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

INCOME TAX REFERENCE NO.463 OF 1998

The Commissioner of Income Tax ..Applicant
-***Versus***-
M/s. Sevantilal Fakirchand & Co. ..Respondent

....
Mr. Suresh Kumar for the Applicant.
....

CORAM: S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATE :- 23rd APRIL, 2015.

P.C.:

The Tribunal at the instance of the revenue has referred following question of law for opinion and answer of this Court;-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the Income Tax Officer to allow weighted deduction under section 35B of the Act on the interest amount on packing credit?"

2] The question arises in relation to assessment years 1978-79 and 1980-81.

3] The assessee firm claimed weighted deduction under section

35B of the Income Tax Act, 1961 in respect of the expenditure on interest on packing credit. This was not allowed by the authorities under the Income Tax Act, 1961. The Tribunal, however, did not consider the claim of the assessee in the second appeals and the mistake was brought to its notice by the assessee by filing a Misc. Application invoking section 254(2) of the Income Tax Act, 1961. The Tribunal found that the ground was raised by the assessee and there was a mistake apparent from the record. The Tribunal referred to the chart filed by the assessee in the assessment proceedings and bank interest include Rs.7,20,067/- for assessment year 1978-79 and Rs.10,79,202/- for assessment year 1980-81 being the interest on packing credit.

4] The Tribunal directed the Income Tax Officer to verify the claim of the assessee and allow weighted deduction in accordance with the judgment of the High Court of Madhya Pradesh in the case of Commissioner of Income Tax V/s. Vippy Solvex (1986) 159 ITR 487 and its special bench decision in the case of Samir Diamonds.

5] Despite such an approach the Tribunal found it fit to refer the question of law for opinion and answer of this Court. The counsel for the revenue Mr. Suresh Kumar has invited our attention to the Division Bench judgment of this Court in the case of ***KEC International Ltd. V/s. Commissioner of Income Tax, Central Range-II, 2010 (322) ITR 465*** and submits that the question of law has been answered by this Court. The disallowance was, thus, upheld and the question of law was answered in favour of the revenue and against the assessee by differing from the judgment of the High Court of Madhya Pradesh. In other words, this Court did not apply the reasoning of the High Court of Madhya Pradesh and preferred the view of the Andhra Pradesh High Court in the case of ***Commissioner of Income Tax V/s. Coromandel Agro Products Oil Ltd. 1998 (230) ITR 335.***

6] In the light of the above, we answer the question of law in terms of the Division Bench judgment of this Court in favour of the revenue and against the assessee. The reference is disposed of accordingly. There shall be no order as to costs.

(A. K. MENON, J.) **(S. C. DHARMADHIKARI, J.)**

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