

# **BOBMAY HIGH COURT**

Commissioner of Income Tax

Vs

Bombay Suburban Electric Supply Co. Pvt., Ltd.

(Tulzapurkar, J.)

15.03.1976

## **JUDGEMENT**

### **Tulzapurkar, J.**

( 1. ) IN this reference made under section 66(1) of the Indian Income Tax, Act, 1922, the following question has been referred to us for our decision at the instance of the Commissioner of Income Tax, Bombay City I, Bombay : "Whether, on a proper interpretation of section 10(5) and section 10(2)(vib) of the Indian Income Tax Act, 1922, the contributions received from the Government or public or local authorities can be deducted in arriving at the actual cost of the machinery for purposes of allowance of development rebate under section 10(2)(vib) –

( 2. ) THE few facts giving rise to this question may be stated : The question relates to the assessment year 1961 -62, the corresponding previous year being the year ended on March 31, 1961. The assessee, Bombay Suburban Electric Supply Co. Pvt. Ltd., is a company which generates and distributes electricity. During the relevant previous year the assessee -company installed machinery of the total value of Rs. 53,44,232. It claimed development rebate amounting to Rs. 13,36,060 on the said machinery under section 10(2)(vib) of the Act. Admittedly, for installing this machinery the assessee had received contributions of Rs. 1,36,436 from the Government or public or local authorities. In determining the actual cost on the basis of which the development rebate was claimed, the assessee did not deduct these contributions amounting to Rs. 1,36,436 from the total value of Rs. 53,44,232. Incidentally, it may be stated that for the purpose of depreciation the claim was made on the net cost after deducting contributions received from the Government or public or local authorities. The Income Tax Officer took the view that definition of the expression "actual cost" occurring in the Explanation to section 10(5) clearly provided for a deduction on this account. He, accordingly, deducted the contributions received from the Government or public or local authorities and allowed development rebate on the balance. The amount actually allowed came to Rs. 13,35,025. The matter was carried in appeal by the assessee -company to the Appellate Assistant Commissioner, who confirmed the Income Tax Officer's order. He rejected the assessee's contention that the Income Tax Officer was not correct in taking the view that the Explanation under section 10(5) would also cover the item of development rebate under section 10(2)(vib). The matter was carried in second appeal by the assessee -company to the Appellate Tribunal and the assessee -company raised the self -same

contention, namely, that the Explanation to section 10(5) has no application to the provisions of section 10(2)(vib). The Tribunal accepted the contention and held that the Explanation to section 10(5) had been introduced only for the purpose of defining the words "actual cost" occurring in section 10(5) which opens with the words "For the purposes of this sub -section" and that it could not be given a larger operation than what had been conceived for it by the legislature. It, therefore, held that when the Explanation did not have application, the matter was governed by the decision of this court in the case of Commissioner of Income Tax v. Poona Electric Supply Co. Ltd. : [1946] 14 ITR 622 and it, therefore, allowed development rebate on the entire value of the machinery without deducting therefrom the contributions received by the assessee -company from the Government or public or local authorities. As stated above, at the instance of the Commissioner of Income Tax, the question indicated above has been referred to us for decision. In order to appreciate the contention that was urged on behalf of the revenue by Mr. Joshi before us it would be necessary to refer to the material provisions of section 10. Under the main provision, which is to be found in section 10(1), it has been provided that the tax shall be payable by an assessee under the head "profits and gains of....." in respect of the profits or gains of any business..... carried on by him. Under sub -section (2) it has been provided that such profits or gains shall be computed after making certain allowances which have been specified thereunder. Two of such allowances are depreciation allowance under sub -section (2)(vi) and development rebate under sub -section (2)(vib). The material provision with which we are concerned in the instant case is the latter and it runs as follows : "in respect of a ..... new machinery or plant installed after the 31st day of March, 1954, which is wholly used for the purposes of the business carried on by the assessee, a sum by way of development rebate in respect of the year of acquisition of the ..... installation of the machinery or plant, equivalent to, - ..... (ii) in the case of machinery or plant installed before the 1st day of April, 1961, twenty -five per cent. and in the case of machinery or plant installed after the 31st day of March, 1961, twenty per cent. of the actual cost of the machinery or plant to the assessee....."

( 3. ) IT was relying upon the aforesaid material provisions which are to be found in section 10(2)(vib) that the assessee -company had claimed development rebate on the total value of the new machinery that was installed in the relevant previous year, the total value being Rs. 53,44,232, as according to the assessee -company that was the actual cost of the machinery or plant to the assessee. ;