

CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Dewas Synthetics (P.) Ltd

(S C Sen, C.J. Bhagabati Prasad Banerjee, J.)

20.03.1990

JUDGMENT

Bhagabati Prasad Banerjee J.

1. The Tribunal has referred to this court the following question of law under Section 256(1) of the Income-tax Act, 1961 ("the Act") :

"Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 43(1) of the Income-tax Act, 1961, the Tribunal was right in holding that a sum of Rs. 11,22,102 received by the assessee as subsidy under the 'Central Outright Grant or Subsidy Scheme, 1971,' should not be deducted from the cost of the capital assets mainly plant and machinery and factory building ?"

2. The assessment year involved is 1980-81 for which the relevant accounting year ended on June 30, 1979.

3. The facts of this case, as is evident from the statement of case, are as follows :

"The assessee is a private limited company. It derives income from the business in the manufacture and sale of raw silk fabrics. The assessment year involved in this reference is 1980-81, the relevant previous year was the year ending June 30, 1979.

Under the Central Outright Grant or Subsidy Scheme, 1971, introduced by the Central Government and implemented by different State Governments, the assessee received certain sums as subsidy from the M. P. Government for establishing an industry in a backward area. The Income-tax Officer deducted the amount of such subsidy from the cost of the fixed assets employed in the assessee's business and allowed depreciation only on the balance value of those assets. The assessee appealed to the Commissioner (Appeals) and contended that the Income-tax Officer should not have deducted the value of the subsidy amount from the cost of the fixed assets for the purpose of allowing

depreciation under the Income-tax Act, 1961. The Commissioner (Appeals) accepted the claim of the assessee and directed that depreciation should be allowed on the full cost of the fixed assets without any deduction of the subsidy amount therefrom.

The Department appealed to the Tribunal and contended that the Commissioner (Appeals) erred in his decision. On the other hand, the assessee supported the order of the Commissioner (Appeals).

The Tribunal considered the contentions of both the parties as well as the facts on record. The Tribunal found that the issue raised before them had already been considered by the Special Bench of the Tribunal in the case of Pioneer Match Works (1 SST 331). In that case, it has been decided that the amount of subsidy was given after the fixed assets were purchased by the assessee and the assessee was free to use the subsidy amount for any purpose other than acquisition of the fixed assets. Consequently, it was held therein that no portion of the subsidy amount could be said to have been given specifically towards the acquisition of the fixed assets and so the cost of the fixed assets to the assessee could not be reduced by the amount of subsidy for the purpose of determining the written down value for the purpose of Section 43(1) of the Act. Respectfully following the aforesaid decision of the Special Bench of the Tribunal, the Tribunal upheld the order of the Commissioner (Appeals) and dismissed the departmental appeal."

4. In this case, both the Commissioner (Appeals) and the Tribunal relied on a Special Bench decision in the case of Dewas Textile Mills (P.) Ltd. which is a sister concern of the assessee-company. In that case, it was decided that the amount of subsidy was given after the capital assets of the assessee were purchased and the assessee was free to use the subsidy amount for any purpose other than acquisition of the fixed assets, and as such, no part of the subsidy amount could be said to have reduced the cost of acquisition of the capital assets of the assessee for the purpose of Section 43(1) of the Act. It was held that the amount of subsidy received in that case could be said to have reduced the cost of capital assets of the assessee. In this case also, it appears from the order of the Commissioner (Appeals) that the subsidy was given after the unit was established so that the beneficiary could utilise the subsidy for the industrial unit in accordance with the scheme, which means, for any purpose of the business operations. It is clear that the subsidy was given after the industrial unit started its operations. It is not in dispute that, with the help of the subsidy amount, the capital assets were not purchased and the purpose of giving such subsidy to the assessee was not to help the assessee for the purpose of acquiring any capital asset. If any subsidy is given after the investment made for setting up of the plant and machinery or after the industrial unit has been set up and it has already started business operations and such subsidy is utilised for business operations, in our view, it cannot be said that it must be reduced from the cost of capital assets for the purpose of granting depreciation. If the capital assets were not acquired with the help of the subsidy, the amount of capital assets could not be reduced by the amount of subsidy that has been paid by the Government under the scheme. The Tribunal has followed a decision of the Special Bench of Tribunal on identical facts in respect of a sister concern of the assessee-company. In our view, the Tribunal has rightly

decided on the point that the subsidy could not be deducted from the cost of the capital assets of the company on the ground that the capital assets were not purchased with that subsidy and no part of that amount was paid towards reimbursement of the cost of acquisition of the capital asset. As such, the Tribunal has rightly decided the point and, accordingly, the question is answered in the affirmative and in favour of the assessee.

5. There will be no order as to costs.

Suhas Chandra Sen J.

6. I agree.