(1987) 04 KL CK 0007

In the High Court Of Kerala

Case No : IT Reference No''s. 200 to 205 of 1981 & Income-tax Reference No''s. 200 to 205 of 1981

Commissioner of Income Tax APPELLANT

Vs

Protein Products Ltd. RESPONDENT

Date of Decision : 07-04-1987

Acts Referred:
Income Tax Act, 1961 — Section 43(3), 80J

Citation : (1987) 32 TAXMAN 559

Hon'ble Judges : T. Kochu Thommen, J;K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P.K.R Manon and N.R.K. Nair, for the Appellant; Jose Joseph, for the Respondent

Judgement

T. Kochu Thommen, J.—The following four questions have been referred to us by the Tribunal, Cochin Bench:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 9.35 lakhs representing part of the total value of the shares issued by the assessee to the French Company was rightly capitalised and apportioned to various assets and consequently depreciation should be allowed on such capitalised value?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rs. 90,056 representing rent payment on buildings for accommodation of engineers who were supervising the construction of buildings and erection of plant was rightly capitalised and depreciation should be allowed thereon?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the relief u/s 80J of the income tax Act, 1961 should not be restricted in proportion to the period of working by the assessee-company?

4. Whether, on the facts and in the circumstances of the case and having regard

to rule 19A(3) of the income tax Rules, 1962, the Appellate Tribunal was right in law in holding that the borrowed capital should not be excluded from the capital computation for purpose of allowing relief u/s 80J of the income tax Act, 1961?

Question No. 3 in the light of the decision of this Court in CIT v. English Indian Clays Ltd. [1983] KLT 1079, is answered in the affirmative, that is, in favour of the assessee and against the revenue. Question No. 4 in the light of the decision of the Supreme Court in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, is answered in the negative, that is, in favour of the revenue and against the assessee.

2. Pursuant to an agreement with the foreign collaborators, the assessee issued to them shares worth Rs. 11.03 lakhs. The assessee capitalised their value at Rs. 9,35,000 and claimed depreciation thereon during the accounting years relevant to the assessment years 1972-73 to 1974-75. This claim was disallowed by the ITO stating that the value of the shares could not be regarded as depreciable capital assets. However, the AAC as well as the Tribunal took a contrary view and upheld the contention of the assessee.

3. The counsel for the revenue submits that the shares cannot be regarded as capital assets capable of depreciation. This contention, as rightly pointed out by Mr. Jose Joseph appearing for the assessee is unsustainable in the light of the decision of the Supreme Court in Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, in that case the Supreme Court pointed out that expenditure incurred to purchase drawings, designs, charts, plans, processing data and other literature was of a capital nature as a result of which a capital asset of technical know-how acquired by the assessee. Such capital asset was a depreciable asset falling within the definition of ''Plant'' [See section 43(3) of the income tax Act, 1961]. This is what the Court stated:

... We are, therefore, clearly of the view that the capital asset acquired by the assessee, namely, the technical know-how in the shape of drawings, designs, charts, plans, processing data and other literature falls within the definition of ''Plant'' and is, therefore, a depreciable asset.

4. It is not disputed that in the instant case the shares were allotted in consideration of the technical know-how provided by the foreign collaborators in the form of drawings, designs, charts, etc., without such technical assistance it would not have been possible for the assessee to erect the plant. The expenditure incurred to obtain such expertise was closely and directly related to the erection of the plant and such expenditure was in our view, rightly considered by the appellate authorities as a capital expenditure whereby a capital asset within the meaning of ''Plant'' was acquired by the assessee, and such asset was a depreciable asset. Accordingly, we answer question No. 1 in the affirmative that is, in favour of the assessee and against the revenue.

5. Question No. 2 relates to the expenditure incurred by the assessee for payment of rent for the building taken on lease to house the experts whose

services were placed at the disposal of the assessee by the foreign collaborators during the erection of the plant. Counsel for the assessee submits that the foreign experts were rendering an indispensable service without which the plant could not have been erected. These facts are not disputed. We are of the view that all such expenses as are incurred for payment of rent for the building in which the experts were housed must be capitalised and added to the cost of the fixed assets created partly as a result of such expenditure-- Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, , Commissioner of Income Tax Vs. L.G. Balakrishnan and Bros. (P.) Ltd., , Ambica Mills Ltd., Ahmedabad Vs. Commissioner of Income Tax Gujarat, Ahmedabad, and Habib Hussein Vs. Commissioner of Income Tax, Bombay City I, . Question No. 2 is accordingly answered in the affirmative, that is, in favour of the assessee and against the revenue. We direct the parties to bear their respective costs in these tax referred cases.

