

(1989) 03 MP CK 0008

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 284 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Steel Tubes of India Ltd.

RESPONDENT

Date of Decision: March 11, 1989

Acts Referred:

- Income Tax Act, 1961 - Section 32, 32A, 35B, 43, 43(1)

Citation: (1989) 78 CTR 130 : (1990) 181 ITR 90 : (1989) 44 TAXMAN 266

Hon'ble Judges: G.G. Sohani, Acting C.J.; R.K. Verma, J

Bench: Division Bench

Advocate: R.C. Mukati, for the Appellant; M.S. Choudhary, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following questions of law to this court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of capital subsidy received by the assessee from the Madhya Pradesh Financial Corporation would not be deductible from the cost of the assets for allowing depreciation and investment allowance thereon in terms of Section 43(1) of the Income Tax Act, 1961 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in admitting the claim for weighted deduction u/s 35B of the Income Tax Act on the commission paid by the assessee to the Indian agents totalling Rs. 93,307 ?"

3. The material facts giving rise to this reference, briefly, are as follows :

The assessee is a limited company deriving income from manufacture and sale of steel tubes. During the assessment year in question, the assessee received a capital subsidy of Rs. 6,77,475 from the Madhya Pradesh Financial Corporation in pursuance of a certain scheme of the Government. The Income Tax Officer, while framing the assessment, reduced the cost of fixed assets of the assessee-company by the amount of capital subsidy recovered by it, for the purpose of allowing depreciation, as per the provisions of Section 43(1) of the Act. The Income Tax Officer also rejected the claim of the assessee for weighted deduction u/s 35B of the Act. On appeal, the Commissioner of Income Tax (Appeals) held that the Income Tax Officer was not right in deducting the amount of capital subsidy from the cost of the fixed assets for the purpose of allowing depreciation. The Commissioner of Income Tax (Appeals), however, rejected the claim of the assessee for weighted deduction u/s 35B of the Act. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the assessee as well as the Revenue preferred appeals before the Tribunal. The Tribunal dismissed the appeal filed by the Revenue and partly allowed the appeal of the assessee by upholding the claim of the assessee with regard to weighted deduction on the amount of expenditure amounting to Rs. 93,307 incurred in making payment by way of commission to the Indian agents. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid questions of law have been referred to this court for its opinion.

4. Now, so far as question No. 1 is concerned, learned counsel for the parties conceded that the matter was concluded by a decision of this court in [COMMISSIONER OF Income Tax Vs. BHANDARI CAPACITORS PRIVATE LTD.,](#) . Following that decision, therefore, it must be held that the Tribunal was justified in holding that the amount of capital subsidy received by the assessee from the Madhya Pradesh Financial Corporation would not be deductible from the cost of the assets for allowing depreciation and investment allowance u/s 43(1) of the Act. Our answer to question No. 1 referred to this court is, therefore, in the affirmative and against the Revenue.

5. As regards question No. 2, learned counsel for the Revenue contended that the Tribunal erred in admitting the claim for weighted deduction on the amount of Rs. 93,307, in the absence of any evidence to support that claim. In this connection, we may usefully refer to the following passage in the order of the Tribunal:

"With regard to the next item, i.e., commission paid to the Indian agents to the extent of Rs. 93,307, learned counsel drew our attention to the decisions of the Bombay High Court in [Commissioner of Income Tax \(Central\) Vs. Piramal Spinning and Weaving Mills Ltd.,](#) ; [Commissioner of Income Tax, Bombay City-II Vs. Tata Engineering and Locomotive Co. Ltd.,](#) and [Universal Ferro and Allied Chemical Ltd. and another Vs. P.G.K. Warriar and others,](#) the decision of the Delhi High Court in [Handicrafts and Handloom Export Corporation of India Vs. Commissioner of Income](#)

[Tax, Delhi-II](#), the decision of the Special Bench of the Income Tax Appellate Tribunal, Bombay, in the case of J. Hemchand and Co., the decision of the Special Bench of the Income Tax Appellate Tribunal, Madras, in the case of Bharat Skin Corporation and the decision of this Bench of the Tribunal dated October 20, 1984, in ITA No. 542 of 544/Ind/83 in the case of Premier Extraction Co. Pvt. Ltd. v. IAC, Indore, and submitted that weighted deduction should be allowed on the payment of commission to the Indian agents. In this connection, details of commission paid to the Indian agents at page 143 of the paper book were referred to."

6. The Tribunal has then set out the details of vouchers relied upon by the assessee in that behalf. On consideration of the material produced before the Tribunal, the Tribunal was satisfied that the assessee was entitled to weighted deduction in respect of the commission paid by the assessee to the Indian agents, totalling Rs. 93,307. Now, on behalf of the Revenue, reference was not sought on the question as to whether there was any evidence to support the finding of the Tribunal upholding the claim of the assessee for weighted deduction on the amount of Rs. 93,307 paid to the Indian agents by way of commission. On the basis of the evidence produced before the Tribunal, the Tribunal was satisfied that the assessee was entitled to weighted deduction on the amount of Rs. 93,307. Under the circumstances, it cannot be held that the Tribunal was not justified in admitting the claim for weighted deduction u/s 35B of the Act on the commission paid by the assessee to the Indian agents amounting to Rs. 93,307. Our answer to question No. 2, is, therefore, in the affirmative and against the Revenue.

7. Reference answered accordingly. In the circumstances of the case, parties shall bear their own costs of this reference.