(2009) 09 MP CK 0019

Madhya Pradesh High Court (Indore Bench)

Case No: None

S. Kumars Tyre Manufacturing Company Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Sept. 9, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 256, 80HH, 80I

Citation: (2009) 227 CTR 204

Hon'ble Judges: S.K. Seth, J; A.M. Sapre, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

A.M. Sapre, J.

This Income Tax reference is made to this Court at the instance of assessee u/s 256(1) of the Act to answer 4 questions of law, referred by Tribunal. This Court by order dt. 6th July, 2009 [reported as S. Kumars Tyre Manufacturing Co. Ltd. v. CIT (2009) 227 CTR 181 (MP) Ed.] answered question Nos. 1,2 and 3. So far as question No. 4 was concerned, this Court observed on the basis of statement made by learned Counsel for assessee that the same need not be answered on its merit. In other words, this Court declined to answer question No. 4 on concession made by learned Counsel for assessee on its merits.

2. The assessee then made an application under order 47 Rule 1 of CPC registered as MCC No. 244 of 2009 praying therein that since this Court has answered main question Nos. 2 and 3 against the assessee and hence, it has become necessary to answer question No. 4 on its merits. This Court acceded to the request, made by assessee and in consequence, while allowing the application by order dt. 3rd Sept., 2009 listed the main reference i.e. IT Ref. No. 62 of 1997 for answering question No. 4 on merits. This is how this reference is again listed for hearing to answer question

No. 4.

3. The question No. 4 reads as under:

Whether in the facts and circumstances of the case the Tribunal was in error in not permitting the deductions under Sections 80HH and 80-I in respect of positive income assessed on the ground that the compensation amount of Rs. 5,18,02,396 could not be said to be income derived directly from an industrial activity?

4. At the outset, learned Counsel appearing for the parties in all fairness at their command brought to our notice one decision of this Court rendered in IT Appeal No. 64 of 2004, CIT v. Alpine Solvex Ltd. decided on 23rd Jan., 2008, [reported at Commissioner of Income Tax Vs. Alpine Solvex Ltd., .] wherein the question No. 4 of this reference was answered in favour of Revenue and against the assessee. In other words; according to learned Counsel since the question No. 4 is already answered by this Court in the case of Alpine Solvex Ltd. (supra) on its merits and hence, there is no need to again examine its merits in this reference except to answer the same against the assessee and in favour of Revenue by placing reliance on the decision rendered in Alpine Solvex Ltd. (supra).

5. We have perused the decision rendered in Alpine Solvex Ltd. (supra) and find that this Court has examined the issue in detail in the light of law laid down by the Supreme Court in several cases and then answered the question No. 4 on its merits against the assessee and in favour of Revenue.

6. In the light of our reasoning contained in Alpine Solvex Ltd. (supra) we do not consider it necessary to again examine the question No. 4 in this reference and answer question No. 4 against the assessee and in favour of Revenue on the basis of our reasoning contained in order dt. 23rd Jan., 2008 passed in IT Appeal No. 64 of 2004 (CIT v. Alpine Solvex Ltd.) (supra).

7. This order though passed separately be treated as part of our main order dt. 6th July, 2009. No costs.