**(2004) 08 AHC CK 0282**

**In the Allahabad High Court**

**Case No :** IT Reference No. 60 of 1985 5 August 2004 & Income-tax Reference No. 60 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Rakesh Cold Storage — RESPONDENT

**Date of Decision :** 05-08-2004

**Acts Referred:**
Income Tax Act, 1961 — Section 256(1), 263, 43(1)

**Citation :** (2005) 274 ITR 102

**Hon'ble Judges :** R.K. Agarwal, J;K.N. Ojha, J

**Bench :** Division Bench

**Advocate :** Shambhoo Chopra, for the Appellant; None appeared, for the Respondent

**Final Decision :** Disposed Of

## Judgement

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

"Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in upholding the Appellate Assistant Commissioner''s order directing the Income Tax Officer to work out depreciation for the assessment year 1978-79 by adopting the W.D.V. as per the assessment order for the assessment year 1977-78 dated June 3, 1978 ?"

2. Briefly stated, the facts giving rise to the present reference are as follows :

The present matter relates to the assessment year 1978-79. The respondent-assessee is a registered firm and ran a cold storage, called M/s. Rakesh Cold Storage. It maintained its account on mercantile basis. It purchased a generator for Rs. 2,18,035 on November 17, 1974, falling in the assessment year 1976-77. The Income Tax Officer had allowed depreciation of Rs. 21,803.00 at 10 per cent. on the total cost of the generator. Subsequently, it was found that the respondent-assessee had received subsidy, sanctioned vide order dated October 18, 1975, amounting to Rs. 30,000 on January 15, 1976, Rs. 24,075.00 on August 30, 1976 and Rs. 54,075.00 on March 13, 1978, total Rs. 1,08,150, from the U. P. Financial Corporation towards the purchase of the generator. The Department was of the view that though the subsidy was received in different years, it had actually accrued to the respondent-assessee immediately when the generator was installed. The Commissioner of Income Tax initiated proceedings u/s 263 of the Act and the assessment for the assessment year 1976-77 was cancelled vide his order dated January 2, 1980 directing the Income Tax Officer to work out the cost of the generator for the purposes of depreciation after deducting the amount of subsidy receivable from the U. P. Financial Corporation. The respondent-assessee appealed to the Tribunal who vide order dated December 26, 1980 cancelled the order of the Commissioner of Income Tax that he had no jurisdiction to revise the order of the Income Tax Officer as the same had merged in the order of the Appellate Assistant Commissioner, dated December 5, 1979. The Department filed a reference application u/s 256(1) of the Act against the said order dated December 26, 1980, which was referred to this court on June 7, 1984. Meanwhile the Income Tax Officer revised the assessment for the assessment years 1976-77, 1977-78 and 1978-79 and determined the cost of the generator by reducing it by the amount of subsidy received and allowed depreciation on such reduced amount. This order was cancelled by the Appellate Assistant Commissioner following the order of the Tribunal dated December 26, 1980. Departmental appeals against this order were dismissed by the Tribunal vide order dated February 11, 1983, against which reference applications u/s 256(1) of the Act were filed by the Department and the matter was referred on April 6, 1984.

3. For the assessment year 1978-79 (account period being December 24, 1976 to December 31, 1977), original assessment was made on June 23, 1979 wherein depreciation was allowed as under :

Rs. Generator cost 2,48,035.00 Less: Subsidy on accrued basis 1,08,150.00 ___________ 1,39,885.00 Less : Depreciation for the assessment year 1976-77 at 10% 13,988.00 ___________ 1,25,897.00 Less : Depreciation for the assessment year 1977-78 12,589.00 ___________ 1,13,308.00 Depreciation allowed for the assessment year 1978-79 11,330.00

4. The respondent-assessee filed an appeal before the Appellate Assistant Commissioner who vide his order dated December 31, 1982, held that no subsidy was received in the accounting year relevant for this year. Since the order dated January 2, 1980, passed by the Commissioner of Income Tax was cancelled by the Tribunal, the Appellate Assistant Commissioner directed the Income Tax Officer to work out depreciation for the year by adopting the W.D.V. as per the assessment order for the assessment year 1977-78, dated June 3, 1978. Departmental appeal against the said order was dismissed by the Tribunal on March 31, 1984 with the following observations :

 

"In our opinion, the order passed by the Commissioner of Income Tax u/s 263 having been cancelled, the original assessment made by the Income Tax Officer dated June 3, 1978 stands as valid assessment. Therefore, the depreciation that was allowed by the Income Tax Officer in the assessment order dated June 3, 1978 would not be changed or varied. Viewed thus, we uphold the order of the Appellate Assistant Commissioner."

5. We have heard Shri Shambhoo Chopra, learned counsel for the Revenue. Nobody has put in appearance on behalf of the respondent-assessee. The question as to whether the amount of subsidy received should be deducted while working out the cost of a capital asset, has been considered by the hon''ble Supreme Court in the case of Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., . The hon''ble Supreme Court has held as under (head-note) :

"Where Government subsidy is intended as an incentive 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''. The expression ''actual cost'' in Section 43(1) of the Income Tax Act, 1961, needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductability from ''actual cost''. The amount of subsidy is not to be deducted from the ''actual cost'' u/s 43(1) for the purpose of calculation of depreciation, etc."

6. The aforesaid decision has been followed by this court in the case of Commissioner of Income Tax Vs. Jayana Cold Storage and Ice Factory, .

7. Respectfully following the aforesaid decisions, we are of the considered opinion that the amount of subsidy could not have been deducted from the actual cost of the generator.

8. In view of the foregoing discussions, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.