



IN THE HIGH COURT OF DELHI

ITR No.122781

Date of Decision: 4th January, 2001

The Commissioner of Income-tax
Delhi-V

.....Petitioner
through: Mr.Sanjiv Khanna
with Mr.Ajay Jha
Advocates

Versus

M/s.Span Industries

.....Respondent
through: None

CORAM:

THE HON'BLE MR.JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE

THE HON'BLE MR.JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment ? *Yes*
2. To be referred to the Reporter or not ? *Yes*

ARIJIT PASAYAT, C.J. (Oral) -

At the instance of Revenue, Income-tax Appellate Tribunal Delhi Bench-B ('Tribunal' in short) has referred the following question under Section 256(1) of the Income-tax Act, 1961 (in short 'the Act') for opinion of this Court:

"Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the entry made for development rebate reserve after 31-3-76 would meet the requirements of Section 34(3) ?"

2. For the assessment year 1976-77 assessee filed

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::2::

[ITR 122/81]

its original return on 16th July, 1976. In the Profit and Loss Account and Balance Sheet filed along with the original return, assessee had not shown any claim relating to development rebate reserve. Immediately thereafter a revised return was filed and in the Profit and Loss Account and Balance Sheet annexed thereto development rebate reserve was shown on the basis of entries made in the books of account. The amount in question was Rs.1,06,567/-. Assessing Officer held that since the entries had not been made before the close of the accounting period, provisions of Section 34(3) of the Act were not complied with and, therefore, claim was not admissible. Assessee preferred appeal before the Commissioner of Income-tax (Appeal) ('CIT (A)' in short). It was contended that Section 34(3) of the Act did not contemplate any time limit for creating development rebate reserve in order to make a claim. Reliance was placed on decisions of various High Courts i.e. Punjab & Haryana High Court in Commissioner of Income-tax, Patiala-I v. Rita Mechanical Works (1977) 108 ITR 552, Andhra Pradesh High Court in Veerabhadra Iron Foundry and Anr. v. Commissioner of Income-tax, A.P. (1968) 69 ITR 425, Allahabad High Court in Commissioner of Income-tax, Delhi Central v. Modi Spinning & Weaving Mills Co. Limited (1973) 89 ITR 304, Bombay High Court in Tata Iron & Steel Co. Limited v. N.C.Upadhyaya and Another (1974) 96 ITR 1 and Orissa

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[ITR 122.]

High Court in Commissioner of Income-tax, Orissa v. Narula Cold Storage & Ice Factory (1976) 104 ITR 148. Income-tax Officer denied the claim relying on the decision of Gujarat High Court in Keshavlal Vithaldas v. Commissioner of Income-tax, Gujarat (1976) 105 ITR 601. Assessee submitted that if two views are possible on a particular matter, in view of the decision of the Apex Court in Commissioner of Income-tax, West Bengal v. Vegetable Products Limited (1973) 88 ITR 192 the one in favour of the assessee had to be adopted. It is to be noted that CIT(A) held that view expressed by the Gujarat High Court was to be adopted. Assessee carried the matter in further appeal before the Tribunal. On consideration of the rival submissions, it was held by the Tribunal that there was preponderance of authority in favour of the assessee and accordingly it was to be held that it is not necessary that entries in the accounts must be made on or before last day of the accounting year. Tribunal noticed that on facts there was no dispute regarding entries in books of account and consequent revision of the Profit and Loss Account and Balance Sheet which were made soon after the first return was filed on 16th July, 1976. In the Profit and Loss Account and Balance Sheet annexed to the revised return filed on 24th July, 1976, assessee had credited in its books development rebate reserve. This, according to the Tribunal, was in compliance with the

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::4::

[ITR 122/81]

requirement of Section 34(3) of the Act. On being moved for reference, the question as set out above has been referred for opinion of this Court.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessee in spite of service of notice.

Learned counsel for Revenue submitted that the entries should be made before finalisation of the accounts, more particularly before drawing up Profit and Loss Account and Balance Sheet. According to him, when original return was filed this admittedly had not been done and, therefore, the Tribunal was not justified in its view.

4. Decision of Allahabad High Court to which reference was made by the Tribunal i.e. Commissioner of Income-tax, Delhi Central v. Modi Spinning and Weaving Mills Co. Limited, was subject-matter of appeal before the Apex Court in Commissioner of Income-tax, Delhi Central v. Modi Spinning and Weaving Mills Co. Ltd. (1991) 187 ITR 51. View expressed by the Allahabad High Court was affirmed by the Apex Court. Further, view expressed by the Bombay High Court in Tata Iron & Steel Co. Ltd (supra) was also taken note of. Apex Court noted that the Central Board of Direct Taxes had, by Circular No.189 dated 30th January, 1976 (reported in (1976) 102 ITR St. 90), clarified the matter in paragraph 'A' thereof. Therefore Apex Court did not

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[ITR 122/81]

entertain Revenue's appeal.

Above being the position, we answer the question referred in the affirmative, in favour of assessee and against Revenue.

The reference stands disposed of accordingly.


CHIEF JUSTICE

4th January, 2001
"v"


D.K. JAIN, J.