
(1988) 08 MP CK 0054

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 252 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Premier Extraction (P.) Ltd.

RESPONDENT

Date of Decision : 04-08-1988

Acts Referred:

Income Tax Act, 1961 — Section 43(1)

Citation : (1989) 175 ITR 22

Hon'ble Judges : G.G. Sohani, Acting C.J.; R.K. Verma, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; G.M. Chaphekar and Samvatsar, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal", Indore Bench, Indore, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, and in view of Section 43(1), the Tribunal is justified in holding that the amount of capital subsidy received by the assessee from the Government would not go to reduce the cost of assets for the purpose of allowing depreciation, etc. ?"

2. The material facts giving rise to this reference, briefly, are as follows : The assessee is a private limited company deriving income from extraction of oil from oilcakes. The assessee-company received capital subsidy of Rs. 4,26,748 during the assessment year 1978-79 and Rs. 1,07,617 during the assessment year 1979-80 from the M. P. Financial Corporation under a scheme of the Government with a view to industrialise the country and provide employment by granting incentives to start industrial units in select and specified backward areas. The Inspecting Assistant Commissioner (Asstt.), while framing the assessment for the assessment years in question, reduced the cost of the fixed assets of the

assessee by the amount of capital subsidy received, for the purpose of allowing depreciation as per the provisions of Section 43(1) of the Act. Aggrieved by the order passed by the Inspecting Assistant Commissioner, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) who dismissed the appeals. The assessee then filed second appeal before the Tribunal. The Tribunal held that the amount of subsidy received by the assessee from the Government would not go to reduce the cost of the fixed assets for the purpose of allowing depreciation to the assessee. In this view of the matter, the Tribunal allowed the appeal. 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.

3. At the time of hearing, learned counsel for the parties conceded that the matter arising in this reference is covered by a decision of this court in COMMISSIONER OF Income Tax Vs. BHANDARI CAPACITORS PRIVATE LTD., . We see no reason to take a view different from that taken in COMMISSIONER OF Income Tax Vs. BHANDARI CAPACITORS PRIVATE LTD., . Following that decision, it must be held that the Tribunal was right in holding that the amount of capital subsidy in question was not deductible in computing the actual cost of the asset as defined by Section 43(1) of the Act for the purpose of calculating the depreciation admissible to the assessee.

4. Consequently, our answer to the question referred to this court by the Tribunal is in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.