(1987) 07 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 57 of 1985

Commissioner of Income Tax APPELLANT

Vs

Bhandari Capacitors (P.) Ltd. RESPONDENT

Date of Decision : 14-07-1987

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 43(1)

Citation : (1987) 34 TAXMAN 91

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : Mukati, for the Appellant; Chaphekar, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 256(1) of the income tax Act, 1961 (''the Act''), the Tribunal has referred the following question of law to this Court for its opinion: Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of capital subsidy of Rs. 1,28,616 was not deductible in computing the actual cost of the asset as defined in section 43(1) of the income tax Act, 1961 for the purposes of calculating the depreciation and investment allowance admissible to the assessee?

The material facts giving rise to this reference, briefly, are as follows:

The order of assessment passed by the ITO for the assessment year 1977-78 was set aside by the Commissioner as he was of the opinion that the order of assessment was erroneous insofar as it was prejudicial to the interests of the revenue. The Commissioner was of the view that in working out the cost of plant and machinery for the purpose of allowing investment allowance and depreciation, the ITO had computed the actual cost incurred by the assessee even though the assessee had received a subsidy of Rs. 1,28,616. The Commissioner was of the view that the ITO should have reduced the cost of plant and machinery by the capital subsidy of Rs. 1,28,616 for the purpose of computing the depreciation and the investment allowance. The Commissioner, therefore, set aside the order passed by the ITO, and directed the ITO to make fresh assessment according to law. Aggrieved by that order, the assessee preferred an appeal before the Tribunal. The Tribunal examined the scheme for grant of subsidy for individual units set up in backward areas and held that the subsidy was not granted to meet the costs of any item of plant or machinery. The Tribunal, therefore, held that the amount of capital subsidy was not deductible in computing actual costs of the asset as defined 1 in section 43(1) of the Act for the purpose of calculating the depreciation and investment allowance admissible to the assessee. In this view of the matter, the Tribunal set aside the order passed by the Commissioner. Aggrieved by the order passed by the Tribunal, the revenue sought reference and it is at the instance of the revenue that the aforesaid question of law has been referred to this Court for its opinion.

2. A similar question came up for consideration before the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Godavari Plywoods Ltd., We may usefully refer to the following observations of Y.V. Anjaneyulu, J.:

We have examined the subsidy schemes under consideration bearing the above principles in mind. We do not find any provision either in the Central Subsidy Scheme, 1971 or in the State Incentives Scheme that the entrepreneurs are granted the subsidy for the specific purpose of meeting a portion of the cost of the assets. Under both the schemes, the cash subsidy is quantified by determining the same at a specified percentage of the fixed capital cost. The basis adopted for determining cash subsidy with reference to the fixed capital cost is only a measure adopted and cannot, in our opinion, be considered to be for the specified purpose of meeting any portion of the fixed capital cost. We have, therefore, no hesitation in coming to the conclusion, on a careful examination of the scheme under consideration, that the subsidy granted to the assessee cannot be related to meeting a portion of the cost of the assets so that, for purposes of section 43(1) of the Act, such subsidy can be reduced from the amount of actual cost of the assets to the assessee. It seems to us that the specified percentage of the fixed capital cost taken as the basis for determining the subsidy the scheme is only a measure. The subsidy is granted more as a recompense for the hardships and inconveniences which the entrepreneur may encounter while setting up industries in backward areas. In that view of the matter, we uphold the decision of the Special Bench of the Tribunal that the subsidy granted to the entrepreneurs cannot be reduced from the actual cost of the assets to the assessee...." (p. 184)

We respectfully agree with the aforesaid observations. The learned counsel for the revenue referred to the finding of the Commissioner that the subsidy was towards the cost of plant and machinery granted by the State Government. But this finding has not been upheld by the Tribunal. The Tribunal found that subsidy was not granted for the specific purpose of meeting a portion of the cost of plant and machinery. In view of this finding, the Tribunal, in our opinion, was right in holding that the amount of capital subsidy was not deductible computing the actual cost of the asset, as defined by section 43(1) for the purpose of calculating the depreciation and investment allowance admissible to the assessee.

For all these reasons, our answer to the question referred to this Court is in the affirmative and against the revenue. In the circumstances of the case, the parties shall bear their own costs of this reference.