

SUPREME COURT OF INDIA

Eastern Electro Chemical Industries

Vs.

Commissioner Of Income Tax, Bhopal

(S.B.Majmudar and R.P. Sethi JJ.)

02.02.2000

ORDER

S.B. MAJMUDAR, J.

1. Delay of 68 days in filing the Review Petition is condoned.
2. We have gone through the Review Petition on its own merits. The judgment sought to be reviewed has relied upon the decision of a two Judge Bench of this Court in Sahney Steel & Press Works Ltd., Hyderabad v. Commissioner of Income Tax.A. P.I. , Hyderabad . On the facts of the case, the aforesaid judgment was directly attracted. The petitioner-asses-see was given power subsidy based on a percentage of electricity bills to meet certain percentage of electric power. The aforesaid decision relied upon in the impugned judgment has upheld the stand of the revenue that subsidy on power consumed for production was not intended to be contribution towards actual outlay, but it was a revenue receipt.
3. An effort is made in the Review Petition to distinguish the said judgment on the basis of an earlier judgment of this Court in Commissioner of Income Tax v. P.J. Chemicals Limited . The aforesaid decision was not cited before the Bench which decided the impugned judgment. But even that apart, the said decision was not concerned with the question whether receipt on subsidy by a going on concern was by way of revenue receipt or capital receipt. It was concerned with the question of depreciation and the actual cost of the capital asset to be computed under Sections 43(1) & (6) and 32(1) of the Income Tax Act, 1961. On the facts of that case, subsidy was granted by way of incentive for establishing the industrial concern. Hence, on the facts of that case, it was not a payment directly or indirectly to meet any portion of the "actual cost" incurred for obtaining such capital assets, but it was intended as an incentive to entrepreneurs, its quantification determined at a percentage of the fixed capital cost. The said judgment rendered in connection with an entirely different factual context and dealing with an entirely different topic cannot be of any assistance to the review petitioner.
4. The Review Petition is therefore, dismissed on merits.