

(1995) 03 DEL CK 0053

In the Delhi High Court

Case No : Income-tax Case No. 129 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Orissa Cement Ltd.

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Citation : (1995) 126 CTR 157 : (1995) 58 DLT 760 : (1995) 34 DRJ 69 :
(1995) 215 ITR 631 : (1995) 81 TAXMAN 320

Hon'ble Judges : Dr. M.K. Sharma, J; Arun Kumar, J

Bench : Division Bench

Advocate : Rajendra, for the Appellant; Hari Har Lal, for the Respondent

Judgement

Dr. M.K. Sharma, J.—This petition u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") has been preferred by the Revenue, praying for a direction to the Income Tax Appellate Tribunal, to state a case and to refer to this court for its opinion the following questions stated to be questions of law relevant to the assessment year 1983-84 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 1,77,99,414 received by the assessed as price of cement and retained by it under the orders of the Delhi High Court was not liable to be included in the assessor's income ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in dismissing the Departmental appeal only on the ground that the order u/s 263 cancelling the earlier order of the Assessing Officer was set aside by the Income Tax Appellate Tribunal without taking into account the fact that the Department's reference application against the earlier order is still pending before the Income Tax Appellate Tribunal and without considering the merits of the case ?"

2. The assessed is a limited company and for the assessment year 1983-84, pertaining to the accounting year ending on December 31, 1982, the assessee-

company was manufacturing and selling cement, refractories, soda ash and ammonium chloride. At the time of the assessment proceedings before the Income Tax Officer for the aforesaid assessment year, the assessed claimed that an amount of Rs. 1,77,99,414 was received by the assessee-company as additional retention price of cement on the basis of an interim order passed by this High Court allowing the assessed to retain an additional retention price of Rs. 35 per tonne of cement under the Cement Control Order, 1967, was not assessable. The assessed claimed that it was liable to repay this amount along with interest in case the aforesaid writ petition pending in this court in that regard is finally rejected. It was further stated before the Income Tax Officer by the assessed that it had further bank guarantee and pending final disposal the retention price was credited to a suspense account. Before the Income Tax Officer, the assessed further claimed that deposits to the tune of Rs. 34,287, certain deposits made by the depositors, were secured by way of second charge on certain movable assets of the company.

3. The Income Tax Officer, following his earlier order for the assessment year 1982-83, where similar receipts of Rs. 2,17,75,473 were held assessable, held that the said additional retention price was assessable as the assessor's income. So far as the other issue with regard to disallowance of interest at 15 per cent. out of the interest paid to the depositors is concerned, the Income Tax Officer examined the trust deed and held that there was uncertainty about the security being available to the depositors and, hence, according to him the deposits in question were unsecured and not covered by sub-clause (ix) of clause (b) of Explanation to section 40A(8). He, accordingly, disallowed 15 per cent. out of the interest payable of Rs. 57,91,671 and the disallowance was to the tune of Rs. 8,53,751. The appeal having been preferred before the Commissioner (Appeals) against the aforesaid assessment order passed by the Income Tax Officer, the Commissioner of the Income Tax (Appeals) deleted the addition of Rs. 1,77,99,414 and also the amount of Rs. 7,47,763 in respect of the second issue involved therein. On further appeal before the Tribunal against the aforesaid order of the Commissioner of Income Tax (Appeals), the Tribunal following its order for the earlier assessment year 1982-83 held that the retention price is a trading receipt but to the same extent there is a liability and, Therefore, no addition for retention price is called for, thereby upholding the order of the Commissioner of Income Tax (Appeals) in that regard. In respect of the other issue, also, the Tribunal upheld the order of the Commissioner of Income Tax (Appeals) following its own order in the assessor's case for the year 1981-82 and 1982-83. The reference application filed by the Revenue u/s 256(1) of the Income Tax Act was also rejected by the Tribunal on the ground that question No. 1 was decided in favor of the Revenue and so far as question No. 2 is concerned no question of law could be said to have arisen.

4. We have heard learned counsel for the Revenue as also learned counsel appearing for the assessee, who have taken us through the orders of the Tribunal passed on the appeal as also on the reference application. On a perusal of the

records available before us, we find that questions of similar nature also arose in the earlier assessment proceedings of the assessed itself for the assessment year 1982-83. We also find that such similar question have already been referred by the Tribunal itself in the assessment year 1982-83 on the basis of the application filed u/s 256(1) of the Income Tax Act. On going through the order of the Tribunal passed on the appeal in the instant case, we are satisfied that questions of law do arise from the aforesaid issues decided by the Tribunal, although the question proposed by the Revenue are not properly framed and worded. In the aforesaid view of the matter and also to bring out the real controversy in issue arising out of the orders of the Tribunal, we reframed the said two questions in the following manner, which, in our opinion, are questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 1,77,99,414 received by the assessed as price of cement and retained by it under the orders of the Delhi High Court was a trading receipt in the hands of the assessed and liable to be included in computing its income ?

(2) Whether the Tribunal was justified in upholding the Commissioner (Appeals) order deleting the disallowance of Rs. 7,47,763 made u/s 40A(8) of the Income Tax Act ?"

5. Learned counsel for the assessed submitted before us that this court should not exercise the power to reframe the questions unless it is of the opinion that such powers should be exercised only in exceptional cases and only in cases for removal of obscurity or doubts. While passing the present order we have considered the aforesaid submission of learned counsel for the assessee. In view of the fact that questions of law do arise in the instant case and also in view of the fact that similar questions are already referred to this court for its opinion for the assessment year 1982-83, we are inclined to call for a reference in this case also. Accordingly, this application is allowed and we direct the Income Tax Appellate Tribunal to state a case and refer to this court for its opinion the aforesaid two questions of law which we have reframed hereinabove. No costs.