

(2004) 08 MP CK 0024

In the Madhya Pradesh High Court

Case No : IT Ref. No. 68 of 1998 & IT Ref. No. 68 of 1998 16 August 2004 & IT Ref. No. 68 of 1998 16 August 2004 Income Tax Act, 1961, section 256 (2)

Commissioner of Income Tax

APPELLANT

Vs

Soya Udyog Ltd.

RESPONDENT

Date of Decision : 16-08-2004

Acts Referred:

Income Tax Act, 1961 — Section 143

Citation : (2005) 143 TAXMAN 364

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

Bench : Full Bench

Advocate : R.L. Jain, for the Revenue and None, for the Assessee, for the Appellant;

Judgement

A.M. Sapre, J.

This is an application made by the revenue (CIT) u/s 256(2) of the Income Tax Act consequent upon passing of an order dated 21-11-1997 (Annex. H), by Tribunal in RA No. 121/Ind/1997 whereby the application made by the revenue u/s 256(1) of the Act was rejected by the Tribunal holding, inter alia that no referable question of law arises out of a second appellate order dated 28-7-1997, passed by Tribunal in ITA Nos. 834 and 835/Ind/1992 (Annex. F).

2. Heard Shri R.L. Jain, learned counsel for the petitioner.

3. Having heard learned counsel for the petitioner and having perused record of the case, we are of the view that the questions proposed by the petitioner do arise out of the order passed by the Tribunal and secondly, they are regarded as questions of law, requiring the Tribunal to refer the questions to this court for answer on their merits.

4. Since the Tribunal had declined to refer those questions to this court in its jurisdiction conferred upon it u/s 256(1) of the Act and hence this court is

required to step in for calling the questions by taking recourse to the provision of section 256(2) of the Act. In other words, in our considered opinion, after perusing the entire record of the case and in particular the second appellate order passed by the Tribunal in second appeal, there do arise questions of law out of the aforementioned order and hence the Tribunal should have allowed the application made by the revenue u/s 256(1) of the Act and should have referred the questions to this court for being answered.

5. It is not necessary for us to burden our order by narrating the facts in detail, as it is now for the Tribunal to state the facts in detail in statement of case which they are now required to draw to enable this court to answer the questions proposed to be referred to this court. We may only take note of those facts which are necessary for the disposal of this reference application.

6. The dispute in this case relates to assessment year 1989-90. It is in this year, the question arose before the taxing authorities as to whether Tribunal was justified in deciding the issue regarding payment of additional tax amounting to Rs. 4,79,251 in favour of assessee on cash compensatory support. In other words, the question arose before the authorities, as to whether cash compensatory support can be added to the income of the assessee and if so, whether it can be considered for the purpose of levying additional tax u/s 143(1A) of the Act ? Placing reliance on the earlier views of the Tribunal taken on this very issue in the case of other assessees, the Tribunal in the facts of this case held that it cannot be added in the income of the assessee for the purpose of levying additional tax u/s 143(1A) of the Act.

7. In our opinion, this is not a question of fact as wrongly observed by the Tribunal while rejecting the application made by the petitioner u/s 256(1) of the Act but, according to us, this is a pure question of law and does arise out of the order passed by the Tribunal requiring this court to examine at our end. We are, therefore, inclined to allow this application and direct the Tribunal to refer the following questions of law to this court after drawing the statement of case as required u/s 256(1) *ibid*:

"1. Whether Tribunal (ITAT) was justified in holding that cash compensatory support cannot be considered for levying of additional tax u/s 143(1A) of the Act by way of prima facie adjustment, but can be added only as the income of the assessee ?

2. Whether Tribunal (ITAT) was justified in placing reliance on the decisions rendered by the Tribunal in cases of Vippy Solvex Products (P) Ltd. and Malwa Vanaspati & Chemicals Ltd. without even narrating as to what were the facts of these cases and what was the view so taken therein and how and in what circumstances the view so taken apply to the facts of this case ?"

8. Let the statement of the case along with copies of orders passed in aforementioned two cases, as mentioned in question No. 2 and as taken note of by the Tribunal in para 5 of the order passed by the Tribunal in the second

appeal, be sent to this court within three months from the date of the receipt of this order by the Tribunal. Record of the case be sent back to Tribunal by the registry forthwith. No costs.