

Cit Vs. Vippy Solvex Products Ltd.

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Court : Madhya Pradesh

Decided On : Sep-28-2004

Reported in : [2005]142TAXMAN492(MP)

Appeal No. : IT Reference No. 29 of 1998 28 September 2004

Appellant : Cit

Respondent : Vippy Solvex Products Ltd.

Advocate for Pet/Ap. : R.L. Jain, *for the Revenue* H.C. Goyal, *for the Assessee*

Judgement :

ORDER

Sapre, J.

This is an application made by revenue (Commissioner of Income Tax) under section 256(2) of the Income Tax Act consequent upon the dismissal of their application by order dated 29-8-1997 by Tribunal under section 256(1) of the Act in R.A. No. 55/Ind./97 which in turn arises out of an order dated 17-3-1997, passed by Tribunal in I.T.A. No. 354/Ind./92. By this application, the applicant, i.e., revenue prays for calling the following questions of law said to arise out of the order dated 17-3-1997, passed by Tribunal in I.T.A. No. 354/Ind./92 to this court for being answered on merits under section 256(1). Since, in the opinion of Tribunal, the questions proposed are findings of fact and hence, the Tribunal

declined to make the reference to this court.

2. Following two questions are proposed as questions of law and which according to revenue arise out of the appellate order of the Tribunal :

'1. Whether on the facts and the circumstances of the case, the ITAT was justified in law in allowing deduction under section 80HHC at Rs. 11,91,197 as against the profit from export as computed in the assessment order at Rs. 4,70,550 ignoring the proviso to section 80HHC(1) which restricted the amount of deduction to the profits derived by eligible assessee from the export of eligible goods or merchandise?

2. Whether on the facts and circumstances of the case, the ITAT was justified in law in holding that the circumstances in which the assessee committed the default are a material consideration while levying interest under section 217 and thereby affirming the deletion made by learned CIT (A) of the entire interest charged under section 217(1)(a) of the Income Tax Act?'

3. Heard Shri R.L. Jain, learned counsel for the applicant and Shri H.C. Goyal, learned counsel for non-applicant.

4. Having heard learned counsel for the parties and having perused record of the case, we are of the view that the aforementioned two questions of law does arise out of the appellate order of the Tribunal and secondly, they are questions of law for being answered by this court in exercise of jurisdiction conferred under section 256(1) of the Act.

5. Since, we are satisfied that the questions of law does arise out of the order, we do not wish to burden our order by narrating the entire facts in detail as it will be now for the Tribunal to State the material facts in detail in drawing up the statement of case to this court for being answered on merits on its receipt from the Tribunal.

6. Suffice it to say the dispute relates to assessment year 1988-89. The question arose before the taxing authorities as to how and to what extent and in what manner compensation of deduction is to be made under section 80HHC, read with

section 80CC(1) *ibid*, of the income of an assessee derive from business and its export. The resultant question that arose for consideration is in regard to imposition of interest triable under section 217(1)(a) of the Act on the said addition if not allowed to be deleted. Though this issue was eventually decided in assessee favour, by the Tribunal, yet in our opinion, the same has got to be decided on its merits by this court being an issue of law. In our considered opinion, the issue proposed in no way is question of fact but it is a question of law.

7. Accordingly and in view of aforesaid discussion, the application made under section 256(2) of the Act by revenue is allowed. The Tribunal is directed to draw a statement of case as contemplated under section 256(1) of the Act and refer the same to this court for answering the following two questions of law which does arise out of the Appellate Tribunals order :

'1. Whether on the facts and the circumstances of the case, the ITAT was justified in law in allowing deduction under section 80HHC at Rs. 11,91,197 as against the profit from export as computed in the assessment order at Rs. 4,70,550 ignoring the proviso to section 80CC(I) which restricted the amount of deduction to the profits derived by eligible assessee from the export of eligible goods or merchandise?

2. Whether on the facts and circumstances of the case, the ITAT was justified in law in holding that the circumstances in which the assessee committed the default are a material consideration while levying interest under section 217 and thereby affirming the deletion made by learned CIT(A) of the entire interest charged under section, 217(1)(a) of the Income Tax Act?'

8. Let the statement of case be drawn and refer to this court by the Tribunal within three months from the date of this order. The Registry is directed to send the original record of this case to Tribunal (if requisitioned) alongwith the order of this court forthwith.

No. costs.