
(1996) 11 MP CK 0033
In the Madhya Pradesh High Court
Case No : MCC No. 182 of 1995

COMMISSIONER OF Income Tax

APPELLANT

Vs

VIPPY SOLVEX PRODUCTS (P) LTD.

RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (1998) 144 CTR 235

Hon'ble Judges : N. K. Jain, J

Bench : Division Bench

Judgement

N. K. JAIN, J. :

The CIT, Bhopal has made application under S. 256 of the IT Act, 1961 (for short, the Act) seeking direction to the Tribunal, Indore Bench, Indore, to state the case and refer the undernoted question said to be of law for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, Tribunal was justified in law in allowing development rebate on plant and machinery for which agreement to supply was entered into on 28th December, 1973."

2. The assessment year involved is 1975-76. The AO disallowed the claim of the respondent-assessee for development rebate on the ground that there was no valid contract for supply of machinery prior to 1st December, 1973. In appeal, CIT(A) confirmed the disallowance. However, in second appeal (ITA No. 662/Ind/88), the Tribunal vide its order dt. 17th September, 1993, allowed the claim of the assessee observing :

"We have carefully perused the records and considered the rival submissions. It is well accepted principle in Companies Law that a promoter cannot act on behalf of the company under incorporation and the company soon after its incorporation has ratified such actions of the promoters. This is an accepted mode of transacting in the case of the company and we have, no doubt, in our mind that

the promoter in this case has only acted on behalf of the company and such contract having been ratified by the company becomes the contracts of the company and are enforceable against the company by the third parties. This being the legal petition, in our view, the Department should have accepted the assessee's claim for development rebate. We, therefore, direct that the assessee shall be given the development rebate in accordance with law. We further direct the assessing authority to withdraw the initial depreciation, if any, allowed by applying the other provisions of the Act alternate to development rebate. The AO is directed to modify his order and also carry out the consequences of the same."

3. The Revenue was not satisfied with the decision of the Tribunal. It, therefore, made application under S. 256(1) of the Act seeking reference to this Court. The Tribunal vide its order dt. 1st September, 1994 passed in RA No. 294/Ind/1993 declined the prayer holding that the order of the Tribunal is based on appreciation of facts and no referable question of law, therefore, arises. The Revenue has, therefore, approached this Court under S. 256(2) of the Act.

4. We have heard Shri J. N. Sharma, ITO, appearing for the Revenue and Shri S. S. Samvatsar, learned counsel for the non-applicant/assessee.

5. It is pointed out by the Revenue that the scheme of development rebate was discontinued through a notification dt. 25th May, 1971 in respect of plant and machinery installed after 31st May, 1974. Sec. 16 of the Finance Act, 1974 however, provided that benefit of the scheme would be available in some exceptional cases even in respect of plant and machinery installed after 31st May, 1974. The relevant clause of S. 16 of the Act of 1974 thus reads as under :

(c) "Any machinery or plant, [not being machinery or plant referred to in cl. (b)] installed by any assessee after the 31st day of May, 1974 but before the last day of June, 1975, if the assessee furnishes evidence to the satisfaction of the ITO that before the 1st day of December, 1973, he had purchased such machinery or plant or had entered into a contract for the purchase of such machinery or plant with the manufacturer or owner of, or a dealer in, such machinery or plant, or had, where such machinery or plant has been manufactured in an undertaking owned by the assessee, taken steps for the manufacture of such machinery or plant."

6. It would be seen that in order to get development rebate on a plant and machinery installed after 31st May, 1974, the assessee was required to furnish evidence that he had entered into a contract for purchase of such machinery or plant with the manufacturer or owner of, or a dealer in, such machinery or plant before 1st December, 1973. In the instant case, as pointed out by the Department, the agreement for supply of plant and machinery was in fact made on 28th December, 1973 as is clear from cl. XI of Para 2 of the Order of the Tribunal itself.

7. We refrain from expressing any opinion on merits of the case as we propose to allow the application. We are, however, satisfied that a case is made out to direct

the Tribunal to state the case and refer the abovenoted question for the opinion of this Court. We order accordingly.

8. The application thus stands disposed of as aforesaid but without any order as to costs.