

(1998) 04 AP CK 0029

In the Andhra Pradesh High Court

Case No : Case Referred No. 28 of 1990

Commissioner of Income Tax

APPELLANT

Vs

Rassi Cement Ltd.

RESPONDENT

Date of Decision : 09-04-1998

Acts Referred:

Income Tax Act, 1961 — Section 57

Citation : (1998) 232 ITR 554

Hon'ble Judges : T.N.C. Rangarajan, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; S. Ravi, for the Respondent

Judgement

T.N.C. Rangarajan, J.—At the instance of the Revenue, the following two questions are referred :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding that the amount of Rs. 23,385 earned by the assessee constitutes capital receipt in the assessee's hands and cannot be brought to tax under the head "Other sources" for the assessment year 1980-81 ?

Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in law in holding that the amounts of Rs. 360, Rs. 79,100, Rs. 18,909, Rs. 1,506 and Rs. 17,301 earned by the assessee constitute capital receipts in the assessee's hands and cannot be brought to tax under the head "Other sources" for the assessment year 1981-82 ?"

2. In respect of the first question as well as in respect of the amounts of Rs. 18,909, Rs. 1,506 and Rs. 17,301, referred to in the second question which represent the interest earned on surplus funds deposited in the banks during the installation of the company, the status of the company before the commencement of the business, it has been held in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, that such

interest has to be separately treated as income and cannot be taken as part of the capital structure. In the circumstances, question No. 1 and on this aspect question No. 2 are answered in the negative and against the assessee.

3. In respect of the first part of question No. 2 the two items of Rs. 360 and Rs. 79,100, which represent the realisation by selling the tender forms and empty cement bags, learned counsel for the Revenue submitted that the same principle that applied to the surplus funds should apply to these items. Learned counsel for the assessee however, submitted that in respect of the interest there is specific provision in the Income Tax Act, 1961, u/s 57 of the Act ; whereas in respect of the empty cement bags, it was actually part of the purchase of cement and the amount realised went to reduce the cost of cement, which was utilised in the construction of the factory. The question of assessing any realisation from the sale of tender forms and the sale of empty cement bags should arise only as income from the business which had not come into operation because admittedly the business had not commenced. It cannot be said that such income should be assessed under the head "Income from other sources", when it does not cease to be the part of the activity which would otherwise be taxable as business income, if business is actually done. Therefore, it remains as part of the capital structure and hence these receipts are only capital receipts and cannot be taxed. This part of question No. 2 is answered in the affirmative and against the Revenue.