

Commissioner Of Income Tax, Jodhpur vs Hindustan Zinc Ltd., Udaipur on 3 February, 1999

Equivalent citations: AIR2000SC3625, [2000]243ITR867(SC), (1999)9SCC270, AIR 2000 SUPREME COURT 3625, 1999 (9) SCC 270, (2001) 116 TAXMAN 200, (2000) 243 ITR 867, (2000) 158 TAXATION 210, (2000) 163 CURTAXREP 273

Bench: M. Srinivasan, U.C. Banerjee

ORDER

1. The High Court has rejected the application filed by the appellant under Section 256(2) of the Income-tax Act whereby directions were sought from the High Court for getting a statement of case from the Tribunal on the following two questions:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in considering the miscellaneous application of the assessee and rectifying the original order beyond the time limit prescribed Under Section 264(2) of the I.T. Act, 1961?

(2) Without prejudice to the above whether the Tribunal was justified in holding that there was really a mistake apparent from record in the original order?

2. The circumstances under which the said application by the appellant was filed are as follows:

The Tribunal passed an order on 12th June, 1978 with reference to the assessment years 1974-75 and 1975-76 with regard to unabsorbed depreciation and development rebate claimed by the assessee. At that time the Tribunal followed the judgment of this Court in "Camby Electric Supply Industrial Co. Ltd. v. Commissioner of Income-tax, Gujarat-II Subsequently the assessee filed an application under Section 256(2) of the Act relying upon the judgment of this Court in Rajapalayam Mills Ltd. v. Commissioner of Income-tax and contended that the earlier decision of the Tribunal should be modified in view of the ratio of the judgment of this Court in later case. That contention was accepted by and the Tribunal passed an order on 27th October, 1983 changing the earlier order by granting the benefit of development rebate and depreciation claimed by the assessee.

3. The Revenue, aggrieved by the said order of the Tribunal sought to have the two questions, mentioned earlier, referred to the High Court. The High Court has dismissed the application on the only ground that there was a mistake apparent on the face of the order of the Tribunal passed earlier in 1978 and the question of time limit in passing the later order did not arise out of the order of the Tribunal. Both questions raised by the Revenue are questions of law which require to be considered by the High Court on reference. The question whether the Tribunal's earlier order of 1978 suffered

from a mistake apparent when it followed the judgment of this Court in "Camby Electric Supply Industrial Co. Ltd's case which was ruling the field at that time is definitely a matter to be considered by the High Court.

4. In the result the order of the High Court is set aside. The Income-tax Appellate Tribunal is directed to send a statement of the case to the High Court setting out the two questions mentioned earlier for consideration by High Court. The appeals are allowed accordingly.