

(1987) 12 KAR CK 0018

In the Karnataka High Court

Case No : Income-tax Reference Case No. 295 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Hindustan Machine Tools (No. 2)

RESPONDENT

Date of Decision : 02-12-1987

Acts Referred:

Income Tax Act, 1961 — Section 256 (1), 43 (3)

Citation : (1989) 175 ITR 216 : (1989) 43 TAXMAN 153

Hon'ble Judges : M. Rama Jois, J;H.G. Balakrishna, J

Bench : Division Bench

Judgement

Rama Jois, J.—The Income Tax Appellate Tribunal, Bangalore Bench, has referred the following two questions for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 ("the Act" for short) :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in deciding that the revenue expenditure incurred by the assessee in connection with its new divisions is deductible as business expenditure of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the technical assistance fees paid by the assessee in connection with the setting up of the six new divisions is deductible ?"

2. As far as the first question is concerned, the matter is covered by the order of this court made in the case of same assessee in ITRC No. 294 of 1979, decided on January 7 Commissioner of Income Tax Vs. Hindustan Machine Tools Ltd. (No. 1), (supra). Following the said decision, we answer the first question in the affirmative and in favour of the assessee.

3. As far as the second question is concerned, the relevant facts are these :

The assessee is a Government of India undertaking. The assessment year is 1971-72. The previous year is the year ending March 31, 1971. In connection

with the commissioning of its six new divisions, the assessee had entered into a collaboration agreement with certain parties and had paid technical assistance fees during the previous year. The Income Tax Officer disallowed the deduction on the ground that the deduction could be given only from the year in which the production commenced. The Appellate Assistance Commissioner accepted the plea of the assessee and held as follows : "The engineering fees and technical assistant fees, relating to the previous year will be eligible for deduction as revenue expenditure. This amounts to Rs. 3,94,915. Similar expenditure has been allowed by the Income Tax Officer himself in the subsequent assessment year. The assessee will not be entitled to claim the engineering fees amounting to Rs. 2,74,996 relating to the assessment year 1970-71. It has not become a liability in the course of this assessment year. In this view of the matter, I hold that the assessee will be entitled to a deduction of Rs. 3,94,915 only on this account."

4. The Income Tax Appellate Tribunal upheld the view taken by the Appellate Assistant Commissioner. The relevant portion of the order reads :

"The other point urged in the grounds of appeal by the Department is about the allowance of technical assistance fees. The Income Tax Officer disallowed it on the ground that production had not commenced during the previous year. Since it has been held that the entire business activity of the company is one and the same, there is no question of starting a new business and production. The decision in this regard follows as a corollary to the decision with regard to the earlier point, viz., development and commissioning expenditure. In view of the fact that we have upheld the order of the Appellate Assistant Commissioner with regard to the development and commissioning expenditure, it follows that the assessee's claim with regard to technical assistance fees also has to be allowed."

5. Learned counsel for the Revenue relied on the judgment of the Supreme Court in *Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh*, Learned counsel submitted that in the said case, the Supreme Court had held that the technical know-how in the form of drawings, designs, charts, plants, processing data and other literature fell within the definition of "plant" in section 43(3) of the Act and, therefore, the expenditure incurred on acquiring them was capital expenditure. Learned counsel for the assessee, however, relied on the judgment of the Supreme Court in the case of *CIT v. Ciba of India Ltd.* [1986] 69 ITR 692 , in which the Supreme Court held that by securing, under an agreement, the right to draw, from the purpose of carrying on the business as a manufacturer and dealer of pharmaceutical products, upon the technical knowledge made available by the Swiss company for a limited period, the assessee did not acquire any asset or advantage of an enduring nature for the benefit of its business and, therefore, the expenditure incurred was revenue expenditure. He also relied on a Full Bench judgment of this court in the case of *Mysore Kirloskar Ltd. Vs. The Commissioner of Income Tax, Bangalore*, , in which it was held that imparting know-how under an agreement for technical

collaboration did not result in parting with an asset and, therefore, payment for acquisition of such know-how was revenue expenditure.

6. In our opinion, it is unnecessary to rely upon the aforesaid decisions for this case, for, the only ground on which the deduction was disallowed by the Income Tax Officer was that production had not commenced during the previous year. Once it is held that the new units were only a continuation of the existing business, the said objection no longer subsists.

7. In the result, we answer the second question also in the affirmative and in favour of the assessee.