
(2004) 11 MP CK 0007
In the Madhya Pradesh High Court
Case No : IT Ref. No. 53 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Neo Sack Ltd.

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 4

Citation : (2006) 203 CTR 162 : (2005) 148 TAXMAN 603

Hon'ble Judges : Ashok Kumar Tiwari, J; A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and V. Mandlik, for the Appellant; Pradeep Nema, for the Respondent

Judgement

A.M. Sapre, J.—This is an IT Reference made u/s 256(1) of the IT Act at the instance of Revenue (CIT) by the Tribunal in RA No. 24/Ind/1998 arising out of an order dt. 21st Nov., 1997, passed in ITA No. 121/Ind/1994 (Annex. C) to answer the following question of law by this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deciding the issue in favour of the assessee as the issue is squarely covered by the decision of jurisdictional High Court in the case of CIT v. Hind Syntex Ltd., MCC No. 314/92 and MCC No. 334/92, dt. 29th March, 1996, treating it receipt of capital nature ?

2. Facts of the case as mentioned in the statement of case duly supported by the annexures accompanying the statement of case, need mention in brief.

3. The assessee (respondent) is a limited company having one industrial unit engaged in manufacture of certain commodities, The assessee was given a power subsidy. It was essentially for running the unit and was to be utilized in the shape of certain percentage in power expenditure. The question arose before AO in the asst. yr. 1990-91 as to whether power subsidy received by an assessee can be regarded as capital expenditure or revenue expenditure in their hands. As

usual, if the contention of assessee was that it is in the nature of capital expenditure, whereas the contention of Revenue was it is in the nature of revenue expenditure. The AO and CIT(A) held against the assessee. In their opinion, it was in the nature of revenue expenditure and hence, has to be taxed treating it to be in the nature of revenue expenditure in the hands of assessee. However, the Tribunal held it to be in the nature of capital expenditure. Accordingly, the view taken by AO and CIT(A) was reversed, giving rise to making of this reference to this Court at the instance of Revenue u/s 256(1) of the Act to answer the aforementioned question.

4. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned counsel for the Revenue and Shri Pradeep Nema appeared in person for assessee pursuant to SPL issued by this Court for hearing of the reference.

5. Having heard learned counsel for the parties and having perused record of the case, we are inclined to answer the question in favour of Revenue (CIT) and against the assessee.

6. Indeed, in our considered opinion the question referred to us no more remains *res Integra* and stands answered by the decision of the Supreme Court in the case of *M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad*, It is in this case their Lordships examined the question as to which kind of subsidy received by an assessee can be regarded as capital receipt or revenue receipt. Their Lordships in this case laid down certain guidelines to be taken note of for determining the true nature of receipt. In that case power subsidy was held as revenue receipt because it was to be used essentially for running the plant by consuming the electricity. In other words, their Lordships were of the view that subsidy used for running the plant/unit cannot be said to be of enduring nature so as to make it a capital one. Respectfully following the verdict of the Supreme Court which is binding on this Court, we hold that power subsidy received in this case by the assessee is in the nature of revenue receipt.

7. Submission of learned counsel for the assessee was that firstly in the absence of any categorical finding recorded by the Tribunal about the nature of scheme meant for disbursing the subsidy in question, this Court, cannot hold that it is a revenue receipt. We do not agree. True it is that Tribunal did not discuss the issue in detail before coming to the conclusion and simply placed reliance on the earlier decision of Tribunal, yet in our opinion, perusal of order of AO and CIT(A) does indicate the nature of subsidy received by an assessee. Since the subsidy in question was given to assessee for power consumption, we have no hesitation in coming to a conclusion on the strength of decision of *Sahney Steel & Press Works Ltd's case (supra)* that it has to be and it is in fact a revenue receipt in the hands of assessee.

8. In view of aforesaid discussion, we do not subscribe to the view taken by the Tribunal. Instead we prefer to uphold the view taken by AO and CIT(A). We are

also constrained to observe that Tribunal failed in their duty in properly deciding the appeal. The slipshod manner in which the Tribunal disposed of the appeal cannot be countenanced. It is the legal duty of the Tribunal to deal with issue by narrating full facts and then discuss the issue in detail in the context of decided cases. The Tribunal being the last so far as facts are concerned, a higher responsibility is cast by the legislature to decide the cases by assigning cogent reasons.

9. As a consequence of aforesaid discussion, we answer the question in favour of Revenue and against the assessee.