Indian Motors Transport Pvt. Ltd. vs Commissioner Of Income-Tax, Haryana ... on 11 September, 1985

Equivalent citations: [1985]156ITR489(SC), 1986SUPP(1)SCC484, AIRONLINE 1985 SC 10, (1985) 156 ITR 489 1986 SCC (SUPP) 484, 1986 SCC (SUPP) 484

Bench: Sabyasachi Mukharji, V.D. Tulzapurkar

JUDGMENT

1. There is no substance in this appeal which has been preferred by the assessee against the decision of the High Court rendered on January 16 1973, in Income-tax Reference No. 44 of 1971, whereby the High Court took the view that the Tribunal was not justified in law in directing the Income-tax Officer first to allow the development rebate under the rules and subsequently withdraw it under Section 35(11) of the Indian Income tax Act, 1922 (hereafter referred to as " the Act ").

2. The short facts giving rise to this appeal are that for the assessment year 1958-59 in respect whereof the accounting year ended on March 31 1958, the assessment was first completed by the ITO on July 16, 1960, and while making such assessment, development rebate at the prescribed rate was allowed in favour of the assessee in respect of seven buses which had been purchased by the assessee before December 31, 1957, and had been used by the assessee in its business during the accounting period. It appears that in this assessment certain additions were also made by the Income-tax Officer. The assessee preferred an appeal to the Appellate Assistant Commissioner and, in the appeal, the Appellate Assistant Commissioner did not agree with the additions made by the Income-tax Officer but he set aside the assessment order altogether and directed that a fresh assessment (de novo)be made. Such de novo assessment order was made by the income-tax Officer on August 31, 1967, by which time the Income-tax Officer came to know of the fact that the assessee had sold these seven buses within eight years of their purchase with the result that it was realised that the assessee was not entitled to development rebate. Therefore, the development rebate was denied by the Income-tax Officer to the assessee. The assessee preferred an appeal to the Appellate Assistant Commissioner and contended that the Income-tax Officer ought to have first allowed the development rebate and thereafter withdrawn or cancelled the same under Section 35(11) of the Act by means of a rectification order. The Appellate Assistant Commissioner did not agree with this contention and took the view that it was open to the Income-tax Officer to deny the development rebate even at the initial stage since the fact that the buses had been disposed of within eight years of their purchase had come to his notice and it was not necessary for him first to allow the development rebate and then (withdraw or cancel the same later on. The matter was carried by the assessee to the Tribunal and the Tribunal took a contrary view holding that it, was incumbent upon the Income-tax Officer first to allow the full development rebate under the Rules and then subsequently withdraw it under Section 35(11) of the Act. A specific question as to whether, on the facts and Bin the circumstances of the case, the Tribunal was justified in law in directing the Income-tax Officer first to allow full development rebate under the Rules and subsequently withdraw it under Section 35(11) of the Act, was referred to the High Court at the instance of the

Revenue. The High Court answered the question in the negative, in favour of the Revenue and against the. assessee.

3. After hearing counsel for the assessee, we are satisfied that the view taken by the High Court is perfectly justified having regard to the language of Section 10(2)(vib). The material portion of Clause (vib) with which we Fare concerned is the proviso below Sub-section (2)(vib) and that provision runs thus :

> Provided that no allowance under this clause shall be made unless-...
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> and if any such... machinery... is sold or otherwise transferred by the assessee to any person other than the Government... any time before the expiry of ten years from the end of the year in which it was acquired or installed, any allowance made under this clause shall be deemed to have been wrongly allowed for the purposes of this Act.

4. The obvious purpose of the aforesaid provision is to deny the development rebate to the assessee if the machinery (here, the buses) is sold by the assessee before expiry of ten years from the end of the year in which it was acquired. Ordinarily, at the initial assessment, the position whether this particular condition is satisfied or not may not be within the know ledge of the Income-tax Officer and hence recourse is required to be made to the procedure of allowing the rebate first and subsequently cancelling Kg under Section 35(11) of the Act. In the facts of the present case, when a fresh (de novo) assessment was directed by the Appellate Assistant Commissioner to be undertaken by the Income-tax Officer and when such de novo assessment was undertaken by the Income-tax Officer, the aforesaid fact about the buses having been disposed of by the assessee within eight years from the date of their purchase had come to the knowledge of the Income tax Officer. In such circumstances, we do not think that it was necessary ' for the Income-tax Officer to have first allowed the development rebate and then cancelled it under Section 35(11) of the Act. Among the condition which entitle an assessee to claim development rebate is also the condition that the assessee has not disposed of the machinery to any person other than the Government before the expiry of 10 years from the end of the year in which it was acquired and the assessee has to satisfy the same Such a condition had not been fulfilled by the assessee and this fact came to the knowledge of the Income-tax Officer when the fresh (de noyo) assessment was made by him on August 31, 1967.

5. In this view of the matter, we are of the opinion that the High Court was right in answering the question in favour of the Revenue The appeal is, therefore, dismissed with costs.