
(1984) 02 RAJ CK 0016

In the Rajasthan High Court

Case No : Income Tax Reference No. 298 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Foresole Ltd.

RESPONDENT

Date of Decision : 20-02-1984

Acts Referred:

Income Tax Act, 1961 — Section 176(3A), 256

Citation : (1984) ACJ 739 : (1984) 41 CTR 47 : (1985) 153 ITR 349 : (1984) 19 TAXMAN 166

Hon'ble Judges : S.N. Bhargava, J; S.C. Agrawal, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; S.L. Aneja, H.C. Rastogi and J.P. Goyal, for the Respondent

Judgement

Agrawal, J.—This application has been moved by the Commissioner of Income Tax, Jaipur, u/s 256(2) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), for a direction to the Income Tax Appellate Tribunal, Jaipur Bench (hereinafter referred to as "the Tribunal"), to refer the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, and in the light of the language of Section 176(3A) of the I.T. Act, the Tribunal was justified in holding that the assessee is entitled to deduction of Rs. 8,18,262, Rs. 33,205 and Rs. 31,260 ?"

2. M/s. Foresole Ltd., the non-petitioners in this application (hereinafter referred to as "the assessee"), was engaged for the work of drilling in Jaisalmer area by the Oil and Natural Gas Commission and it conducted the drilling operations from February 17, 1964, till the end of April, 1967. Some disputes arose between the assessee and the Oil & Natural Gas Commission which were referred to arbitration. In those arbitration proceedings, the arbitrator gave an award on December 21, 1974, which was made a rule of the court on May 7, 1975. Under the said award, a sum of Rs. 13,61,811 was awarded to the assessee. The

assessee submitted a return for the assessment year 1976-77 and in the said return it claimed deduction of expenses amounting Rs. 9,93,132. Out of the said deductions claimed by the assessee towards the expenses, the ITO disallowed deductions to the extent of Rs. 9,60,500, and allowed deductions to the extent of Rs. 32,632 only towards expenses which were incurred during the relevant previous year. The aforesaid order passed by the ITO was affirmed in appeal by the Commissioner of Income Tax (Appeals). The Tribunal held that the assessee was entitled to deduction of Rs. 8,18,262 towards expenses relating to the arbitration proceedings incurred from 1968-69 to 1974-75, Rs. 33,205 towards other expenses incurred in preceding years and Rs. 31,260 towards direction and control charges. The Tribunal held that Section 176(3A) of the Act does not postulate that the expenses incurred by the assessee in receiving the sum due to it after discontinuance of his business, should not be permitted for the purpose of computing the income of the assessee. According to the Tribunal, the cardinal principle of law is that only income can be taxed and that income can be computed only after deducting the expenditure and it could not be the intention of the Legislature to charge only the receipt of the discontinued business to tax in a subsequent year without taking into account the expenditure incurred on that receipt. The Tribunal also held that the Legislature could not have intended to tax the receipt of discontinued business in an absolutely different way from the receipt of continued business and that there could not be any distinction so far as chargeability of two types of receipts, i.e., receipts of a continuing business and receipts of discontinued business. The Tribunal allowed the deductions as claimed by the assessee on account of the expenses and held that the entire expenditure aggregating to Rs. 8,18,264 was incurred in connection with the arbitration proceedings which culminated in the receipt of Rs. 13,61,811. The Tribunal also held that the amount aggregating to Rs. 33,205 was incurred by the assessee on the transportation to France of the machinery that was being used in the drilling operations and that the transportation charges were to be borne by the Oil and Natural Gas Commission and that the said amount was received by the assessee as reimbursement by the Oil and Natural Gas Commission of the amount that was spent by the assessee on taking the machineries back to France. As regards the sum of Rs. 31,260, the Tribunal held that the assessee manages its offices from Paris and that the staff of the assessee supervised the affairs of the discontinued business from Paris and that out of the expenditure incurred by the assessee for its diversified activities, a sum of Rs. 31,260 was apportioned in a consolidated manner and on hourly basis as direction and control charges for the supervision of the discontinued business. The Tribunal found that the assessee had filed an audit certificate which showed that for India Branch, the expenditure of Rs. 31,260 had been certified by the auditor of the assessee. The Tribunal, therefore, allowed deduction of the aforesaid amounts relating to expenditure incurred in the earlier years. The Commissioner of Income Tax moved an application before the Tribunal u/s 256(1) of the Act for drawing a statement of case and referring to this court the question as to whether on the facts and in the circumstances of the case and in

the light of language of Section 176(3A) of the I.T. Act, 1961, the Tribunal was justified in holding that the assessee is entitled to deduction of expenditure of Rs. 8,18,262, Rs. 33,205 and Rs. 31,260. The Tribunal rejected the said application submitted by the Commissioner of Income Tax on the view that it is too elementary a principle that under the scheme of the I.T. Act only income can be taxed and income can be computed only after deducting the expenditure. Following this principle, the Tribunal took the view that the restricted view taken by the Commissioner (Appeals) that only that expenditure which was incurred in the year of receipt, was allowable, was not correct. The Tribunal, therefore, held that no referable question of law arose from the order dated March 27, 1981, passed by the Tribunal. Thereupon, the Commissioner has moved this application u/s 256(2) of the I.T. Act.

3. We have heard Shri R. N. Surolia, the learned counsel for the Revenue, and Shri S. L. Aneja, learned counsel for the assessee.

4. Shri Surolia has submitted that the Tribunal was in error in holding that the expenditure incurred by the assessee after the business had been discontinued was deductible from the amount that was received by the assessee under the award. In support of his aforesaid submission, Shri Surolia has invited our attention to the provisions contained in Section 176(3A) of the Act and has pointed out that in the said section, the Legislature has created a legal fiction whereby the sum received after the discontinuance of business has been deemed to be the income of the recipient. The submission of Shri Surolia was that the said legal fiction cannot be extended so as to permit deduction of expenditure that was incurred on such receipt. Shri Surolia has, therefore, submitted that the question as set out in para. 4 of the application does arise from the order of the Tribunal dated March 27, 1981, and that the Tribunal was in error in not referring the said question for the opinion of this court and that this court should direct the Tribunal to state the case and refer the said question for the opinion of this court.

5. Shri Aneja, on the other hand, has submitted that no case is made out for requiring the Tribunal to state the case and refer the question set out in para. 4 of this petition for the opinion of this court inasmuch as the answer to the question which is raised in para. 4 of this application is self-evident and it would be futile to require the Tribunal to refer such question for the opinion of this court.

6. We are inclined to agree with the aforesaid submission of Shri Aneja. In our opinion, the answer to the question as set out in para. 4 of the application is self-evident and it will be futile to require the Tribunal to refer the said question for the opinion of this court. In so far as the Income Tax law is concerned, the position is well-settled that only income can be taxed and income has to be computed only after deducting the expenditure incurred in deriving that income. The expenditure that has been claimed by the assessee and which has been allowed by the Tribunal was the expenditure that was incurred by the assessee for the recovery of the amount of Rs. 13,61,311. It relates to the expenses

incurred by the assessee in the arbitration proceedings as well as the expenditure incurred by the assessee towards the transportation charges of the machinery, equipment and the expenses towards the administrative charges. For computing the income of the assessee for the purpose of assessment to tax under the I.T. Act, the aforesaid expenditure has necessarily to be excluded from the amount that was received by the assessee. On the basis of the material on record, the Tribunal was satisfied that the aforesaid expenditure was incurred by the assessee. It cannot be said that the Tribunal has committed any error of law in taking this view. In our opinion, therefore, no case is made out for requiring the Tribunal to state a case and refer the question set out in para. 4 of the application for the opinion of this court. The application is, therefore, dismissed. In the circumstances of the case, the parties are left to bear their own costs.