IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 367 OF 1997

Commissioner of Income Tax, Central - I ..Applicant

Vs.

M/s Hindustan Aluminum Corporation Ltd. ..Respondent

....

Mr. Suresh Kumar, Advocate for Applicant.
Mr. Pankaj R. Topraniji and Ms. Keyuri Y. Desai, Advocates for Respondent.

....

CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 12th JUNE 2015

P.C.:

By this reference under Section 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for our opinion:

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the reduction plant is an integral part of the factory of the assessee and therefore the assessee was entitled for extra shift allowance in terms of the two circulars issued by the Central Board of Direct Taxes?"

2. The respondent-assessee claimed extra shift allowance in respect of its reduction plant as a part of its factory. The Assessing Officer disallowed the same on the ground that the reduction plant is an independent plant and not a part of the factory. Consequently, the extra shift allowance was restricted only in respect of the number of days for which the reduction plant actually worked.

3. In appeal, the Commissioner of Income Tax (Appeals) held that the reduction plant was not an independent/separate factory but a part of the respondent's factory. Further, reliance was placed upon the circular dated 26 May 1985 of the Central Board of Directed Taxes (the 'CBDT') which while reiterating its earlier circular dated 28 September 1970 provided that extra shift allowance is extended to a factory as a whole and not determined separately in respect of the working of each and every machinery/plant in the factory. Consequently, appeal of the respondent-assessee was allowed and extra shift allowance was extended to the respondent not on the basis of the extra shift the reduction plant was itself worked but on the basis of the extra shifts the factory worked.

4. On further appeal by revenue, the Tribunal by its order dated 20 June 1992 upheld the order of Commissioner of Income Tax (Appeals) and confirmed that the reduction plant is a part of the factory of the assessee. Further, reliance was also placed upon the CBDT's circular dated 26 May 1985 (reiterating the earlier circular dated 28 September 1970) while extending the benefit of extra shift allowance to the reduction plant for the entire 365 days as claimed by the respondent.

5. The question of law as formulated for our opinion refers to two aspects as under:

(a) Is the reduction plant an integral part of the factory of the respondent-assessee?

(b) Whether the respondent is entitled to extra shift allowance in terms of circular dated 26 May 1985 of the CBDT?

6. So far as the first part of the question is concerned, both the CIT (Appeals) as well as the Tribunal have reached a concurrent

finding of fact that the reduction plant is an integral part of the factory of the respondent. This concurrent finding of fact by Commissioner of Income Tax (Appeals) and the Tribunal is not shown to be in any manner perverse. Therefore, we now examine the second aspect of the question viz. applicability of the circular dated 26 May 1985 (reiterating the earlier circular dated 28 September 1970) to the assessee in respect of its reduction plant which is undisputedly an integral part of the respondent's factory. This issue stands concluded in favour of the respondent by the decision of the Supreme Court in ***South India Viscose Ltd. Vs. CIT*** reported in ***227 ITR 286.*** In the above case, the Supreme Court had occasion to consider the effect of the circular dated 28 September 1970 which is in fact reiterated in the subsequent circular dated 26 May 1985. The Apex Court has observed that extra shift allowance has to be calculated on the basis of number of days which the factory had actually worked on extra shift and the extra shift allowance has not to be calculated qua a machinery or plant in the factory. Thus as held by the Supreme Court the extra shift allowance has to be calculated on the basis of number of days in which the factory had worked for extra shift and not on the basis of individual plant/machinery working an extra shift. In view of the above, the decision of the Apex Court in South India Viscose Ltd. (supra) concludes the issue in favour of the respondent-assessee.

7 Accordingly, we answer the question as framed for our opinion in the affirmative i.e. in favour of the respondent-assessee. Accordingly, the reference application is disposed of. No order as to costs.

[N.M. JAMDAR, J] **[M.S. SANKLECHA, J.]**