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Cit Vs. Premier Proteins Ltd.

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Court : Madhya Pradesh

Decided On : Nov-29-2004

Reported in : [2005]144TAXMAN147(MP)

Appeal No. : IT Reference No. 41 of 1997 29 November 2004

Appellant : Cit

Respondent : Premier Proteins Ltd.

Advocate for Pet/Ap. : R.L. Jain and Ku. V. Mandlik *for the Applicant*. G.M. Chafekar and D.S. Kale *for the Respondent.*

Judgement :
ORDER

Sapre, J.

This is an Income Tax Reference made under section 256(1) of the Income Tax Act at the instance of revenue (CIT) by the Tribunal in R.A. No. 12/Ind/97 arising out of an order dated 20-12-1996, passed in ITA No. 911/Ind/94 (Annexure-C) to answer the following question of law by this Court:

'Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the power subsidy received by the assessee company is a capital receipt and, therefore, not chargeable to income-tax?'

2. Facts of the case as mentioned in the statement of case duly supported by the Annexures accompanying the statement of case, need mention in brief.

3. The assessee-respondent is a Limited Company having one industrial unit engaged in manufacture of certain commodities. The assessee was given a power subsidy. It was essentially for running the unit and was to be utilized in the shape of certain percentage in power expenditure. The question arose before assessing officer as to whether power subsidy received by an assessee can be regarded as capital expenditure or revenue expenditure in their hands. As usual, if the contention of assessee was that it is in the nature of capital expenditure, whereas the contention of revenue was - it is in the nature of revenue expenditure. The assessing officer and CIT(A) held against an assessee. In their opinion, it was in the nature of revenue expenditure and hence, has to be taxed treating it to be in the nature of revenue expenditure in the hands of assessee. However, the Tribunal held it to be in the nature of capital expenditure. Accordingly, the view taken by assessing officer and CIT(A) was reversed, giving rise to making of this reference to this court at the instance of revenue under section 256(1) of the Act to answer the aforementioned question.

4. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned counsel for the revenue and Shri G.M. Chafekar, learned senior counsel with Shri D.S. Kale, learned counsel for the assessee.

5. Having heard learned counsel for the parties and having perused record of the case, we are inclined to answer the question in favour of revenue (CIT) and against the assessee.

6. Indeed, in our considered opinion, the question referred to us no more remains resintegra and stands answered by the decision of Supreme Court in the case of Sahney Steel & Press Works Ltd. v. CIT : 1997ECR787(SC) . It is in this case their Lordships examined the question as to which kind of subsidy received by an assessee can be regarded as capital receipt or revenue receipt. Their Lordships in this case laid down certain guidelines to be taken note of for determining the true nature of receipt. In that case power subsidy was held as revenue receipt because it was to be used essentially for running the plant by consuming the electricity. In

other words, their Lordships were of the view that subsidy used for running the plant/unit cannot be said to be of enduring nature. So as to make it a capital one. Respectfully following the verdict of the Supreme Court which is binding on this Court, we hold that power subsidy received in this case by the assessee is in the nature of Revenue Receipt.

7. Submission of learned counsel for the assessee was that firstly in the absence of any categorical finding recorded by the Tribunal about the nature of Scheme meant for disbursing the subsidy in question, this court cannot hold that it is a revenue receipt. We do not agree. True it is that Tribunal did not discuss the issue in detail before coming to the conclusion and simply placed reliance on the earlier decision of Tribunal, yet in our opinion, perusal of order of assessing officer and CIT(A) does indicate the nature of subsidy received by an assessee. Since, the subsidy in question was given to assessee for power consumption, we have no hesitation in coming to a conclusion on the strength of decision of Sahney Steel & Press Works Ltd. case (supra) that it has to be and it is in fact a Revenue Receipt in the hands of assessee.

8. In view of aforesaid discussion, we do not subscribe to the view taken by the Tribunal. Instead we prefer to uphold the view taken by assessing officer and CIT(A). We are also constrained to observe that Tribunal failed in their duty in properly deciding the appeal. The slip short manner in which the Tribunal disposed of the appeal cannot be countenanced. It is the legal duty of the Tribunal to deal with issue by narrating full facts and then discuss the issue in detail in the context of decided cases. The Tribunal being the last so far as facts are concerned, a higher responsibility is cast by the Legislature to decide the cases by assigning cogent reasons.

9. As a consequence of aforesaid discussion, we answer the question in favour of revenue and against the assessee.

No costs.

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