confirming the Assessing Officer''s order on this point and directed to delete the addition of Rs. 25,27,154 from the total income of the assessee. The Tribunal further directed the Assessing Officer to exclude the sum of Rs. 50,115 which was incurred on account of advertisement expenses for recruitment of personnel while making disallowance u/s 37(3A) read with Section 37(3B) of the Act.

3. Being aggrieved by the order of the Tribunal dated December 4, 1992, the Department filed a reference u/s 256(1) of the Act before the Tribunal with a prayer to draw up a statement of the case and refer the questions of law arising out of its order dated December 4, 1992, to this court for opinion. The Tribunal, however, rejected the application by its order dated September 8, 1993.

4. We have heard Mr. G.K. Joshi, learned senior standing counsel assisted by Mr. U. Bhuyan, learned junior standing counsel appearing for the petitioner, and Mr. A.K. Maheswari, learned counsel for the respondent. In its order dated September 8, 1993, the Tribunal held as follows :

"The findings of the Tribunal in regard to both the questions raised by the Commissioner are pure findings of fact based on an appreciation of the entire materials that have been brought on record and there is no point of law involved in them. Hence, we find ourselves unable to agree with the Revenue that any question of law arises put of these findings of the Tribunal."

5. We do not find any material to come to a different conclusion. Accordingly, the petition is rejected. However, in the facts and circumstances of the case, we make no order as to costs.