
(1995) 09 MAD CK 0115

In the Madras High Court

Case No : Tax Cases No's. 1551 and 1552 of 1986

Saroja Mills Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-09-1995

Acts Referred:

Income Tax Act, 1961 — Section 256, 28

Citation : (1996) 135 CTR 106 : (1996) 220 ITR 626

Hon'ble Judges : Venkatachaliah, J; Abdul Hadi, J

Bench : Division Bench

Advocate : Deokinandan, K.M.L. Majele, for the Respondent

Judgement

Abdul Hadi, J.—In these two tax case references under s. 256 of the IT Act, 1961, by the assessee, relating to the asst. yrs. 1979-80 and 1980-81, the common question referred to us is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that a sum of Rs. 2,49,000 and Rs. 3,88,200 received from SIPCOT, respectively, for the asst. yrs. 1979-80 and 1980-81 should be treated as revenue receipts ?"

Thus, the only short question is whether the above referred amounts, which are received by the assessee from SIPCOT as subsidy are revenue receipts, as held by the Tribunal, or capital receipts, as contended by the assessee.

2. One factual finding on which there is no dispute is that this was a subsidy in respect of a revenue expenditure incurred by the assessee in modernisation of its plant in its industrial unit, which was established in a backward area. It is also accepted by learned counsel for the assessee that the said revenue expenditure was allowed as a deduction in computing the total income of the assessee. Yet, he contends that, just as another subsidy, given by SIPCOT to the assessee under the same scheme towards fixed capital investment of the assessee in the industrial unit was admittedly earlier treated by the Revenue as capital receipt,

this subsidy also should be treated as capital receipt since both the subsidies were given only as incentive for the assessee to establish the said industrial unit in a backward area.

3. But, admittedly, this latter subsidy was given in different instalments to recoup the revenue expenditure incurred as and when progress is made in the modernisation of the plant and depending on the said progress. In such a situation it is clear to us that the decision cited by learned counsel for the Revenue in *V. S. S. V. Meenakshi Achi vs. CIT* (1996) 60 ITR 253 would squarely apply. There, subsidy was made by the Government to the assessee-rubber planter, out of the cess fund earlier collected from the assessee himself, against revenue expenditure incurred by the assessee on the maintenance of the plantation. The relevant observation there is as follows :

"Mr. Sastri, learned counsel for the Revenue, did not support the principle accepted by the High Court that the source of payment was material and not the nature of expenditure. Indeed his argument was contrarywise, namely, that the expenditure was revenue expenditure and, therefore, the amounts paid to recoup it partook of that character.

The decision in *Higgs vs. Wrightson* (1944) 26 Tax Cas 73 is rather apposite. There the appellant was a dairy farmer, the greater part of whose land was, before the war, permanent pasture.... he received grants in respect of the ploughing and bringing into a state of cleanliness and fertility land previously under grass for a period of seven years or more. The Court held that the ploughing grant was a revenue receipt..... So too, in the instant case, the payments to the planters were made against the expenditure incurred for maintaining the rubber plantations..... If so, it follows that the receipts by the assessee..... were revenue receipts...."

4. No doubt, learned counsel for the assessee sought to contend that, in the above said Supreme Court case, only out of the cess sum collected from the assessee, the said payment of subsidy was made and that that is not the case here. But, this alleged distinction, really is not at all a material distinguishing feature.

5. Learned counsel for the assessee also relies on *Velimalai Rubber Co. Ltd Vs. Agricultural Income Tax Officer*, which distinguishes the above said *V. S. S. V. Meenakshi Achi vs. CIT*. In this Madras decision, no doubt, it was held that replanting subsidy received from the Rubber Board by the assessee was a capital receipt, and in that connection it no doubt distinguished *V. S. S. V. Meenakshi Achi vs. CIT* (supra) on the facts and followed *Commissioner of Income Tax Vs. Ruby Rubber Works Ltd., Travancore Rubbers Ltd. and Smt. M. Fathima*, . The said decision of the Full Bench of the Kerala High Court on the facts before it held : "We find it difficult to hold that the replantation subsidy given to the rubber growers is to swell the profits of the assessees..... we hold that the replantation subsidy paid to the assessee is not a revenue receipt...." Thus, the

said Kerala decision also, on the facts distinguished V. S. S. V. Meenakshi Achi vs. CIT (supra). It is this Kerala decision in CIT vs. Ruby Rubber Works Ltd. (supra), which this Court followed in Velimalai Rubber Co. Ltd. vs. Argl. ITO (supra) on the facts of the case before it. In the said Kerala decision, the relevant observation is as follows :

"We are tempted to say that the subsidy received by the assessee is used to acquire an asset by replanting high-yield variety of rubber trees. The difference is, as said by Bowen L. J., the expenditure in the acquisition of the concern will be capital expenditure and the expenditure in carrying on the concern is revenue expenditure. This makes the vital difference..... The subsidy scheme makes it very clear that the amount of subsidy has to be spent "for the acquisition of an asset".....".

6. But, in the present case, since it is clear that the subsidy receipt is admittedly relatable to revenue expenditure incurred by the assessee, we have to hold that V. S. S. V Meenakshi Achi (supra) is squarely applicable to the present facts. The other decision cited by learned counsel for the assessee, viz., Kanthimathy Plantations Ltd. Vs. State of Tamil Nadu, also has no application to the present facts since it only follows Velimalai Rubber Co. Ltd. (supra) which has already been held to be not applicable to the present case.

Likewise, Commissioner of Income Tax Vs. Dusad Industries, is also distinguishable. There, subsidies were given for a specified period by the Government to persons like the assessee therein, as incentive for setting up industries in backward area and on facts it was found that these subsidies were given not to supplement the profits of the assessee. In the above circumstances, the subsidies were held to be capital receipts. But, that is not the case here, as already found.

7. In fact, learned counsel for the assessee himself fairly drew our attention to a decision, which is against him, viz., Merinoply and Chemicals Ltd. Vs. Commissioner of Income Tax, which considered many of the earlier decisions and held that the transport subsidy received by the assessee therein (who was engaged in the manufacture and sale of plywood and blackboard) at the rate of 50 per cent of actual cost of transport, was a revenue receipt, since the subsidy was directly relatable to the abovesaid revenue expenditure of transport, which was an incidental expenditure of the assessee's business. The said decision specifically held that the abovesaid transport expenditure was the expenditure which the subsidy recouped and that the purpose of the recoupment was to make up possibly a profit deficit for operating in a backward area. Learned counsel for the assessee also sought to rely on an observation in Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., . But, that decision did not at all deal with the question whether a particular receipt is a revenue receipt or a capital receipt. It only dealt with the interpretation of the term "actual cost" in working out the depreciation allowable (no doubt, in connection with a grant of subsidy by the Government, based on a specified percentage on the fixed capital

cost and as incentive for setting up industries in backward areas). Thus, in the said case, the subsidy received was only a capital receipt. But despite the said fact, the Supreme Court held that depreciation was allowable on the corresponding capital asset created therefrom, disregarding the subsidy given since the subsidy did not form part of the "actual cost". In that connection, the Supreme Court referred to a Gujarat decision which observed that the basis adopted for determining the subsidy was only a measure for quantifying the subsidy and the subsidy was not given for the specific purpose of meeting any portion of the cost of the fixed asset. Likewise, according to learned counsel, here also, the corresponding revenue expenditure was only adopted as a measure for quantifying the subsidy.

8. But, it must be remembered that in the present case, the subsidy was given for meeting specifically the entire corresponding revenue expenditure and not as a measure to quantify the subsidy. So, the said decision is clearly distinguishable.

That apart, as rightly pointed out by learned counsel for the Revenue, the said observation in a different context cannot be relied on in the present context of determining the question whether the receipt in question is capital or revenue. The Supreme Court also has pointed out in *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, that it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the Court.

9. Learned counsel for the assessee also sought to rely on the instructions of the Board referred to in the Tribunal's order at the end of paragraph 6. It appears that as per the said instructions, the subsidy received should be treated as a capital receipt. But, it is clear to us that the circular containing the instructions would not apply to the above referred to subsidy, which is in question in these tax cases. Presumably it relates to the other subsidy, which was given in relation to fixed capital investment.

That apart, it may also be noted that in *Commissioner of Wealth-tax Vs. V.T. Ramalingam and others*, , this Court referred to *Keshavji Ravji & Co. vs. CIT* : [1990]183ITR1(SC) and observed thus :

"In yet another decision of the Supreme Court in *Keshavji Ravji & Co. vs. CIT* [1990]183ITR1(SC) it had been pointed out that the Board, by its circulars, cannot pre-empt a judicial interpretation of the provisions of the Act and the Tribunal, much less the High Court, is not bound by the circulars and that though such circulars might have departed from the tenor of the statutory provision and given benefits to the assesseees, that is not the same as saying that such circulars either have a binding effect on the interpretation of the provisions of the Act or that the Tribunal and the High Court are supposed to interpret the law in the light of the circulars."

10. The net result is, the question referred to us is answered in the affirmative

and against the assessee. No costs.