

**M/s MEPCO INDUSTRIES LTD Vs COMMISSIONER OF INCOME TAX & ANR**

The assessee is engaged in the business of manufacture of Potassium Chlorates. Its factory is located in the Union Territory of Pondicherry. It received power subsidy for two years, which it initially offered as revenue receipt in its Return of Income. In the petitions filed under Section 264 of the Income Tax Act, 1961, the assessee, relying on the judgement in the case of **Commissioner of Income Tax vs. P. J. Chemicals Limited** ([2002-TIOL-749-SC-IT](#)), pleaded that the subsidy amount was a capital receipt, hence not liable to be taxed, and, accordingly, it sought revision of the assessment orders for Assessment Years 1993-1994 and 1994-1995. In the revision petitions, appellant had pleaded that the subsidy amount was a capital receipt. The revision petitions filed by the appellant under Section 264 of the Act stood allowed by the Commissioner of Income Tax by order dated April 30, 1997.

Subsequent to the said order, on 19th September, 1997, the Supreme Court in the case of **Sahney Steel and Press Works Limited** ([2002-TIOL-11-SC-IT](#)) held that incentive subsidy admissible to Sahney Steel and Press Works Limited was a revenue receipt liable to be taxed under Section 28 of the Act. This decision was based on a detailed examination of the Subsidy Scheme formulated by the Government of Andhra Pradesh. It stated that incentives would not be available unless and until production had commenced. In that matter, the Supreme Court found that incentives were given by refund of sales tax and by subsidy on power consumed for production. In short, on the facts and circumstances of that case, the Court came to the conclusion that incentives were production incentives in the sense that the assessee was entitled to incentives only after entering into production. It was also clarified that the Scheme was not to make any payment directly or indirectly for setting up the industries.

Following this judgement delivered on 19th September, 1997, the Commissioner of Income Tax passed an order of rectification dated 30th March, 1998. The only ground on which rectification was sought to be made was that Power Tariff Subsidy given to the appellant was admissible only after commencement of production.

Consequently, according to the Commissioner of Income Tax, Power Tariff Subsidy constituted operational subsidies, they were not capital subsidies and, in the circumstances, applying the ratio of the judgement in the case of Sahney Steel and Press Works Limited, the Commissioner of Income Tax sought to rectify his earlier order dated 30th April, 1997, by invoking Section 154 of the Act.

Aggrieved by the said order, the appellant herein filed writ petitions before the Madras High Court, which took the view that, in view of the subsequent decision

of the Supreme Court in the case of Sahney Steel and Press Works Limited, the Department was entitled to invoke Section 154 of the Act and that the Commissioner was right in treating the receipt of subsidies as a revenue receipt.

**Having heard the parties the Apex Court observes that,**

**++ It is settled law that under Section 154 of the Act, rectification cannot be permissible on debatable issue.**

++ The nature of the subsidies is very critical to decide whether an income is revenue receipt or not. There is no straight-jacket principle of distinguishing a capital receipt from a revenue receipt. It depends upon the circumstances of each case. In Sahney Steel and Press Works Limited & Ors, the Court had observed that the production incentive scheme was different from the Scheme giving subsidy for setting up industries in backward areas. In the circumstances, the present case is an example of change of opinion which is not permissible. Revenue has clearly erred in invoking Section 154 of the Act.

**++ Rectifiable Mistake:** It must be a patent mistake, which is obvious and whose discovery is not dependant on elaborate arguments. Decision on debatable point of law cannot be treated as "mistake apparent from the record".