Cit Vs. Premier Proteins Ltd.

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Court : Madhya Pradesh

Decided On : Jan-18-2005

Reported in : [2008]296ITR657(MP); [2006]150TAXMAN42(MP)

Judge : A.M. Sapre and ;Ashok Kumar Tiwari, JJ.

Appeal No. : IT Reference No. 32 of 1998 18 January 2005

Appellant : Cit

Respondent : Premier Proteins Ltd.

Advocate for Pet/Ap. : R.L. Jain and ;V. Mandlik, Advs.

Judgement :
ORDER

Sapre, J.

This is an income-tax reference made at the instance of revenue under section 256(i) of the Income Tax Act by the Tribunal (ITAT) in R.A. No. 139/Ind./97, dated 9-2-1998 which arises out of an order dated 17-10-1997, passed by Tribunal in ITA No. 475/Ind./93 to answer following questions of law said to arise out of the aforementioned order:-

'Whether on the facts and in the circumstances of the case, Tribunal was justified in law in holding that assessee was correct in claiming power subsidy as capital receipt.'

2. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned counsel for the revenue. None for the assessee.

3. At the outset, we wish to point out as to how and in what manner the Tribunal (ITAT) decided the question referred while deciding the appeal filed by the assessee:-

'Para 2 - Ground No. 1 relates to the treatment accorded by the revenue authorities to power subsidy received by the assessee. The assessee claimed the power subsidy as capital receipt. The revenue authorities rejected the assessee's claim and brought it to tax. Aggrieved thereby, the assessee is before us.

Para 3 - We have heard the arguments advanced by the parties. The parties have admitted that the issue is covered by the decision of the Tribunal in favour of the assessee in the case of Kashyap Sweetners Pvt. Ltd, Ratlam v. DCIT (Assessment) in ITA No. 704/Ind./94 dated 25-1-1995 for assessment year 1991-92. In this view of the matter and following the decision (supra), we decide this ground in favour of the assessee.'

4. With respect we may say that Tribunal has not discussed any issue while deciding the question except to mention and rely upon one order of Tribunal and concluded the issue by saying that the issue has to be answered in favour of assessee.

5. The question, whether any amount received by an assessee by way of subsidy is to be taxed in the hands of assessee as capital receipt or revenue receipt cannot be decided one way or other unless the authorities examine the scheme pursuant to which the amount is paid to assessee. In other words, in order to decide as to whether a particular subsidy given to assessee is capital or revenue, the same cannot be decided by its nomenclature but it requires an analytical examination of the entire scheme. Before one is able to come to its conclusion, it is necessary to find out as to what is the object of the scheme, its nature, manner, mode of payment, its reimbursement, benefit conferred upon the assessee. It is

these factors which determine the character of the amount received which in turn determines its nature from income tax point of view. If the amount is paid by way of subsidy for setting up a plant/machinery prior to commencement then it is regarded in the nature of capital but when it is given for running the business i.e., after the production has begun in the plant, then it may well be regarded as revenue receipt in the hands of assessee.

6. Every subsidy (known as power subsidy) cannot be regarded as capital subsidy. It can be either capital or revenue. Indeed, the law on this point is well explained by the Supreme Court in the case of Sahney Steel&Press; Works Ltd v. CIT (1997) 228 ITR 2531. It is in this case, their Lordships have held that before coming to a conclusion as to what is the true nature of the amount for holding it to be capital or revenue it is necessary to examine the scheme of subsidy.

7. When we peruse the order of Tribunal and the statement of case drawn to this court for answering the question, we regretfully note that Tribunal neither discussed the scheme of power subsidy applicable to the case of assessee, nor gave any finding, nor even referred to it and nor mentioned in the statement of case. It was not even enclosed alongwith the statement of case. As a result of this though the Tribunal decided the issue in favour of assessee but without examining the same in accordance with law, we cannot countenance with such approach of the Tribunal.

8. We thus decline to answer the question referred to us for want of any material on record which is necessary for deciding the reference.

No costs.