IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

ITR No. 10 of 1995
with connected matters
ITR Nos. 2, 9,11,13,14,16,17, 18 & 20 of 1995

Date of Decision: 11.9.2007

Commissioner of Income Tax …Applicant

Versus

M/s Himachal Engg. Co Pvt. (L) … Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Applicant (s): Mr. Vinay Kuthiala & Ms. Vandana Kuthiala, Advocates.

For the Respondent(s) : Mr. Ajay Kumar, Advocate.

Deepak Gupta, J. (Oral)

By this common judgment, we dispose of all the aforesaid Income Tax References (ITRs) since a common question of law is involved therein.

The main question which has been referred for opinion of this Court by the Income Tax Appellate Tribunal reads as follows:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the cost of assets shall not be reduced by the amount of subsidy received by the assessee from the Government for the purpose of working out depreciation u/s 32 read with Section 43(1) of the Income Tax Act, 1961 ?"

This question has been answered in favour of the assessee by the learned Tribunal. While making the reference the learned Tribunal has found that the Punjab & Haryana High Court in **CIT v. Jindal Bros. Rice Mills** {1989} 179 ITR 470, had accepted the plea of the revenue and had taken the view that the cost of assets must be reduced by the amount of subsidy for the purpose of working out the depreciation. On the other hand, majority of the High Courts in the country had taken a contrary view which was in favour of the assessee. The learned Tribunal basically referred this matter because there was no pronouncement by this Court.

This Court in **CIT v. Ruchira Papers Ltd (HP),** {1994} 208 ITR 601, had followed the decision of the Madras High Court **{Sirinivas Industries v. CIT** (1991) 188 ITR 22 (Mad)**}** and it came to the conclusion that the actual cost of assets cannot be reduced by subsidy received. In fact this question has been settled by the Apex Court in **CIT v. P.J. Chemicals Ltd**. AIR 1984 SC 2727, wherein the apex Court after considering the entire law and the authorities of the various High Courts, has decided the matter against the revenue and upheld the judgment of the Madras High Court which was relied upon by the apex Court. The apex Court specifically set aside the judgment rendered by the Punjab and Haryana High Court relied by the Tribunal. The apex Court held as follows:-

> "The expression "actual cost" needs to be interpreted liberally. The subsidy of the nature granted by Govt. to industries, does not partake of

> the incidents which attract the conditions for their deductibility from "actual cost". Government subsidy, it is not unreasonable to say, is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified as or geared to a percentage of such cost. If that be so, it does not partake of the character of a payment intended either directly or indirectly to meet the "actual cost."

In view of the law settled by the Supreme Court, reference made to this Court is answered in favour of the assessee and against the revenue. A copy of this judgment under the signature of the Registrar General of this Court be forwarded to the Tribunal.

(Deepak Gupta), J

September 11, 2007. (V.K.Ahuja), J.

s.