

(1996) 11 MP CK 0020

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 182 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Vippy Solvex Products P. Ltd.

RESPONDENT

Date of Decision: Nov. 5, 1996**Acts Referred:**

- Finance Act, 1974 - Section 16
- Income Tax Act, 1961 - Section 256(1), 256(2), 33

Citation: (1998) 230 ITR 92**Hon'ble Judges:** Nirmal Kumar Jain, J; Asha Ram Tiwari, J**Bench:** Division Bench**Advocate:** J.N. Sharma, for the Appellant; S.S. Samvatsar, for the Respondent

Judgement

N.K. Jain, J.

The Commissioner of Income Tax, Bhopal, has made an application u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), seeking a direction to the Income Tax Appellate Tribunal, Indore Bench, Indore, to state the case and refer the undernoted question said to be of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing development rebate on plant and machinery for which agreement to supply was entered into on December 28, 1973?"

2. The assessment year involved is 1975-76. The Assessing Officer disallowed the claim of the respondent-assessee for development rebate on the ground that there was no valid contract for supply of machinery prior to December 1, 1973. In appeal, the Commissioner of Income Tax (Appeals) confirmed the disallowance. However, in second appeal (ITA No. 662/Ind of 1988), the Tribunal vide its order dated September 17, 1993, allowed the claim of the assessee observing :

"We have carefully perused the records and considered the rival submissions. It is a well accepted principle in company law that a promoter cannot act on behalf of the company under incorporation and the company soon after its incorporation has to ratify such actions of the promoters. This is an accepted mode of transacting in the case of the company and we have, no doubt, in our mind that the promoter in this case has only acted on behalf of the company and such contract having been ratified by the company becomes the contract of the company and is enforceable against the company by the third parties. This being the legal position, in our view, the Department should have accepted the assessee's claim for development rebate. We, therefore, direct that the assessee shall be given the development rebate in accordance with law. We further direct the assessing authority to withdraw the initial depreciation if any allowed by applying the other provisions of the Act alternate to development rebate. The Assessing Officer is directed to modify his order and also carry out the consequences of the same."

3. The Revenue was not satisfied with the decision of the Tribunal. It, therefore, made an application u/s 256(1) of the Act seeking a reference to this court. The Tribunal vide its order dated September 1, 1994, passed in R. A. No. 294/Ind of 1993, declined the prayer holding that the order of the Tribunal is based on appreciation of facts and no referable question of law, therefore, arises. The Revenue has, therefore, approached this court u/s 256(2) of the Act.

4. We have heard Shri J. N. Sharma, Income Tax Officer, appearing for the Revenue, and Shri S. S. Samvatsar, learned counsel for the non-appli-cant/assessee.

5. It is pointed out by the Revenue that the scheme of development rebate was discontinued through a notification dated May 25, 1971, in respect of plant and machinery installed after May 31, 1974. Section 16 of the Finance Act, 1974, however, provided that the benefit of the scheme would be available in some exceptional cases even in respect of plant and machinery installed after May 31, 1974. The relevant Clause of Section 16 of the Act of 1974 thus reads as under (see [1974] 94 ITR 46) :

"(c) any machinery or plant [not being machinery or plant referred to in Clause (b)] installed by any assessee after the 31st day of May, 1974, but before the 1st day of June, 1975, if the assessee furnishes evidence to the satisfaction of the Income Tax Officer that before the 1st day of December, 1973, he had purchased such machinery or plant or had entered into a contract for the purchase of such machinery or plant with the manufacturer or owner of, or a dealer in, such machinery or plant, or had, where such machinery or plant has been manufactured in an undertaking owned by the assessee, taken steps for the manufacture of such machinery or plant."

6. It would be thus seen that in order to get development rebate on a plant and machinery installed after May 31, 1974, the assessee was required to furnish

evidence that he had entered into a contract for purchase of such machinery or plant with the manufacturer or owner of, or a dealer in, such machinery or plant before December 1, 1973. In the instant case, pointed out the Department, the agreement for supply of plant and machinery was in fact made on December 28, 1973, as is clear from Clause (XI) of para. 2 of the order of the Tribunal itself.

7. We refrain from expressing any opinion on the merits of the case as we propose to allow the application. We are, however, satisfied that a case is made out to direct the Tribunal to state the case and refer the above noted question for the opinion of this court. We order accordingly,

8. The application thus stands disposed of as aforesaid but without any order as to costs.

9. A copy of the order to be transmitted to the Tribunal for doing the needful within nine months from today.