

(1994) 11 OHC CK 0011

In the Orissa High Court

Case No : Special Jurisdiction Case No. 23 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Electrochem Orissa Ltd.

RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 56

Citation : (1995) 123 CTR 162 : (1995) 211 ITR 552

Hon'ble Judges : P.C. Naik, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : Ray, for the Appellant; None, for the Respondent

Judgement

G.B. Patnaik, J.—The Tribunal has drawn up the statement of case on being directed by this court on an application being filed u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), to refer the following question for the opinion of the court :

"Whether the Income Tax Appellate Tribunal was right in holding that the interest earned by Messrs. Electrochem Orissa Ltd. to the tune of Rs. 50,960 from short-term deposits for the assessment year 1979-80 should not be treated as income earned by the assessee under the head "Income from other sources" ?"

2. The assessee, a company, was engaged in the business of manufacture of manganese dioxide, ferro-manganese and other allied products. The relevant assessment year is 1979-80. During the previous year, the factory of the assessee was being constructed and the assessee had deposited some money in fixed deposit and had earned interest to the tune of Rs. 30,960. The assessee claimed that the interest earned by it should be capitalised which go to reduce the cost of setting up of the factory, as it was not a part of the business of the firm to keep money in deposit and earn interest. The Income Tax Officer, however, did not agree with the contention of the assessee and treated the same to be income from other sources. The assessee preferred an appeal and having

lost in the appeal, preferred a second appeal to the Tribunal. The Tribunal, relying upon the decision of the Patna Bench of the Tribunal in *Bihar Alloy Steel Ltd. v. ITO*, as well as the Special Bench decision of the Tribunal in the case of *Arasan Aluminium Industries (P.) Ltd. v. ITO*, came to the conclusion that as the business of the assessee was not set up and was under construction, the interest earned by the assessee by way of short-term fixed deposit would reduce the cost of the plant and, therefore, the said income has to be deleted while assessing the assessee. The Department then moved the Tribunal for making a reference and having failed there moved this court and under the direction of this court, the Tribunal has now referred the question as stated earlier for the opinion of the court.

3. Mr. Ray, learned standing counsel for the Department, argues with vehemence that the interest received on short-term bank deposits is assessable as income from other sources as has been held by the Madras High Court in the case of *Commissioner of Income Tax Vs. Tamil Nadu Industrial Development Corporation Ltd.*, , as well as the decision of the said High Court in the case of *Commissioner of Income Tax Vs. Seshasayee Paper and Boards Ltd.*, . In the aforesaid two decisions of the Madras High Court, no doubt, it has been held that where the assessee had not established its factory during the assessment year in question and, therefore, there would be no question of computing its business income during the year, consequently, the interest earned by the assessee could be assessed separately under the head "Other sources" and these two decisions support the Revenue on all fours. But a Division Bench of the Andhra Pradesh High Court considered a similar question in the case of *Commissioner of Income Tax Vs. Nagarjuna Steels Ltd.*, , and came to the conclusion that where the object of the assessee is to do business and in the course of setting up a plant, since all borrowed money was not required at once, it keeps such surplus funds in short-term deposits, the interest earned on such short-term deposits should be set off against the interest paid by the assessee on the loans obtained and the balance of the interest amount should be capitalised and the interest received on such short-term deposits is not assessable as a revenue receipt. In coming to the aforesaid conclusion, the Division Bench of the Andhra Pradesh High Court relied upon the earlier decision of the said court in the case of *Commissioner of Income Tax Vs. Andhra Farm Chemicals Corporation*, , and distinguished the decision of the Madras High Court in the case of *ADDITIONAL COMMISSIONER OF Income Tax, MADRAS-I Vs. MADRAS FERTILISERS LTD.*, , on the ground that in the Madras case, a finding had been arrived at to the effect that there was no direct connection between the interest paid and the interest received. In our considered opinion, the view expressed by the Division Bench of the Andhra Pradesh High Court is the correct view. Accordingly, we answer the question posed to the effect that the Income Tax Appellate Tribunal was right in holding that the interest earned by *Electrochem Orissa Limited* to the tune of Rs. 30,960 from short-term deposits for the assessment year 1979-80 should not be treated as income earned by the assessee under the head "Income from other sources". Thus, the

answer is against the Department and in favour of the assessee.

4. The reference is answered accordingly.

P.C. Naik, J.

5. I agree.