

Supreme Court of India

Commissioner Of Income Tax, ... vs Pigments India Ltd. on 7 November, 1997

Equivalent citations: 1998 230 ITR 520 SC, (1998) 8 SCC 602

Bench: S Bharucha, V Khare

ORDER

1. Delay condoned.

2. Special leave granted.

3. The notice upon the SLP stated that the matter might be disposed of at the SLP stage. The respondent has been served but has not chosen to appear.

4. By the judgment and order under appeal, the High Court of Kerala rejected the application for reference made by the appellant under Section 256(2) of the Income Tax Act, 1961. The questions raised related to Assessment Years 1986-87 and 1987-88. They read thus:

"7. Whether on the facts and in the circumstances of the case and also in the light of the relevant provisions, the assessee is entitled to carry forward any loss?

2. Whether on the facts and in the circumstances of the case and also considering the relevant provisions the provision contained in subsection (10) of Section 139 which retrospectively came in force from 1-4-1986, the Tribunal is right in law in holding that the assessee is entitled to have the loss carried forward?

3. Whether on the facts and in the circumstances of the case and since the assessing officer had extended time only up to 30-9-1986 and return filed on 10-10-1986 being one within the further extension of time applied for by the assessee (and on which no order was passed by the officer), the Tribunal is right in law in holding that 'therefore, in view of the proviso to Section 139(1) as it stood then, the assessee is entitled to have the loss carried forward'?"

"1. Whether on the facts and in the circumstances of the case and also in the light of the relevant provisions, the assessee is entitled to carry forward any loss?

2. Whether on the facts and in the circumstances of the case and in view of the amendment to Section 139(1) with effect from 1-4-1987, the Tribunal is right in law:

(i) in taking into consideration the loss return filed on 30-9-1987?

(ii) in setting aside the order of the assessing authority and in giving a direction to the assessing authority to pass fresh order in accordance with law?

3. Whether in the facts and in the circumstances of the case, the decision of the Supreme Court reported in CIT v. Manmohan Das, (1966) 59 ITR 699 relied on by the Tribunal has application to

the facts of the case?" By the order under appeal, the High Court rejected the application for reference.

5. We are inclined to agree with learned counsel for the appellant that the provision of law to be applied is different for the two assessment years and that the facts need to be considered in this light. We are not satisfied that this has been done. The questions raise issues of law and deserve to be referred to the High Court for fuller consideration.

6. The appeals are allowed. The order under appeal is set aside and the Tribunal is directed to refer to the High Court for decision the aforestated questions of law.

7. No order as to costs.