
(1998) 08 DEL CK 0093

In the Delhi High Court

Case No : Income Tax R. No. 192 of 1989

Commissioner of Income Tax

APPELLANT

Vs

R.D. Ramnath and Co.

RESPONDENT

Date of Decision : 05-08-1998

Acts Referred:

Income Tax Act, 1961 — Section 2(24), 28

Citation : (1999) 235 ITR 31

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

Bench : Division Bench

Advocate : R.D. Jolly and Premlata Bansal, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

R.C. Lahoti, J.—For the assessment year 1981-82, the following questions of law have been referred at the instance of the Revenue by the Income Tax Appellate Tribunal for the opinion of the High Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that cash compensatory support received by the assessed is not taxable as income 1

2. Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in not holding that duty drawback (Rs. 6,28,395) ; profit on sale of import entitlements (Rs. 2,24,870) and profit on sale of imported material (Rs. 11,477) are capital receipts not liable to tax ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal erred in holding that bank commission (Rs. 39,378) ; freight, octroi and insurance (Rs. 9,09,148) ; packing expenses (Rs. 8,93,675) and interest other than interest on pre-shipment credit is not eligible for weighted deduction u/s 35B of the Income Tax Act, 1961 ?"

2. So far as questions Nos. 1 and 2 are concerned, they are taken care of by an amendment in the law itself. The Finance Act, 1990, has inserted Clause (iib) in

Section 28 of the Act and Sub-clause (vb) in Section 2(24) of the Income Tax Act, 1961. These amendments have been given retrospective effect from April 1, 1967, the consequence whereof is that cash compensatory support received by the assessed is to be treated as profits/ gains of business and hence as income.

3. Similarly, the Finance Act, 1990, has inserted Clause (iiia) in Section 28 and Sub-clause (va) in Section 2(24) of the Act, the consequence whereof is that profit on sale of import entitlements has to be treated as profits/ gains of business liable to be included in the income of the assessee. The amendment has been given retrospective effect from April 1, 1962.

4. The Finance Act, 1990, has inserted Clause (iiic) in Section 28 of the Income Tax Act, 1961, and Sub-clause (vc) in Section 2(24) of the Act. These amendments have been given retrospective effect from April 1, 1972, the effect whereof is that the amount of duty drawback is to be treated as profits/gains of business liable to be included in income.

5. It is, Therefore, clear that in view of the several amendments in the Income Tax Act referred to hereinabove, in so far as cash compensatory support received by the assessed (question No. 1), duty drawback and profit on the sale of import entitlements (question No. 2) are concerned, the same would be liable to be taxed as income.

6. So far as profit on sale of imported machinery (Rs. 11,477) is concerned, the statement of case as also the order of the Tribunal do not contain any details. However, a perusal of the order of the Commissioner of Income Tax (Appeals) shows his having observed, "had the goods been imported resultant profits would have been assessed as business profits" meaning (hereby that the goods imported were referable to the business activities of the assessed and hence profit on sale thereof would obviously be liable to be taxed as income and cannot be treated as capital receipts.

7. So far as questions Nos. 2 and 3 are concerned, these questions were referred at the instance of the assessee. Learned counsel for the assessed states, that he has instructions not to press the reference on these questions and the same may be returned unanswered.

8. Accordingly question No. 1, referred at the instance of the Revenue, is answered in the negative, i.e., in favor of the Revenue and against the assessee, Questions Nos. 2 and 3 are returned unanswered (sic).