
(1980) 01 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 69 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Arun Spinning Mills

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Income Tax Act, 1961 — Section 33, 43(1), 43A(1), 43A(2)

Citation : (1981) 21 CTR 128 : (1982) 133 ITR 382

Hon'ble Judges : M.R. Sharma, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Bhagirath Dass, S.K. Hirajee and B.K. Gupta, for the Respondent

Judgement

This Judgment has been overruled by : Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd., AIR 1992 SC 718 : (1992) 101 CTR 91 : (1992) 193 ITR 255 : (1991) 5 JT 341 : (1991) 2 SCALE 1320 : (1992) 2 SCC 190 Supp : (1991) 3 SCR 303 Supp : (1992) 60 TAXMAN 192

M.R. Sharma, J.—The assessee is a registered firm deriving income from the manufacture and sale of shoddy yarn. It agreed to purchase one woollen card, one woollen ring spinning frame and one willow machine with spares from a Japanese company. The payment was to be made in foreign currency and on instalment basis. For the assessment year 1969-70, the assessee claimed development rebate on a sum of Rs. 9,89,017 spent towards the price of the machinery acquired during the relevant accounting period. The ITO while framing the assessment deducted a sum of Rs. 2,63,688 from this amount representing the cost of the machinery on account of devaluation and allowed the rebate on a sum of Rs. 7,25,329 only. The plea raised by the assessee that u/s 43A(2) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), the increase in price on account of devaluation should be taken into consideration for development rebate, was negatived by the ITO and the AAC. It, however, prevailed with the Income Tax Appellate Tribunal, Amritsar Bench (hereinafter referred to as "the

Tribunal"), which gave the assessee the necessary relief.

2. At the instance of the revenue, the following question of law has been referred to us for our opinion:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the actual cost of the new machinery to the assessee was a sum of Rs. 9,89,017 on which development rebate was admissible ?"

3. We have heard the learned counsel for the parties.

4. u/s 33 of the Act, deduction on account of development rebate has to be worked out on the basis of a certain percentage of "the actual cost of machinery or plant to the assessee". The words "actual cost" are defined in Section 43(1) of the Act. Section 43A(1) of the Act lays down that a change in the rate of exchange of currency has to be taken into consideration for determining the cost. Sub-section (2) of this section, however, makes a departure from the normal rule and lays down that such a change shall not be taken into account in computing the actual cost of an asset for the purpose of the deduction on account of development rebate u/s 33 of the Act. In view of this provision, the Tribunal, in our opinion, correctly came to the conclusion that the assessee was entitled to the relief claimed.

5. The view taken by us is supported by a Division Bench judgment of the Madras High Court in Additional Commissioner of Income Tax Vs. Kwaliti Spinning Mills (Private) Ltd., and another Division Bench judgment in Arvind Mills Ltd. Vs. Commissioner of Income Tax, Gujarat-II, .

6. Mr. Awasthy, the learned counsel for the revenue, however, relied upon another Division Bench judgment of the Madras High Court in South India Shipping Corporation Ltd. Vs. Addl. Commissioner of Income Tax, for the contrary proposition. In that case, however, the devaluation took place later and the assessee had, on the basis of the mercantile system followed by it, entered in its books of account the cost of the machinery incurred prior to the devaluation. As a matter of fact, the court distinguished South India Shipping Corporation Ltd. Vs. Addl. Commissioner of Income Tax, and Arvind Mills Ltd. Vs. Commissioner of Income Tax, Gujarat-II, on this very basis.

7. For the reasons aforementioned, we answer the question of law referred to us for our opinion in the affirmative, i.e., against the revenue and in favour of the assessee. No costs.

Dhillon, J.

8. I agree.

Appendix EXTRACT FROM THE STATEMENT OF THE CASE * * *

9. In coming to the above conclusion, the Tribunal observed as under :

"10. We have gone through the record and heard the learned representatives of

the parties and, in our opinion, the assessee deserves to succeed. Section 33 of the Income Tax Act, 1961, provides that in respect of new machinery or plant which is owned by the assessee and is wholly used for the purpose of the business carried on by him, there shall be allowed a deduction, in respect of the previous year in which the machinery or plant was installed or the plant or the machinery is first put to use in the immediately succeeding previous year, then in respect of that previous year, a sum by way of development rebate as specified in Clause (b) at the rate of 20% of the actual cost of the machinery or plant to the assessee where it is installed before the first day of April, 1970. Section 43(1) of the Income Tax Act defines "actual cost" as under :

"(i) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority."

Now, in the present case, the actual cost of the machinery to the assessee is the amount that has been actually incurred by the assessee and that amount is a sum of Rs. 9,89,017. In our opinion, the assessee is entitled to development rebate on the actual cost of the new machinery which amounted to Rs. 9,89,017 and not Rs. 7,25,329 on which development rebate has been allowed by the Income Tax Officer. In this connection, a reference is made to the Commentary of Income Tax by Kanga & Palkhivala, Vol. I, page 484, where the learned author has observed as under :

"Sub-section (2) provides that "the provisions of Sub-section (1) shall not be taken into account in computing the actual cost of an asset for the purpose of development rebate". The effect of this sub-section is that for the purpose of computing development rebate, the provisions of Section 43A(1) are to be wholly ignored and only the/definition of "actual cost" in Section 43(1) is to apply. The result is that if an assessee has not borrowed money to pay for a capital asset but has an outstanding liability to pay the price in foreign exchange, which liability increased as a result of devaluation of the Indian rupee, and the increase is not later than the year in which the development rebate is allowable u/s 33, the assessee would be entitled to claim development rebate on the basis of such increased cost."

After considering the relevant provisions of the Income Tax Act in this connection and the facts and circumstances of the case, we are of the opinion that the assessee is entitled to development rebate on the actual cost of the new machinery which was Rs. 9,89,017. The Income Tax Officer is directed to allow development rebate on the above sum as per rules,"