

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5855 OF 2008
(Arising out of SLP(C) No.7115 of 2007)

SHREYANS INDUSTRIES LTD., PUNJAB

...APPELLANT (S)

VERSUS

COMMR. OF INCOME TAX-I, LUDHIANA

...RESPONDENT(S)

ORDER

Leave granted.

Appellant is running a Paper Mill at Ahmedgarh in District Sangrur, Punjab. It is engaged in the business activity of manufacturing paper.

During the previous year relevant to the Assessment Year 1996-1997, appellant applied to the Pollution Control Board and the Forest Department to allow it to discharge its effluent water from its Mill to Village Tallewal. The Department of Environment & Forest agreed to provide forest land for open drain to be constructed by the assessee (user agency) for carrying its effluent to Tallewal drain subject to certain conditions. One of the conditions was that the appellant will transfer 4.063 hectare non-forest land in favour of the Forest Department. That was done.

The main controversy which arises for determination in this Civil Appeal is whether an amount of Rs.70,79,862/- incurred by

the appellant on construction of open drain for disposal of effluents is Revenue Expenditure,

as claimed by the appellant. According to the Department the expenditure was on Capital

Account, particularly, when the appellant has debited the building account to the extent of Rs.70,79,862/-. It may also be noted that CIT(Appeals) as well as the Tribunal held that the expenditure incurred was on Revenue Account. However, aggrieved by the decision of the Tribunal the matter was carried by the Department in appeal to the High Court. Before the High Court the Department submitted that the following substantial question of law be framed:

“Whether on the facts and circumstances of the case, the Tribunal was justified in law in allowing the expenditure of Rs.70,79,862/- incurred by the assessee under the head “Building Account”, for the construction of drainage for disposal of effluents by treating the same as Revenue Expenditure, while ignoring the facts that the assessee had acquired an asset of enduring benefit in nature and enjoys exclusive rights for the usage of the same?”

The basic question which the High Court was required to answer was whether the assessee (appellant) had acquired assets of enduring benefit? This was the key question which is in-built in the question quoted hereinabove. For that purpose the High Court was required to examine the terms and conditions on which the Forest Department had permitted the appellant to construct an open

drain. The High Court was required to consider the effect of diversion of forest land. It is not in dispute that the open drain runs for approximately fourteen kilometers. It is not in dispute that it cuts through the forest land. It is not in dispute that in lieu of this diversion, non-forest land came to be surrendered by the appellant in lieu of the forest land. Further,

the appellant was required to raise plantation on both sides of the open drain. Under the terms and conditions it was stipulated that the Forest Department shall have afforestation on both sides of drain having tree growth with an amount of Rs.1.62 lacs to be paid by the user agency (appellant) for raising and maintenance of plantation. Further, even with regard to open drain, the terms and conditions make it very clear that the open drain will be lined to avoid any seepage/leakage of effluent in due course of time. None of the terms and conditions imposed by the Forest Department have been examined the above circumstances for deciding the question framed hereinabove.

As stated above, framing of a proper substantial question of law is a mandatory requirement under Section 260A of the Income Tax Act. It is very similar to Section 100 of C.P.C. Without framing or re-framing of such a question the High Court could not have reversed the concurrent finding given by C.I.T.(Appeals) as well as by the Tribunal. However, at the same time, we make it clear that the matter needs to be examined by the High Court in proper perspective and for that purpose, we have given

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reasons to indicate the effect of forest diversion. After noticing the facts the High Court has to apply tests laid down by the various Judgment of this Court. We do not wish to express any opinion on the merits of the case.

Suffice it to state that since the High Court has not formulated a correct substantial question of law and since the High Court is required to take into account all the above mentioned facts and circumstances of the case, we set aside the impugned order and remit the matter to the High Court for fresh consideration in accordance with law.

Accordingly, the Income Tax Appeal No. 277 of 2004 shall stand restored to the file of the High Court and the matter is remitted to the High Court for fresh consideration in

accordance with law. The appeal is allowed with no order as to costs.

**.....J.
[S.H. KAPADIA]**

**New Delhi,
September 23, 2008**

**.....J
[B. SUDERSHAN REDDY]**