
(2004) 11 MP CK 0004
In the Madhya Pradesh High Court
Case No : IT Ref. No. 19 of 2000

Shreejee Chitra Mandir

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2005) 194 CTR 413 : (2005) 275 ITR 492 : (2005) 145 TAXMAN 67

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : Nazir Singh, for the Appellant; R.L. Jain, for the Respondent

Judgement

A.M. Sapre, J.—This is an appeal filed by the assessee u/s 260A of the IT Act against an order dt. 27th July, 2000, passed by Tribunal in ITA Nos. 463 and 464/Ind/1995.

2. It is admitted on the following substantial question of law :

"1. Whether the Tribunal was justified in holding that the subsidy received by the assessee under MP Naya Cinema Gharon Ke Nirman Ko Protsahan Yojna Ke Sahayata Anudan Niyam, 1982, from the State Government was a revenue receipt, after following the judgment of the apex Court in the case of M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, ?"

3. With the consent of the parties, the appeal was heard finally.

4. The issue arises out of the asst. yrs. 1992-93 and 1993-94. The assessee is engaged in the business of exhibiting the films. They claim to have received a sum of Rs. 5,86,642 and Rs. 5,13,510, respectively, by way of an entertainment subsidy pursuant to rules framed by the State called MP Naye Cinema Gharon Ke Nirman Ko Protsahan Yojana Ke Sahayata Anudan Niyam, 1982 (Ex. B), for disbursement of subsidy.

5. The question arose in the assessment proceedings before the AO as to whether assessee is entitled to claim deduction of this amount. In other words, the question arose before the AO as to whether amount in question can be regarded as a capital receipt or a revenue receipt. This enquiry was necessary because depending upon the finding so given, assessee was entitled to claim deduction. The AO considered it to be a case of revenue receipt and made addition. This addition was deleted by the CIT(A) placing reliance upon a decision of Tribunal rendered in the case of Asstt. CIT v. Sundram Exhibition ITA No. 126/121/Ind/ 1994 257 ITR 235 . When the matter was carried in appeal by the Revenue to Tribunal, the Tribunal by merely referring to the decision of Supreme Court rendered in the case of M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, and the order of Tribunal in Sundram's case referred supra, decided the issue in favour of the Department. It is against this finding of the Tribunal that the assessee is in appeal u/s 260A of the IT Act, 1961.

6. Heard Shri Nazir Singh, learned counsel for appellant, and Shri R.L. Jain, learned senior advocate for respondent.

7. Having heard the learned counsel for the parties and having perused the record of the case, we are not satisfied the way the Tribunal has decided this issue. The question whether a particular subsidy is a capital receipt or a revenue receipt is required to be decided keeping in view the nature of subsidy received by the assessee and scheme pursuant to which the same has been received. In other words, it was obligatory upon the taxing authorities before they record a finding one way or the other to examine the nature of subsidy, the object of scheme pursuant to which it has been received by the assessee, etc. In the words of their Lordships of Supreme Court in the case of Sahney Steel's case (supra) :

"What is material and decisive is the character of subsidy in the hands of recipients whether revenue or capital will have to be determined having regard to the purpose for which, the subsidy is given. Moreover, if the purpose is to keep the assessee to set up its business or complete a project, the money must be treated as having been received for capital purposes. But, if monies are given to the assessee for assisting him in carrying out the business operations and the money is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of the trade."

8. In our considered opinion, it is only when the taxing authorities examine the object, purpose and characteristic of scheme and the nature of amount received by the assessee in hand pursuant to such scheme, in the light of law laid down in Sahney Steel's case (supra), a finding can be recorded one way or the other as to whether it is in the nature of capital or revenue and whether assessee is entitled to get the benefit of a deduction from his total income or not.

9. What we find by mere perusal of the impugned order of the Tribunal, which is

contained in para 3 is that learned Members of the Tribunal only referred to the judgment of the Supreme Court in Sahney's case (supra) without even referring to the law laid down and taking note of the scheme in question and proceed to decide the issue. As observed supra, the Tribunal did not even take care to read, much less examine, the scheme (Ex. B) pursuant to which the assessee claimed to have received the subsidy amount. In our opinion, in the absence of any examination of the facts in the light of law laid down by the Supreme Court in Sahney's case (supra), we cannot uphold such finding and the view taken by the Tribunal on this issue.

10. In our considered opinion, it is the duty of the Tribunal that, being the highest Tribunal exercising the appellate jurisdiction under the IT Act, to examine the issue, both of law and fact in right perspective and in detail. It must appear from the order passed by the Tribunal that sincere efforts were made to decide the issue that fell for examination, keeping in view the law laid down by apex Court in its right earnest. Mere reference of a citation in the order for recording a finding is not enough. It is never regarded as a case observing judicial discipline. Any finding whether on facts or in law if recorded cursorily and without assigning reasons can never be regarded as judicial finding. It is incapable of being sustained in higher Courts in hierarchy.

11. In our considered opinion, since the Tribunal in this case committed manifest error of law while recording a finding in the most cursory and perfunctory manner, it is not liable to be upheld. Indeed, the Tribunal failed in their duty, while exercising their appellate powers, to examine the issue in the manner suggested by their Lordships of Supreme Court in Sahney Steel's case (supra). This Court thus, cannot subscribe to such casual finding so recorded.

12. It is not for us to examine the facts of the case de novo and record our findings. It is essentially the job of the Tribunal to examine the issue and then record a finding one way or the other. We have, therefore, refrained ourselves from going into the factual aspect of the matter for want of any categorical finding recorded by the authorities at least in the light of the law laid down by the Supreme Court in Sahney's case (supra).

13. We, therefore, allow the appeal and set aside the order passed by the Tribunal dt. 27th July, 2000, passed in ITA Nos. 463 and 464/Ind/1995. As a necessary consequence, we remand the case to the Tribunal to decide the aforesaid appeal afresh, keeping in view the law laid down by the Supreme Court in Sahney's case (supra) and the observations made by us (supra). It is only after examining the characteristic and nature of the scheme pursuant to which the assessee claimed to have received the entertainment subsidy and the law on the subject, the Tribunal will record a finding on merits, as to what is the true character of the subsidy--capital or revenue--and whether assessee is entitled to claim deduction or not. Let the appeal be decided within six months from today.

14. We may make it clear that we have not examined the issue on facts nor

applied our mind to the facts and hence the Tribunal will decide the appeal strictly on its merits, uninfluenced by any of our observations if made on the controversy.