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(2004) 09 MAD CK 0033

In the Madras High Court

Case No : T.C. No. 110 of 2000

The Commissioner of Income Tax APPELLANT

Vs

Engine Valves Ltd. RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (2004) 192 CTR 162

Hon'ble Judges : P.D. Dinakaran, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : J. Narayanasamy, Income Tax, for the Appellant; P.P.S. Janarthana Raja, for Subbaraya Aiyar, for the Respondent

Judgement

P.D. Dinakaran, J.—This is a reference on a question of law raised u/s 256(2) of the Income Tax Act, namely

Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the refund received by the

assessee from the Central Excise Department cannot be taxed u/s 41(1) of the Income Tax Act, 1961, especially when the same has been claimed

and allowed as a deduction u/s 37 of the Income Tax Act ?

2.1. The respondent assessee is a company. During the assessment year 1988-89, the respondent assessee received a refund of Rs. 16,37,721/-

as refund of excise duty. The assessee claimed this as a liability as this amount represents the liability to the stockists. The assessing officer

assessed this amount as income u/s 41(1) of the Act, as the assessee had availed the deduction in the earlier years, when the money was paid to

the Excise Department.

2.2. On appeal, the action of the assessing officer was confirmed by the CIT

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(Appeals).

2.3. On further appeal, the Tribunal has held that the refund of excise duty is not assessable u/s 41(1) of the Income Tax Act, following the

decision of the Madhya Pradesh High Court in the case of Commissioner of Income Tax Vs. Deora Pu Canbeon Mfg. Co. Pvt. Ltd., and the

decision of the Madras High Court in the case of Commissioner of Income Tax, Tamil Nadu-III Vs. Thirumalaiswamy Naidu and Sons., . Under

such circumstances, the matter was referred on the above question of law to this Bench.

3. Heard.

4. It is not in dispute that both the decisions now referred to have been reversed by the Apex Court and the point on issue is substantially settled

by the Apex Court in Polyflex (India) Pvt. Ltd. Vs. Commissioner of Income Tax, Karnataka, holding that the amount so refunded became income

of the assessment year in question under deeming provision of Section 41(1) of the Income Tax Act and therefore taxable in that assessment year

and the payment of statutory levy such as sales tax or excise duty in the course of carrying on business is, therefore, covered u/s 37 of the Act.

5. Hence, the question of law referred to us is answered in affirmative in favour of the Revenue and against the assessee.

6. However, since it is brought to our notice that the respondent assessee has already paid the tax in the subsequent year for the said amount of

refund, which was attracted u/s 41(1) of the Act, even though the reference is now answered in favour of the Revenue, there shall be a direction to

the Revenue that before taking any further action, they shall take notice of the fact that the respondent assessee has already paid the tax in the

subsequent year for the amount refunded to them and the parties are at liberty to work out their rights in accordance with law.

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