
(1985) 11 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.C.C. No. 98 of 1984

Commissioner of Income Tax	Vs	APPELLANT
Dusad Industries		RESPONDENT

Date of Decision : 04-11-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 58

Citation : (1986) 51 CTR 217 : (1986) 162 ITR 784 : (1986) 27 TAXMAN 4

Hon'ble Judges : R.K. Verma, J;P.D. Mulye, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; Chaphekar, for the Respondent

Judgement

This Judgment has been overruled by : M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, AIR 1997 SC 3968 : (1997) 142 CTR 261 : (1997) 72 ECR 787 : (1997) 228 ITR 253 : (1997) 8 JT 173 : (1997) 6 SCALE 175 : (1997) 7 SCC 764 : (1997) 4 SCR 189 Supp : (1997) 94 TAXMAN 368

P.D. Mulye, J.—The Income Tax Appellate Tribunal, Indore Bench, Indore, at the instance of the Commissioner of Income Tax, Bhopal, has made this reference u/s 256(1) of the Income Tax Act, 1961, for the opinion of this court on the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the additions of Rs. 24,481 and Rs. 66,990 made by the Income Tax Officer for the assessment years 1979-80 and 1980-81, respectively, being sales tax subsidy received by the assessee ? "

2. The facts giving rise to this reference, as per the statement of case received may be stated, in brief, thus : During the two years in question, the respondent-assessee received sales tax subsidies of Rs. 24,481 and Rs. 66,990, respectively. The Income Tax Officer was of the opinion that these receipts were revenue in nature and, as such, liable to be taxed as the income of the assessee.

Consequently, he added these amounts in the assessee's hands. This was confirmed by the Appellate Assistant Commissioner on appeal. On a further appeal being filed by the assessee before the Tribunal, it deleted the additions with the following observations :

" 6. In my opinion, the contention of the assessee has force. The copy of the agreement in question is at pages 13 to 19 of the paper book. Clause 4 of the agreement says that the grantee shall not change the location of the whole or part of the industrial unit or effect construction or dispose of a substantial part of his total capital investment within the period of five years from the date of disbursement of the subsidy. Clause 5 of the agreement provides that the grantee shall be bound to permit the grantor or any person deputed or authorised by general or special order in writing in this behalf by the grantor to inspect the property (premises, building, plants, machinery, tools, etc.) and accounts of the industrial business or enterprise. Rules of concessions of sales tax for establishing new units are given at pages 21 to 26 of the paper book. The title is as under :

" This scheme may be called a scheme for grant of subsidy/interest-free loan to new industries set up in Madhya Pradesh." "

3. Clause (8A) deals with the quantum of subsidy/interest-free loans. Sub-clause B of Clause 8 reads as under :

" Units having capital investment up to 50 lakhs set up in category "A" backward districts will be entitled to a subsidy of 75% of the sales tax paid in a year for a period of five years from the date of starting production. Units having fixed capital investment of over 50 lakhs but below 5 crores shall be given this amount as 15 years interest-free loan instead of subsidy. However, those units which were registered on and after September 15, 1969, but before March 31, 1971, will only get 50%. Similarly, those units which are registered with the Department after March 31, 1971, but before April 1, 1972, will get this subsidy only for a period of 3 years. The quantum of subsidy in a year would, however, be limited to 8% of the capital investment. "

4. Hence, this reference at the instance of the Department.

5. Learned counsel for the applicant has submitted I. A. No. 3957 of 1985 u/s 58 of the Income Tax Act for supplementary statement of facts on the ground that the learned Income Tax Appellate Tribunal has not recorded essential facts on the point of object and purpose of giving subsidy to the respondent nor is any such finding of fact given. However, after hearing learned counsel, we see no valid ground to allow this application. The same is, therefore, rejected.

6. Learned counsel for the Revenue, Shri R. C. Mukati, relying upon the decisions in Delhi Flour Mills Co. Ltd. Vs. Commissioner of Income Tax, , Dhrangadhra Chemical Works Ltd. Vs. Commissioner of Income Tax, Bombay City II, ; Ludhiana Central Co-operative Consumers Stores Ltd. Vs. Commissioner of

Income Tax, ; Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, and Sinclair Murray and Sinclaire Murray and Co. (P) Ltd. Vs. The Commissioner of Income Tax, Calcutta, contended that this subsidy amounts to a revenue receipt and, therefore, the Tribunal has committed an error in deleting the said additions.

7. On the other hand, learned counsel for the assessee placed reliance on the decisions in Aluminium Corporation of India Ltd. Vs. Commissioner of Income Tax, West Bengal, ; Rameshwar Prasad Bagla Vs. The Commissioner of Income Tax, Lucknow, and Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, . He submitted that it has been the contention of the assessee that the said amount is not taxable as it is an additional assistance given by the Government as an incentive to small scale industries in backward areas for capital investment. It is not in dispute that the assessee's industries are situated in Dewas which is a backward area. It is also not in dispute that, according to clause (3) of the terms and conditions, the sales tax subsidy is permissible at 50 per cent. of the sales tax paid in the last three years or 8 per cent. of the capital actually employed, whichever is less. He, therefore, submitted that this payment of subsidy by the M. P. Government was for the purpose of helping the growth of industry and development of backward areas by setting up new industries and not to supplement the profits of the assessee and, therefore, it was in the nature of a capital receipt, there being no intention of the Government to supplement the profits which may be earned in the industries. He also submitted that this is not a case of refund of sales tax but it is a case of subsidy which is subject to certain terms and conditions. He, therefore, submitted that merely because the subsidy is treated as a sales tax subsidy, it will not amount to refund of sales tax which goes in the pocket of the assessee as his income. He, therefore, submitted that the criticism of learned counsel for the Revenue that the respondents had appropriated the aforesaid amount of subsidy in their individual income by apportioning the same will not in any way affect the nature of the receipt which obviously cannot be said to be a revenue receipt but is a capital receipt.

8. Thus, after hearing learned counsel and after going through the case law cited, we are of the opinion that the authorities cited on behalf of the Revenue are distinguishable; there being no dispute that the subsidy is given on the basis of a particular scheme for a specified period in respect of the industries situated in backward areas only, obviously the same is given by way of an incentive for capital investment and not by way of addition to the profit of the assessee as is clear from the facts and circumstances of the case as found by the Tribunal. In this situation, in our opinion, the reference has to be answered in favour of the assessee and against the Department. We are, therefore, of the opinion that, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the additions of Rs. 24,481 and Rs. 66,990 made by the Income Tax Officer for the assessment years 1979-80 and 1980-81, respectively, being sales tax subsidy received by the assessee.

9. The reference is disposed of accordingly with no order as to costs.