Supreme Court of India
Shubhlaxmi Mills Limited vs Additional Commissioner Of ... on 28 March, 1989
Equivalent citations: 1989 AIR 1406, 1989 SCR (2) 86
Author: R Pathak
Bench: Pathak, R.S. (Cj)

PETITIONER:
SHUBHLAXMI MILLS LIMITED

Vs.

RESPONDENT:
ADDITIONAL COMMISSIONER OF INCOME-TAX,GUJARAT

DATE OF JUDGMENT28/03/1989

BENCH:
PATHAK, R.S. (CJ)
BENCH:
PATHAK, R.S. (CJ)
MISRA RANGNATH

CITATION:
1989 AIR 1406 1989 SCR (2) 86
1989 SCC (2) 465 JT 1989 (2) 1
1989 SCALE (1)724

ACT:
Income Tax Act, 1961--S. 33(1) read with S. 34(3)(a) and Explanation thereto--Creation of a reserve fund in the relevant previous year is a condition precedent for claiming deduction on account of 'development rebate'.

HEADNOTE:
Sub-s.(1) of S.33 of the Income Tax Act, 1961 provides that subject to the provisions of S.34 thereof development rebate may be claimed as a deduction in respect of a new machinery or plant. Clause (a) of sub-s.(3) of S.34 stipulates that the said deduction shall not be allowed unless an amount equal to 75 per cent of the development rebate is debited to the profit and loss account of the releva

nt previous year and credited to a reserve account; and the Explanation thereto provides that the deduction shall not be denied by reason only that the amount so credited to the reserve account exceeded the amount of the profit of such previous year.

The appellant-assessee which had a textile mill claimed a sum as development rebate for the assessment year 1962-63. The Income Tax Officer rejected the claim on the ground that the assessee had not created a reserve as contemplated by sub-s.s(3)34of and his order, on appeal, was upheld by the Assistant Commissioner. In second appeal, the claim by the assessee found favour with the Appellate Tribunal; but on a reference made by it at the instance of the Revenue, the High Court held that the assessee had failed to comply with the conditions of sub-s.s(3)34of The appellant contended that the view taken by the High Court was erroneous and that it was not necessary that a reserve should have been created in the previous year.

Dismissing the appeal,

HELD: In order to claim the deduction on account of development rebate under sub-s.s(1)33of it is obligatory that the debit entries in the profit and loss account and the credit entry in a reserve account should be made in the relevant previous year in which the

87

machinery or plant is installed or first put to use. The development rebate contemplated by sub-s. (1) of 33 cannot be allowed as a deduction unless a reserve account has been created in the previous year in which the install

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tion or first use occurs. Any doubt in so reading the prov
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sions because of a want or insufficiency of profit in su
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previous year has been removed by the Explanation to clau
se
(a) of sub-s.(3) of s.34 [91D-E]
What is contemplated is the creation of a Reserve Fu
nd
in the relevant previous year irrespective of the result
of
the profit and loss account disclosed by the books of t
he
assessee. Mere book entries will suffice for creating such
a
Reserve Fund. The debit entries and the entries relating
to
the Reserve Fund have to be made before the profit and lo
ss
account is finally drawn up. That is a condition for secu
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ing the benefit of development rebate. [89E-F]
West Laikdihi Coal Co. Ltd., Calcutta v. Commissioner
of
Income-tax, West Bengal 11, [1973] 87 ITR 501; Commission
er
of Income-tax, Delhi Central v. Modi Spinning & Weavi
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Mills Co. Ltd., [1973] 89 ITR 304 and Indian Overseas Ba
nk
Ltd. v. Commissioner of Income-tax, Madras, [1970] 77 I
TR
512, distinguished.
Additional Commissioner of Income-tax v. Vishnu Indu
s-
trial Enterprises, [1980] 122 ITR 910 and Commissioner
of
Income-tax v. U.P. Hotel and Restaurants, [1984] 145 1
45
ITR 598, overruled.
Dodballapur Spinning Mills Ltd. v. Commissioner
of
Incometax, Karnataka-2 and Another, [1980] 121 ITR 94 a
nd
Indian Oil Corporation Ltd. v. S. Rajagopalan, Income T
ax
Officer, Companies Circle H(I) Bombay and Others, [1973]
92
ITR 241, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 47 (N T) of 1975.

From the Judgment and Order dated 3.10.1974 of t he Gujarat High Court in I.T. Reference No. 30 of 1973. Bishambar Lal for the Appellant. V.S. Desai, B. Rao and Ms. A. Subhashini for the Responden t.

M.B. Lal for the Intervener. (N.P.) The Judgment of the Court was delivered by PATHAK, C.J. This appeal by certificate granted by t he High Court of Gujarat is directed against the judgment of the High Court on the following questions referred to it by the Appellate Tribunal:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was fight in holding that the asse s-

see cannot be denied the benefit of carry forward of deve l-

opment rebate?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing that t he Income-tax Officer should determine the development reba te and such development rebate should be allowed to be carri ed forward and set off when profits are available and if, in that year, the assessee fulfils the necessary requiremen ts for such allowance like creation of adequate reserve?"

The assessee is a limited Company. It has a textile mi ll at Cambay in the State of Gujarat. For the assessment ye ar 1962-63, the previous year being the calendar year 1961, t he assessee claimed that a sum of Rs. 1,26,233 should be a l-

lowed as development rebate under s. 33 of the Income-t ax Act, 1961. The Income-tax Officer rejected the claim on t he ground that the assessee had not created a reserve as co n-

templated by sub-s. (3) of s. 34 of the Income-tax Ac t, 1961. The Appellate Assistant Commissioner of Income T ax dismissed the appeal filed by the assessee. In second appe al the claim by the assessee found favour with the Income T ax Appellate Tribunal. At the instance of the Revenue t he questions set forth earlier were referred to the High Cou rt for its opinion. The High Court has answered the questio ns in favour of the Revenue and against the assessee. It h as held that the assessee had failed to comply with the cond i-

tions of sub-s. (3) of s. 34 of the Act. In this appeal by the assessee it is urged that the vi ew taken by the High Court is erroneous and that it is n ot necessary that a reserve should be created in the previo us year during which the machinery or plant was installed. Sub-s. (1) of s. 33 provides that development rebate m ay be claimed as a deduction in respect of a new machinery or plant installed after 31 March, 1954 which is owned by the assessee and is wholly used for the purposes of the

business carried on by him, and that the allowance of the deduction is subject to the provisions of s. 34. CI. (a) of sub-s. (3) of s.

provides that the deduction referred to in s. 33 shall n ot be allowed unless an amount equal to 75 per cent of t he development rebate to be actually allowed is debited to t he profit and loss account of the relevant previous year a nd credited to a reserve account to be utilised by the assess ee during a period of eight years next following for the pu r-

poses of the business of the undertaking, other than f or distribution by way of dividends or profits or for remi t-

tance outside India as profits or for the creation of a ny asset outside India. The Finance Act, 1966 added an Explan a-

tion to this clause. The Explanation declared that t he deduction referred to in s. 33 could not be denied by reas on only that the amount debited to the profit and loss accou nt of the relevant previous year and credited to the aforesa id reserve account exceeded the amount of the profit of su ch previous year (as arrived at without making the depos it aforesaid) in accordance with the profit and loss accoun t.

The Explanation was inserted with retrospective effect fr om the commencement of the Act. Before the Explanation w as enacted a difference of opinion had existed between the Hi gh Courts on the question whether the statute required t he creation of a reserve in the previous year in which the n ew machinery or plant was installed, when the amount of t he profit of that previous year was either nil or insufficie nt for the purposes of enabling the creation of such reserv e.

It is not necessary to refer to these cases, for it see ms clear to us that the Explanation, which applied to t he assessment year under consideration before us, removes t he doubt altogether. What is contemplated is the creation of a Reserve Fund in the relevant previous year irrespective of the result of the profit and loss account disclosed by t he books of the assessee. Mere book entries will suffice f or creating such a Reserve Fund. The debit entries and t he entries relating to the Reserve Fund have to be made befo re the profit and loss account is finally drawn up. That is a condition for securing the benefit of development rebate a nd if that condition is not satisfied we fail to see how t he deduction on account of development rebate can be claimed at all.

Learned counsel for the assessee relies on West Laikdi hi Coal Co. Ltd., Calcutta v. Commissioner of Income-tax, We st Bengal 11, [1973] 87 ITR 501 and Commissioner of Income-ta x, Delhi Central v. Modi Spinning & Weaving Mills Co. Ltd ., [1973] 89 ITR 304. Those were cases decided under the prov i-

sions of the Indian Income-tax Act, 1922 and there was no Explanation such as we have before us. Re-

ference was made to the decision of this Court in Indi an Overseas Bank Ltd. v. Commissioner of Income-tax Madra s, [1970] 77 ITR 512. In that case, however, the question w as whether the creation of a reserve in compliance with s.

of the Banking Companies Act constituted sufficient compl i-

ance with the requirements of proviso (b) to s. 10(2) (vi

b) of the Indian Income-tax Act, 1922. Reference has also be en made to Additional Commissioner of Income-tax v. Vishnu I n-

dustrial Enterprise, [1980] 122 ITR 919. We do not find it possible to agree with the view taken by the Allahabad Hi gh Court in that case that the development reserve need not be created in the relevant previous year during which the n ew machinery or plant is installed, and that a profit must ha ve been earned during the previous year to permit the creati on of a reserve fund. We think that the Explanation is clea r, and that there can be no doubt that it envisages the cre a-

tion of a Reserve Fund notwithstanding that there is no profit or insufficient profit from which such reserve may be provided. To contemplate otherwise would be to negate t he entire scheme incorporated in s. 33 read with s. 34 of t he Act. For the same reason we are unable to affirm the vi ew taken by the Allahabad High Court in Commissioner of Income-tax v. U.P. Hotel and Restaurants Ltd., [1984] 1 ITR 598. Our attention has been drawn by the learned couns el for the assessee to Dodballapur Spinning Mills Ltd. v.

Commissioner of Income-tax, Karnataka-2 and Anr., [1980] 1 ITR 94 where reference has been made to a circular issued by the Central Board of Direct Taxes dated 14th October, 19 and to a subsequent circular dated 30 January, 1976. We ha ve carefully considered the matter and we do not think that t he circulars affect the true position in law. On behalf of the assessee reliance was placed on Indi an Oil Corporation Ltd. v. S. Rajagopalan, Income-tax Office r, Companies Circle II (1) Bombay and others, [1973] 92 ITR 2 where the Bombay High Court has held that there was no obligation on the assessee to create a reserve in the ye ar of installation if there was no taxable income in the rel e-

vant year. Some of the submissions addressed in that ca se may be set forth in detail. A powerful argument was a d-

dressed by learned counsel for the assessee and it w as pointed out that the expression "shall be allowed" in clau se

(a) of sub-s. (1) of s. 33 indicated that the developme nt rebate is to be assessed and thereupon it becomes allowabl e, and that sub-s. (2) of s. 33 which provides for the allo w-

ance of development rebate mentions that the sum "to be allowed" by way of development rebate for the assessme nt year shall be only such amount as shall be sufficient to reduce the total assessable

income to nil and the amount of development rebate to the extent to which it has not been allowed shall be carried forward to t he following assessment years for eight subsequent year s.

Reference was also made to the distinction between t he expressions "to be allowed" and "actually allowed" used in the relevant provisions. It was also argued that the util i-

sation by the assessee of the development rebate reserve f or the purposes of the business of the undertaking contemplat ed the existence of an actual fund which could be utilised f or the purposes of the business, and that an illusory deb it entry in the profit and loss account and an illusory cred it entry in the development rebate reserve account were n ot contemplated. The High Court accepted the submission a nd concluded that it was not mandatory that the necessary deb it and credit entries must be made in the assessment ye ar following the year of installation in which the developme nt rebate is determined under s. 33. Having considered t he matter at some length in the present case, it seems to us clear that in order to claim the deduction on account of development rebate under sub-s. (1) of s. 33 it is obligat o-

ry that the debit entries in the profit and loss account a nd the credit entry in a reserve account should be made in t he relevant previous year in which the machinery or plant is installed or first put to use. The development rebate co n-

templated by sub-s. (1) of s. 33 cannot be allowed as a deduction unless a reserve account has been created in t he previous year in which the installation or first use occur s.

Any doubt in so reading the provisions because of a want or insufficiency of profit in such previous year has be en removed by the Explanation to clause (a) of sub-s. (3) of s.

34. The significance of the words "actually allowed" in clause (a) of sub-s. (3) of s. 34 has been considered by t he High Court in the judgment under appeal, and we are in entire agreement with the view taken by the High Court in that' regard.

A number of other cases have also been placed before us by learned counsel for the assessee, but as they deal wi th the point on the basis of considerations substantially t he same as have been referred to in the cases mentioned earl i-

er, we think it unnecessary to deal with them specifically .

Upon the aforesaid considerations we hold that the Hi gh Court is right in answering the questions in favour of t he Revenue and against the assessee. In the result, the appeal is dismissed but there is no ord er as to costs.

H.L.C. Appeal di

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missed.