(2001) 11 MAD CK 0083

In the Madras High Court

Case No : Tax Case No. 195 of 1996 (Reference No. 187 of 1996)

Commissioner of Income Tax — APPELLANT

Vs

Sivananda Steels Ltd. — RESPONDENT

Date of Decision : 01-11-2001

Acts Referred:
Income Tax Act, 1961 — Section 271(1)

Citation : (2002) 256 ITR 683

Hon'ble Judges : R. Jayasimha Babu, J;A.K. Rajan, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

Judgement

R. Jayasimha Babu, J.—The Tribunal has held that the claim that has been made by the assessee for depreciation and investment allowance

on newly installed machinery was made bona fide by placing reliance on the decision in the case of V. Ramakrishna and Sons Limited Vs.

Commissioner of Income Tax, Tamil Nadu-I, Madras, , wherein it has been held that the user of the machinery in test production or experimental

manufacture was still user for the purpose of the assessee''s business.

2. The assessee had purchased a centrifugal casting machine at the cost of Rs. 16,38,623 which was installed on March 4, 1981. The machine

was tested with aid of temporary electric connection. However, the actual production with the use of the machinery commenced only in

November, 1982. The assessee had claimed depreciation for the assessment year 1981-82, but subsequently withdrew the claim. The Assessing

Officer initiated proceedings against the assessee for having submitted inaccurate particulars in the original returns and levied penalty which was confirmed by the Commissioner. The Tribunal having set aside the same, this reference is before us at the instance of the Revenue.

3. The finding of the Tribunal is that the claim was bona fide and was based on a decision of this court. The fact that the assessee subsequently

withdrew the claim did not show that there had been deliberate furnishing of inaccurate particulars by the assessee when it filed the original return.

The fact that it had subsequently withdrawn the claim, also on that account alone did not establish that there was a deliberate attempt on the

assessee''s part to claim a benefit to which it was not entitled. On the other hand the decision of this court on which it had relied did indicate that

the question was one on which two opinions could exist.

4. It is also the further finding of the Tribunal that the particulars given by the assessee were accurate. The difference of opinion between the

Assessing Officer and the assessee as to whether the experimental running of the machine was sufficient to regard it as use in the business of the

assessee entitling the assessee to claim depreciation for the year, therefore cannot be regarded as sufficient to subject the assessee to penalty on

the ground that the particulars given by the assessee were incorrect. The Tribunal was, in the circumstances, right in holding that the penalty was

not leviable and setting aside the penalty that had been levied.

5. We therefore answer the questions referred to us, viz.,

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right and had valid materials in cancelling the penalty

imposed u/s 271(1)(c) for the assessment year 1981-82 ?

2. Whether the Tribunal''s view that the facts of the case do not establish that there was any furnishing of inaccurate particulars by the assessee so

as to justify the imposition of penalty u/s 271(1)(c) is reasonable, supported by valid materials and sustainable in law ?"" in favour of the assessee

and against the Revenue.

