(1988) 03 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 144 of 1983

COMMISSIONER OF Income Tax APPELLANT

Vs

PLASTICHEM. RESPONDENT

Date of Decision : 18-03-1988

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

Citation : (1988) 74 CTR 127 : (1988) 174 ITR 546

Hon'ble Judges : G. G. Sohani, Acting C.J.

Bench : Division Bench

Judgement

G. G. SOHANI, ACTG. C.J. - By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur, 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 justified in holding that the sales tax subsidy granted to an industry under the Madhya Pradesh scheme for grant of subsidy/interestfree loan for substantial expansion of the existing industrial unit is a capital receipt ?"

The material facts giving rise to this reference, briefly, are as follows : While framing the assessment of the assessee for the assessment year 1977-78, the Income Tax Officer rejected the claim of the assessee for exemption of subsidy received by the assessee in pursuance of the Madhya Pradesh Scheme providing concessions and facilities for setting up industries in backward areas. Aggrieved by the order passed by the Income Tax Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner held that the subsidy received by the assessee by way of sales tax could not be considered to be a capital receipt. In this view of the matter, the appeal preferred by the assessee in that behalf was dismissed. On further appeal before the Tribunal, the Tribunal held that the subsidy constituted a capital receipt. The Tribunal, therefore, allowed the appeal preferred by the assessee in that behalf. Aggrieved by the order passed by the Tribunal, the Revenue sought a 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.

Shri Rawat, learned counsel for the Revenue, contended that as the sales tax subsidy was granted to the assessee for expansion, it was a revenue receipt. Reliance was placed on Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Sahney Steel and Press Works Ltd., . In reply, Shri Nema, learned counsel for the assessee, relied on the decision of this court in Commissioner of Income Tax Vs. Dusad Industries, .

Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the affirmative and against the Revenue. In Commissioner of Income Tax Vs. Dusad Industries, , a Division Bench of this court has held that the sales tax subsidy received by the assessee in pursuance of the scheme framed by the Government of Madhya Pradesh granting sales tax subsidies to industries set up in backward areas in the State for a specified period from the date of starting production, was a capital receipt and hence was not assessable to tax. Following that decision, our answer to the question referred to this court is in the affirmative and against the Revenue. In the circumstances of the case. parties shall bear their own costs of this reference.