
(1989) 01 KL CK 0060

In the High Court Of Kerala

Case No : Income-tax Reference No. 241 of 1982

Ashok Textiles Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-01-1989

Acts Referred:

Income Tax Act, 1961 — Section 43A

Citation : (1989) 178 ITR 94

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : T.S. Venkiteswara Iyer, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

K.A. Nayar, J.—The Income Tax referred case is at the instance of the assessee, arising out of the appellate order in I. T. A. No. 330 (Coch) of 1979. The question referred is :

"Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. 15,369.84 being the excess amount paid due to fluctuation in rate of exchange was not allowable as revenue expenditure in computing the income of the applicant for the assessment year 1975-76 ?"

2. The assessee had purchased certain machinery from C. Itch & Co. Ltd., Osaka, on a deferred payment scheme. On account of fluctuations in the exchange rate, the assessee had to pay during the relevant assessment year more in terms of rupees than was originally contemplated under the agreement as the payment happened to be made under the agreement in terms of Yen. Such excess payment made in the accounting year amounted to Rs. 15,369.84. This was claimed as revenue expenditure. The Income Tax Officer disallowed it as capital expenditure. On appeal, the Commissioner of Income Tax (Appeals) held that the claim of the assessee should be considered u/s 43A. He did not accept the contention of the assessee that the term "rate of exchange" occurring in Section 43A meant the rate of exchange determined by the Government and not

difference in fluctuations in exchange rates owing to fluctuations of currencies. The appellate authority was of the view that fluctuations in exchange rates due to fluctuation of currencies should be considered to be the "rate of exchange recognised" by the Government also appearing in Section 43A. On second appeal, the Tribunal upheld the view of the lower authorities. The Appellate Tribunal followed the decision of the Madras High Court in Commissioner of Income Tax Vs. South India Viscose Ltd., and pointed out that the extra amount similar to the amounts paid by the assessee had been considered to be a capital expenditure in that decision. It is thereafter, at the instance of the assessee, that the Appellate Tribunal referred the above question of law raised for the decision of this court u/s 256(1) of the Income Tax Act.

3. We heard counsel for the assessee as well as for the Revenue. The question appears to be fully covered by the decision of this court in Periyar Chemicals Ltd. Vs. Commissioner of Income Tax, The question posed for decision in that case was whether the additional expenses incurred for repayment of a foreign loan by reason of variation in the exchange rate will squarely fall u/s 43A as it is an expenditure of a capital nature. The decision of the Supreme Court in Commissioner of Income Tax, Bombay City Vs. Tata Locomotive and Engineering Co., Ltd., was noted in that case which held that the surplus obtained on devaluation of the rupee on the accumulated dollars intended for purchase of capital goods is a capital accretion and is not taxable as profits in the hands of the assessee. To the same effect was the decision reported in Sutlej Cotton Mills Limited Vs. Commissioner of Income Tax, Calcutta, . A similar question also was considered by the Calcutta High Court in Union Carbide India Ltd. Vs. Commissioner of Income Tax, . Consequent on a devaluation of the Indian rupee, the liability of the assessee-company for repayment of the loan was enhanced in terms of Indian rupee. The claim of the assessee that the increased liability arising out of devaluation of the Indian rupee should be allowed as a deduction in computing its business income was held to be unsustainable. In that case also, it was held to be capital expenditure.

4. In the case in question, the purchase cost is to be paid by the assessee in foreign currency. But the assessee has to provide funds for the purchase of foreign currency in terms of the Indian rupee and that will not remain the same as it was at the time of the agreement of purchase. Such extra amount that has to be paid by the assessee has to be considered to be a capital expenditure. The Tribunal also held that the expenditure of Rs. 15,369 had been rightly treated as capital expenditure by the lower authorities. There is no case that the original expenditure for the machinery is not capital expenditure. If that is so, the accretion to it or the enhanced payment represented by the difference due to the fluctuation in exchange rate also should be of capital nature.

5. In the light of the above, we answer the question in the affirmative, i.e., in favour of the Revenue and against the assessee.

6. A copy of this judgment under the seal of the High Court and the signature of

the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.