
(1990) 07 BOM CK 0059

In the Bombay High Court

Case No : Income-tax Reference No. 17 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Elys Plastics Pvt. Ltd.

RESPONDENT

Date of Decision : 12-07-1990

Acts Referred:

Income Tax Act, 1961 — Section 32, 43

Citation : (1990) 87 CTR 80 : (1991) 188 ITR 11

Hon'ble Judges : T.D. Sugla, J; Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, Manjula Singh and K.C. Sidwa, for the Appellant; Sunil Mandloi, Dinesh Vyas, P.C. Tripathi and A.K. Sharma, for the Respondent

Judgement

Sujata V. Manohar J.

1. This is a reference u/s 256(1) of the Income Tax Act, 1961. The following question has been referred to us for decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the amount of Rs. 2,70,201 received on June 14, 1979, being the cash subsidy received from the Gujarat State and Central Government being the grant of subsidy scheme of 1971 (sic) for industrial units set up in selected backward districts or areas, should not be reduced in working out the "actual cost" as defined u/s 43(1) of the Income Tax Act, 1961, for the purpose of computing depreciation, investment allowance on plant and machinery and for the purpose of computing the capital employed u/s 80J of the Income Tax Act, 1961, for the assessment years 1982-83 and 1983-84 ?"

2. The assessee is a private limited company carrying on the business of manufacture and sale of saline disposable plastic sets which are used by hospitals and doctors. The factory of the assessee is located at Kalol in Panchmahal District of Gujarat which is declared as a backward area for the purpose of setting up industries by the Central Government as well as by the

State Government. The assessee's factory building was completed on March 21, 1979. The plant and machinery of the assessee were acquired by February 19, 1979, out of the assessee's own resources. The Gujarat Government gave to the assessee on June 14, 1979, a cash subsidy of Rs. 2,70,201, both under the schemes of the State Government and the Central Government, as an incentive to locate the industry in the backward area of Panchmahal District. The subsidy was given at a percentage of the investment made by the assessee in its building, plant and machinery.

3. The assessee contended before the Income Tax Officer that the subsidy which was granted to the assessee was by way of an incentive for setting up an industry in a backward area. The Income Tax Officer was, however, of the view that the subsidy was towards the cost of building, plant and machinery. He, accordingly, deducted the amount of the subsidy from the cost of building, plant and machinery u/s 43(1) of the Income Tax Act for the purpose of arriving at the actual cost of these assets for depreciation, investment allowance and deduction u/s 80J. On appeal, the Commissioner of Income Tax (Appeals) upheld the order of the Income Tax Officer. The Tribunal, however, in appeal from the order of the Commissioner of Income Tax (Appeals), held that the subsidy was not given to meet the cost of the assets but was to encourage setting up of industries in backward areas. Hence, the subsidy was not liable to be deducted from the cost of the assets u/s 43(1) of the Income Tax Act. From this decision of the Tribunal, the above question has been referred to us.

4. By consent of parties, we have been given the notification issued by the Ministry of Industrial Development, New Delhi, F. 7(15)/71-IO published in the Gazette of India, Extraordinary, Part I, Section 1, dated August 26, 1971, and, amendments to it, vide notifications of September 30, 1972, and June 19, 1973, as also the manual for "10-15% Central Investment Subsidy Scheme". It is also an agreed position that the scheme of the State Government in question is similar to this scheme. Under the notification, it is stated that the Government of India is pleased to make this scheme of 10% Central grant or subsidy for industrial units to be set up in certain selected backward districts/areas with a view to promote the growth of industries there. Clause 3 which deals with the applicability of the Scheme states that the scheme is applicable to industrial units in selected districts/areas as defined therein, whose total fixed capital investment would not exceed Rs. 1 crore. The selected districts/areas are to be set out under the scheme as backward areas for the purposes of this scheme.

5. Under the scheme, the quantum of subsidy which is to be granted is on the basis of a certain percentage of the fixed capital investment as set out in the scheme. Fixed capital investment is defined to mean investment in land, building and plant and machinery. The scheme also provides the manner in which the value of this investment is to be calculated.

6. The manual which deals with the working out of this scheme also states in the introduction "Government of India had announced in 1971, a scheme for Central

outright grant/subsidy for the industrial units to be set up in selected backward districts/areas." The manual deals with eligibility and procedure for claiming disbursement or reimbursement of this subsidy. The manual also gives the details of what is fixed capital investment, how it is to be worked out and how the quantum of subsidy has to be determined. Mr. Jetley had emphasised the fact that the subsidy is based on a percentage of the fixed capital investment, namely, investment in land, building, plant and machinery. He, therefore, submits that the subsidy is nothing but an amount given towards the cost of these fixed capital assets. He, therefore, submits that the subsidy is deductible from the cost of these assets u/s 43(1).

7. We are unable to accept this submission of Mr. Jetley. In the first place, the subsidy is, in terms, for the purpose of encouraging industries being set up in certain selected backward districts or areas, or for the purpose of shifting industrial units to such backward districts or areas. It is true that the quantum of subsidy is calculated on the basis of the fixed capital investment of the company in land, building, plant and machinery. But this by itself does not lead to the conclusion that the subsidy is to meet the cost of land, building, plant or machinery. There is nothing in this scheme which requires the subsidy to be utilised towards meeting the cost of land, building, plant or machinery.

8. u/s 43(1) of the Income Tax Act, "actual cost" means 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. The subsidy in question is not paid by the Central or State Government to meet the cost of any assets of the assessee. It is given as an incentive for setting up or shifting industrial units in a backward area. The subsidy goes to augment the capital resources of the industry in question. In these circumstances, in our view, the provisions of Section 43(1) are not attracted to such a subsidy. In fact, this is clearly brought out by the facts of the present case where the assessee had acquired the land, completed construction of the building and had also purchased plant and machinery some time before the subsidy was granted.

9. Mr. Mandloi, learned counsel for the assessee-respondent, drew our attention to a decision of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Godavari Plywoods Ltd., which also deals with the same Central Subsidy Scheme of 1971 along with the Andhra Pradesh State Incentive Scheme of 1976. After examining this scheme, the Andhra Pradesh High Court held that the financial incentives which were granted by the Central Government and the State Government were basically directed to encourage and induce entrepreneurs to move to backward areas and establish industries there so that the region may be developed and the welfare of the people living in that region be promoted. The Andhra Pradesh High Court also held that there is no provision, either in the Central Subsidy Scheme or in the State Incentive Scheme, to show that entrepreneurs are granted the subsidy for the specific purpose of meeting a portion of the cost of the assets. The specified percentage of the fixed capital

cost taken as the basis for determining the subsidy is only a measure adopted under the scheme to quantify the subsidy. We respectfully agree with these observations of the Andhra Pradesh High Court. Several other High Courts have also taken a similar view. The case reported in Commissioner of Income Tax Vs. Relish Foods, , considered the same question from the point of view of Section 80J of the Income Tax. Act. A number of other High Courts also have taken a similar view ; Commissioner of Income Tax Vs. Diamond Dies Manufacturing Corporation Ltd., , Commissioner of Income Tax Vs. Premier Extraction (P.) Ltd., and COMMISSIONER OF Income Tax Vs. BHANDARI CAPACITORS PRIVATE LTD., .

10. As against these judgments Mr. Jetley relied upon a decision of the Punjab and Haryana High Court in the case of Commissioner of Income Tax Vs. Jindal Brothers Rice Mills, . The Punjab and Haryana High Court case was also dealing with the subsidy granted by the State Government and the Central Government as an incentive for " setting up" new industries in backward areas. The Punjab and Haryana High Court held that the subsidy so given was on a percentage of the cost of the plant, machinery and building. It said that the underlying object was to reduce the value of the plant, machinery and building by 15% of the actual cost. It, therefore, said that the actual cost would be so reduced u/s 43(1) of the Income Tax Act. With respect to the learned judges of the Punjab and Haryana High Court, we are unable to agree with this reasoning of this Punjab and Haryana High Court. The scheme, in terms, is framed with the object of giving an incentive to promote industries in backward areas. There is nothing in the scheme which would go to indicate that the underlying objective of the scheme is to reduce the value of the plant, machinery and building by 15% (or any other percentage) of the actual cost. We, therefore, respectfully differ from the decision of the Punjab and Haryana High Court. As against the view taken by the Punjab and Haryana High Court, a number of other High Courts have taken a contrary view with which we agree. In the premises, the question referred to us is answered in the affirmative and in favour of the assessee.

11. No order as to costs.