(1995) 02 RAJ CK 0066

In the Rajasthan High Court

Case No : IT Reference Application No''s. 6, 44 and 70 of 1994

Commissioner of Income Tax APPELLANT

Vs

Udaipur Mineral Development Syndicate (P.) Ltd. RESPONDENT

Date of Decision : 06-02-1995

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

Citation : (1995) 80 TAXMAN 455

Hon'ble Judges : Y.R. Meena, J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Final Decision : Dismissed

Judgement

1. These applications have been filed u/s 256(1) of the income tax Act, 1961 (''the Act'') to call for the following question of law arising out of the order of the Tribunal.

The learned counsel for the petitioner has been heard and it is found that the issue which is involved is covered by the decision of the Apex Court in Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., The question which was raised by the Commissioner is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the decision of the CIT(A) who has directed the Assessing Officer to allow depreciation by taking into consideration the written down value or the cost of the assets, as the case may be, and without making any deduction on account of the amount of subsidy therefrom ?"

2. The application submitted by the revenue u/s 256(1) was dismissed by the Tribunal and now the prayer is made that the Tribunal should be directed to refer this question.

3. After going through the judgment of P.J. Chemicals Ltd. ''s case (supra) we are

of the opinion that it will serve no useful purpose to direct the Tribunal to refer the above question of law to this Court since the matter is concluded by the decision of the Apex Court. The Apex Court has observed as under:

"The expression ''actual cost'' needs to be interpreted liberally. The subsidy of the nature we are concerned with, does not partake of the incidents which attract the conditions for their deductibility from ''actual cost''. The Government subsidy, it is not unreasonable to say, is an incentive not for the specific purpose of meeting of a portion of the cost of the assets, though quantified as or geared to a percentage of such cost. If that be so, it does not partake of the character of a payment intended either directly or indirectly to meet the ''actual cost''. We should prefer the reasoning of the majority of the High Courts to the one found acceptable by the High Court of Punjab and Haryana."

4. In view of the above observation of the Apex Court, we do not consider that the present one is a fit case for directing the Tribunal for making a reference on the question prayed for. The application is, accordingly, dismissed.