(1989) 08 CAL CK 0053

In the Calcutta High Court

Case No : Income-tax Reference No. 40 of 1981

Commissioner of Income Tax APPELLANT

Vs

Hindusthan Copper Ltd. RESPONDENT

Date of Decision : 18-08-1989

Acts Referred:
Income Tax Act, 1961 — Section 37

Citation : (1992) 103 CTR 140 : (1992) 196 ITR 750 : (1991) 55 TAXMAN 392

Hon'ble Judges : Suhas Chandra Sen, J;Bhagabati Prasad Banerjee, J

Bench : Division Bench

Judgement

Suhas Chandra Sen, J.—The Tribunal has referred the following question of law to this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the claim of Rs. 6,99,539 for the assessment year 1972-73 and Rs. 4,42,073 for the assessment year 1973-74 paid as decretal amount was an allowable expenditure in computing the income from the Kayanite business of the assessee ?"

2. The assessment years involved are 1972-73 and 1973-74 for which the years of account are the calendar years 1971 and 1972.

3. It has been pointed out on behalf of the assessee that the Tribunal has followed its decision in the assessee''s own case in the earlier assessment year against which no reference application has been made ; it has been pointed out that the explanation in respect of these claims have been allowed by the Department in the previous year without any question. The nature of the payments has been stated by the Tribunal in the following words in the assessee''s own case for the assessment year 1962-63 against which no reference application has been made :

"We do not consider that there is any capital element in the payment. The amount is not paid as a premium or salami for inducting the tenant into the property. The liability to pay arose in the course of carrying on the business. The assessee was working under a lease with a clause for renewal. The bona fide belief that it had a right to the renewal, it gave notice therefore and took all the steps it could in this behalf. The State resisted its attempt, but the assessee''s bona fides were established by at least the first court accepting the claims. That the claim did not succeed in the High Court only shows that two views could reasonably be taken on the assessee''s claim. It is thus clear that the assessee''s claim was not just a frivolous one. In compromising a bona fide dispute and as part of an arrangement for enabling the assessee to continue the business, the amount had to be paid. In our opinion too, for this payment, the assessee would have had to close down a part of its business. The profitable nature of this part of the business would be clear from the following figures :

Rs.

195859 39,06,143

1959-60 29,20,258

1960-61 25,52,799

1961-62 35,27,366

The assessee''s anxiety not to lose an opportunity to make profits of this magnitude can well be understood. The above represents roughly between 20 and 25 per cent. of the total profits."

4. On behalf of the assessee, our attention has been drawn to the two judgments of the Supreme Court in the case of Travancore Sugars and Chemicals Ltd. Vs. Commissioner of Income Tax, Kerala, and The Commissioner of Income Tax, Kerala, Ernakulam Vs. The Travancore Sugar and Chemicals Ltd., .

5. In view of the principles laid down in these two judgments, the question referred by the Tribunal is answered in the affirmative and in favour of the assessee.

6. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

7. I agree.

