

(2001) 10 RAJ CK 0030

In the Rajasthan High Court

Case No : Income Tax Reference No. 3 of 1992 & Income Tax Reference No. 3 of 1992 30 October 2001

Commissioner of Income Tax

APPELLANT

Vs

Surendra Textiles

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Income Tax Act, 1961 — Section 32, 43, 80AB, 80HH

Citation : (2002) 172 CTR 555 : (2002) 258 ITR 387

Hon'ble Judges : O.P. Bishnoi, J;N.N. Mathur, J

Bench : Full Bench

Advocate : Sandeep Bhandawat, for the Revenue, for the Appellant;

Judgement

The Income Tax Appellate Tribunal, Jaipur Bench, has referred the following questions of law for the opinion of this court

R. A. Nos. 19 and 20/JP of 1989

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of Central Government subsidy is not deductible from the money cost to the assessee of its plant, machinery and building while computing the original cost thereof u/s 43(1) of the Income Tax Act, 1961, for the purpose of allowing depreciation or investment allowance, etc. ?"

R.A. Nos. 21 and 22/JP of 1989

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that deduction u/s 80HH of the Income Tax Act, 1961, should be allowed on the gross income before deducting depreciation and investment allowance ?"

The relevant facts are that the assessee is in receipt of Central/State Government subsidy during the previous years relevant to the assessment years

1984-85 and 1985-86. The assessing authority deducted the amount of subsidy so received by the assessee from the money cost of plant, machinery, building, etc., for the purpose of section 32 while granting the depreciation or investment allowance. The appellate authority, namely, the Commissioner, reversed the finding and held that the amount of subsidy granted to the assessee is not deductible from the money cost for the purposes of allowing depreciation, investment allowance, etc. The order of the Commissioner was confirmed in second appeal by the Tribunal.

The relevant facts with respect to the second question are that while computing the taxable income of the assessee-firm, the assessing authority allowed deduction u/s 80HH at 20 per cent of the income arrived at after allowing the depreciation and investment allowance. On appeal, the Commissioner (Appeals) after considering the relevant provisions of section 80AB held that the assessing authority rightly calculated deduction u/s 80HH on the net income as per the provisions of the Act. In second appeal, the Tribunal allowed the appeal, following its earlier decision in Digchem Industries" case (1987) 2 TTJ 593 (JP).

We have heard Mr. Sandeep Bandawat, learned counsel for the revenue. In spite of notice none has appeared for the respondent-assessee. As regards the first question that is with regard to subsidy it has been decided against the revenue and in favour of the assessee by a Division Bench of this court in Commissioner of Income Tax Vs. Ambica Electrolytic Capacitors Pvt. Ltd. and Others, The court held that the subsidy or investment subsidy given by the government for the development of industries in backward areas cannot be deducted from the actual cost for the purposes of depreciation or investment allowance. The court held that it is an ex gratia allowance to industries in selected backward areas or districts. The dictionary meaning of the term "subsidy" is "financial aid given by government towards expenses of an undertaking or institution held to be of public utility, or to producers of commodities, etc., to enable goods or services to be provided at lower cost to the consumer." From the definition of subsidy, it appears that it is in the nature of pecuniary assistance from the government to the entrepreneurs so as to encourage the establishment of industries in all backward areas. Therefore, such subsidy/investment subsidy cannot be excluded from the actual cost for giving the benefit of depreciation. This assistance will certainly form part of the total assets of the assessee.

The Apex Court in Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., after considering the views of the various High Courts held that a Government subsidy is not given as an incentive for the specific purpose of meeting the portion of the cost of the assets. It does not partake of the character of a payment either directly or indirectly to meet the actual cost. The court further held that the amount of subsidy is not to be deducted from the actual cost u/s 43(1) of the Income Tax Act for the purpose of calculation of depreciation, etc. Thus the first question has been answered by the Apex Court in favour of the assessee and against the department. As regards the second

question a Division Bench of this court in Commissioner of Income Tax Vs. Sun Stone Engineering Industries Pvt. Ltd., has held that the gross total income of the assessee has to be worked out after deducting unabsorbed loss and unabsorbed depreciation and the income eligible for deduction u/s 80HH will be the net income as computed in accordance with the provisions of the Act and not the gross income. Thus, the second question decided and answered in favour of the department and against the assessee.

Thus, question No. 1 is decided in favour of the assessee and against the department is answered. The second question is answered in favour of the department and against the assessee.

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