(2008) 05 GUJ CK 0006

In the Gujarat High Court

Case No : Income Tax R. No. 21 of 1999

Commissioner of Income Tax APPELLANT

Vs

Unique Industries RESPONDENT

Date of Decision : 07-05-2008

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

Citation : (2008) 307 ITR 350

Hon'ble Judges : Z.K. Saiyed, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; Swati Soparkar, for the Respondent

Judgement

D.A. Mehta, J.—The Income Tax Appellate Tribunal, Ahmedabad Bench-A, has referred the following question for the opinion of this Court u/s 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Revenue.

Whether, on the facts and circumstances of the case, the Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs. 3,40,644 made on account of Modvat credit ?

2. The assessment year is 1989-90, the relevant previous year being the financial year ended on March 31, 1989. The amount of Rs. 3,40,644 was available as credit to the assessee in terms of the provisions of the Central Excise Act and the Rules thereunder. The Assessing Officer came to the conclusion that the amount of Rs. 3,40,644 had to be treated as income of the assessee which was liable to tax because the assessee had not utilised the credit for payment of excise duty of adjusted the same against the purchase.

3. In the appeal filed by the assessee, the Commissioner (Appeals) followed the Calcutta Bench decision in the case of Berger Paints India Limited and allowed the appeal. The Tribunal has confirmed the order of the Commissioner (Appeals).

4. Heard learned senior standing counsel for the applicant-Revenue and learned

advocate for the respondent-assessee.

5. The controversy is no longer res integra. In the case of Commissioner of Income Tax Vs. Indo Nippon Chemicals Co. Ltd., , the apex court has observed as under (page 277):

We are unable to accept the view of the Assessing Officer that merely because Modvat credit is an irreversible credit available to the manufacturers upon purchase of duty paid raw material, it would amount to income which is liable to be taxed under the Act.

Mr. P. J. Pardiwala, learned Counsel for the respondent in C. A. Nos. 2161 of 2002 and 2164-2165 of 2002, points out that the asses-sees have all uniformly adopted the ''net method'', namely, valuing the raw materials at the purchase price minus Modvat credit. This method was also adopted by them while valuing the unconsumed raw materials and the work-in-progress at the end of the year. We, therefore, do not think that their method of valuation was wrong. The Assessing Officer adopted the ''gross method'' at the time of purchase, and the ''net method'' of valuation at the time of valuation of the stock on hand. By this method, which is wholly erroneous in our view, he assumed that the income, to the extent of the Modvat credit on the unconsumed raw material, was generated, which was not reflected in the accounts and attempted to bring it to charge under the Act.

6 In the light of the judgment of the apex court, the question is answered in the affirmative, that is, in favour of the assessee and against the Revenue.

7. Reference stands disposed of accordingly with no order as to costs.

