

(1999) 07 BOM CK 0039

In the Bombay High Court

Case No : Income-tax Reference No. 707 of 1987

Commissioner of Income Tax

APPELLANT

Vs

Govind Poy Oxygen Ltd.

RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Income Tax Act, 1961 — Section 32A

Citation : (1999) 157 CTR 464 : (1999) 239 ITR 543 : (2000) 3 MhLj 43 :
(2000) 108 TAXMAN 580

Hon'ble Judges : Ranjana Desai, J;B.P. Saraf, J

Bench : Division Bench

Advocate : R.V. Desai and P.S. Jetely, for the Appellant; None, for the Respondent

Judgement

Ranjana Desai, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this court for opinion at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the Central subsidy cannot be reduced from the total cost of the assets for computing the investment allowance and that the view taken by the Commissioner of Income Tax u/s 263 is not correct ?"

2. The facts, which are relevant for purposes of this reference, are as under :

3. The assessee-company had installed plant and machinery during the year which ended on June 30, 1977, at a cost of Rs. 64,07,538. The First Income Tax Officer, Margao, determined the investment allowance at Rs. 16,01,884 as claimed by the assessee. The assessee received Central subsidy of Rs. 8,72,270 attributable to the plant and machinery. Upon receipt of Central subsidy," the amount of investment allowance was revised by the assessee to Rs. 13,83,817 by adjustment of actual cost upon receipt of Central subsidy of Rs. 8,72,270.

4. Action u/s 263 of the Income Tax Act, 1961, was initiated for the assessment

year 1979-80 as the assessment order made by the First Income Tax Officer, Margao, was found to be erroneous in so far as, it was prejudicial to the interests of the Revenue. The Commissioner of Income Tax, Karnataka-II, Bangalore, by the order dated July 13, 1983, directed the Income Tax Officer to modify the assessment order for the assessment year 1979-80 by indicating the correct amount of investment allowance, to which, the assessee was entitled for the purposes of carry forward. He held that the assessee had, in the notes forming a part of its balance-sheet, stated that it had revised the investment allowance to Rs. 13,83,870 from the original figure of Rs. 16,01,884 on account of adjustment of actual cost of its plant and machinery on receipt of Central subsidy. He referred to the schedule of fixed assets, which formed part of the balance-sheet as at June 30, 1978, and observed that, in schedule "A" the subsidy of Rs. 8,72,270 had been adjusted against the cost of specific assets and, therefore, in terms of the provisions of Section 43(1) of the Income Tax Act, the actual cost of the asset would stand reduced by the amount of subsidy.

5. In appeal carried by the assessee against the said order, the Income Tax Appellate Tribunal held that the Central subsidy cannot be reduced from the total cost of the assets for computing the investment allowance. It is against this background, that the present reference is made to this court for its opinion.

6. We have heard Shri R. V. Desai with Shri P.S. Jetley, learned counsel for the Revenue. None represents the assessee.

7. Shri R.V. Desai has drawn our attention to the decision of this court in Commissioner of Income Tax Vs. Menezes Farmaco, . In that case, during the previous years, relevant to the assessment years 1985-86 and 1986-87, the assessee, who was a registered firm, received Central subsidy. The Assessing Officer reduced the cost of the plant and machinery for the purpose of determining the actual cost thereof for allowance of depreciation on the ground that the amount of subsidy would go to reduce the cost of plant and machinery in the hands of the assessee. In appeal, the Commissioner of Income Tax (Appeals) held, that the Central subsidy received by the assessee need not be deducted from the cost of the plant and machinery for the purpose of determining actual cost for allowance of depreciation. The Revenue appealed against the said order to the Income Tax Appellate Tribunal. The Tribunal held that the subsidies granted on the fixed capital investment of the assessee were not deductible in computing the cost of plant and machinery for the allowance of depreciation and dismissed the appeal.

8. On reference made to the High Court u/s 256(1) of the Income Tax Act, 1961, the High Court took a resume of the relevant case law. The High Court relied upon the decision of the Supreme Court in Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., and distinguished the later decision of the Supreme Court in M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, . It was held, that the Central subsidy received by the assessee is not a payment, directly

or indirectly, to meet any portion of the actual cost, but is intended as an incentive to the entrepreneurs. The fact that its quantification is determined as a percentage of the fixed capital cost does not change the nature and character of the subsidy. The amount of Central subsidy, therefore, cannot be deducted from the actual cost. The High Court held, that the issue before the Supreme Court in *M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad*, was whether the subsidy received by the assessee from the Andhra Pradesh Government was taxable as revenue receipt or not. The question, whether the amount of subsidy would be deductible from the cost of the asset for finding out the actual cost for purposes of allowance of depreciation did not even arise for consideration before the Supreme Court in that case at any stage. The earlier decision in *Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd.*, was not referred to because it was not relevant for deciding the point in issue in that case. The only issue in that case was, whether the subsidy received in the hands of the recipient was a revenue receipt or a capital receipt. The decision in *Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd.*, was followed by this court as being a decision squarely on the point in issue. It was held that in the case of Government subsidy, which is intended to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the actual cost.

9. In our opinion, the present case is covered by the aforementioned decisions. The character of the subsidy in the hands of the recipient, whether revenue or capital, will have to be determined by having regard to the purpose for which the subsidy is given. It is evident from the copy of the extract of the Central Subsidy Scheme, that the said scheme was announced by the Government of India for the industrial units to be set up in selected backward districts/areas. It is an incentive to encourage entrepreneurs to move to backward areas and establish industries. The scheme does not require the subsidy to be utilised towards meeting the cost of the plant and machinery. Therefore, the Central subsidy cannot be deducted from the total cost of the asset for computing the investment allowance.

10. In this view of the matter, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. Reference stands disposed of accordingly with no order as to costs.