(1989) 09 KL CK 0020

In the High Court Of Kerala

Case No : Income-tax Reference No. 142 of 1983

Asok Textiles Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 27-09-1989

Acts Referred:
Income Tax Act, 1961 — Section 43A

Citation : (1990) 183 ITR 653

Hon'ble Judges : Varghese Kalliath, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the assessee to Income Tax, the Appellate Tribunal has referred the following question of law for the decision of this court :

"Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. 12,112 being the excess amount paid due to the fluctuation in the rate of exchange was not allowable as a revenue expenditure in computing the loss of the applicants for the assessment year 1976-77 ?"

2. The respondent is the Revenue. We are concerned with the assessment year 1976-77. The assessee is a limited company. It had purchased certain machinery from a Japanese concern on deferred payment scheme. The instalments had to be paid in foreign currency. At the time of purchase, the assessee entered in the books of account the value of the machinery and the amount payable in terms of Indian rupees. It was based on the exchange rate prevailing then. When instalments had to be paid, the assessee had to remit more money in terms of Indian currency. This so happened because of the depreciation in the value of the Indian rupee compared to the Japanese yen. In this process, the assessee had to pay Rs. 12,112 more in paying the instalments. This was claimed as a

permissible deduction in computing the income. The Income Tax Officer disallowed the claim. He stated that the claim related to purchase of capital items and so was not allowable. The said order was confirmed in appeal by the Commissioner of Income Tax (Appeals). The Tribunal, following its earlier decision in the assessee''s own case, held that the extra expenditure which the assessee had to incur is a capital expenditure and so not allowable as a deduction. It is thereafter at the instance of the assessee that the Income Tax Appellate Tribunal has referred the above question of law for the decision of this court.

3. We heard counsel. A Bench of this court in Periyar Chemicals Ltd. Vs. Commissioner of Income Tax, has held that the extra expenditure incurred for repayment of the loan raised for the purpose of payment towards the price of capital goods purchased from foreign countries was not of the nature of revenue expenditure and could be treated only as a capital expenditure. The said decision was followed in an unreported decision in I. T. R. Nos. 33 to 36 of 1983, judgment dated March 12, 1987, and the decision (since reported) in I. T. R. No. 241 of 1982, judgment dated January 24, 1989. in. I. T. R. No. 241 of 1982 (Ashok Textiles Ltd. Vs. Commissioner of Income Tax, , the matter has been discussed at length by reference to the earlier decisions in Periyar Chemicals Ltd. Vs. Commissioner of Income Tax, , in Commissioner of Income Tax, Bombay City Vs. Tata Locomotive and Engineering Co., Ltd., and later decisions in Sutlej Cotton Mills Limited Vs. Commissioner of Income Tax, Calcutta, and in Union Carbide India Ltd. Vs. Commissioner of Income Tax, . Those decisions establish that the extra expenses incurred for repayment of the loan raised for the purpose of payment of the price of capital goods purchased from a foreign Country cannot be considered to be a revenue expenditure, in the light of the above Bench decisions, the Appellate Tribunal was justified in holding that the excess amount paid due to the fluctuation of the rate of exchange was not allowable as revenue expenditure for the year 1976-77. We answer the question referred to us in the affirmative, against the assessee and in favour of the Revenue.

4. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.