(1997) 09 DEL CK 0059

In the Delhi High Court

Case No : ITC No. 55 of 1995 16 September 1997

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

MODI RUBBER LTD. (NO.1) — RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Citation : (1998) 148 CTR 448

Hon'ble Judges : R.C. Lahoti, J;R.C. Lahori, J;J.K. Mehra, J

Bench : Full Bench

Advocate : R.D. Jolly and Ms. Premlata Bansal, for the Revenue G. C. Sharma and Santosh Aggarwalfor the Assessee, for the Appellant;

Judgement

R.C. Lahori, J.—This is an application u/s 256(2) of the Income Tax Act, 1961, filed by the revenue seeking a mandamus to the Tribunal for drawing up a statement of case and referring the following two questions for the opinion of the High Court : "(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in allowing interest of Rs. 40,67,364 due from Bombay Tyre International Ltd., in spite of the fact that the deduction was actually waived off by directors in 1986 ? (2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that for the purpose of applying rule 6D a disallowance should have been made by aggregating expenditure incurred on various tours undertaken by an employee in a year ?"

2. So far as question No. 1 is concerned the brief relevant facts are that the assessed had sold goods to Bombay Tyre International Ltd. The purchaser did not promptly pay the sale price. Consequently, the price of the goods became a trade debt. On such trade debt, the assessee-company raised a demand of interest, issued a debit note and made a corresponding entry in the books of account maintained in the mercantile system of accounting. However, the debit notes raised by the assessee-company were not honoured by the debtor. In the subsequent year, the amount was written off. The assessing officer and the

Commissioner (Appeals) both held that so far as the assessment year in which the debit entry was made is concerned, the amount of interest will be treated as an income accrued and then it could be treated as a bad debt in the year in which it was written off.

3. Learned counsel for the revenue has relied on the judgment of the Supreme Court in State Bank of Travancore Vs. Commissioner of Income Tax, Kerala, and a decision of the Bombay High Court in Western India Oil Distributing Co. Ltd. Vs. Commissioner of Income Tax,

4. Learned counsel for the assessed has submitted that the question stands concluded by two Supreme Court decisions, namely, Godhra Electricity Co. Ltd., Ahmedabad Vs. Commissioner of Income Tax, Gujarat-II, Ahmedabad, and Commissioner of Income Tax, Bombay City I Vs. Shoorji Vallabhdas and Co., . In both the above said cases, the law laid down by their Lordships is that Income Tax is a levy on income. Though the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt, yet the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialise. Where income has, in fact, been received and is subsequently given up on such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account.

5. In the case of Commissioner of Income Tax, Bombay City I Vs. Shoorji Vallabhdas and Co., the assessed was entitled to interest at a certain rate under a managing agency agreement. A debit entry for the amount of interest was made in the books of account. However, subsequently, the rate of interest was reduced but by that time the accounting year had come to an end. Their Lordships held on a consideration of relevant facts that the interest at the reduced rate could only be treated as real income accrued to the assessed and liable to Income Tax. In the opinion of their Lordships, the subsequent agreement had altered the rate of commission in such a way as to make the income which really accrued to the assessed different from what had been entered in the books of account.

6. In the case at hand, the Tribunal has on an evaluation of relevant circumstances held that the mere unilateral act of the assessed debiting the books of account with the amount of interest, the liability for payment whereof was not accepted or agreed to by the debtor, did not amount to income really accrued to the assessee. This is a finding of fact, so question No. 1 does not arise as a referable question of law from the order of the Tribunal. In any case, the issue having been concluded by at least two pronouncements of the Supreme Court referred to hereinabove, the question is rendered a mere academic one. No

mandamus can be issued for drawing up a statement of case and calling for a reference so far as question No. 1 is concerned.

7. So far as question No. 2 is concerned, we are satisfied that the question does arise as a referable question of law from the order of the Tribunal.

8. It is also pointed out by learned counsel for the revenue that an identical question has been ordered to be referred as a question of law in Commissioner of Income Tax Vs. Modipon Ltd. (No. 2),

9. Accordingly, the application is partly allowed. The Tribunal is directed to draw up a statement of the case and refer question No. 2 stated hereinabove, for the opinion of the High Court.

10. No order to as the costs.

