(1999) 06 AP CK 0116

In the Andhra Pradesh High Court

Case No : Case Referred No. 15 of 1991 23 June 1999 A.Y. 1976-77 and 1977-78

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

REPUBLIC FORAGE CO. — RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:
Income Tax Act, 1961 — Section 30, 31, 32, 33, 34

Citation : (2000) 106 TAXMAN 355

Hon'ble Judges : Ramesh Madhav Bapat, J;Ananda Reddy, J

Bench : Full Bench

Advocate : A. S. Kishore, for the Revenue, for the Appellant;

Judgement

Bapat, J.

This court by order dated 2-6-1986 passed an order in IT Case No. 20 of 1985, directing the Tribunal to refer the following question for its opinion.

"Whether, on the facts and in the circumstances of the case, the interest payable amounting to Rs. 3,97,477 and Rs. 1,04,474 for the assessment years 1976-77 and 1977-78, respectively, by the company is allowable as revenue expenditure ?"

Now the question is referred to this court.

2. The facts leading to this can be briefly stated as follows:

The assessee is a public limited company. The assessments involved are for 1976-77 and 1977-78 for which the previous years ended on 31-3 -1976 and 31-3-1977, respectively. In order to establish the forging plant at Hyderabad, the company entered into an agreement with Societe D'' Etudes ET DE Realisations Realisations Renault Engineering, France (hereinafter referred to as the company) to supply the entire machinery and the technical know-how relating thereto. The total price of engineering, imported machinery and equipment and technical assistance has to be paid in transferable NF in 20 half-yearly instalments along with yearly interest at 6 per cent on all amounts remaining due from the date of last shipment as shown in article 5(B) of the agreement. The assessee-company, accordingly, paid the instalments including interest and the interest debited to the profit and loss account for the assessment year 1976-77 was Rs. 3,97,477 and for the assessment year 1977-78 it was Rs. 1,04,474. The Income Tax Officer disallowed the amounts holding that the payment was not for the purpose of business and it was for acquisition of assets before commencement of business and, hence, it was capital in nature. Appeals were filed against the said order before the Commissioner (Appeals) and the Commissioner (Appeals) allowed the appeals. Then aggrieved by the said orders, appeals were filed before the Tribunal, Hyderabad, bearing IT Appeal Nos. 975 and 976 (Hyd.) of 1981. The appeals were dismissed confirming the orders of the Commissioner (Appeals). Thereafter the present reference has come for our consideration.

3. The learned standing counsel for the department submitted at the Bar that it is a capital expenditure and, therefore, the deduction is not allowable. While rebutting the aforesaid argument, the learned counsel for the assessee invited our attention to section 36(1)(iii) of the Income tax Act, 1961 (''the Act'') which specifically allows interest to be deducted in respect of capital borrowed for the purpose of business or profession and submitted that in the above section, though the supplier of machinery and the financer is one and the same, the assessee had to pay interest on the amount borrowed. Therefore, his case is squarely covered by section 36(1)(iii). It was alternatively pointed out by the learned counsel for the assessee that if it is held that the case of the assessee is not covered under the above section, then he is entitled to the benefits of section 37(1) of the Act which reads as under:

"General- Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly aide exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head ''Profits and gains of business or profession''."

With this it was contended by the learned counsel that it was not the case of the department that the interest was paid by the assessee for his personal benefit. It was wholly paid for the purpose of business and under these circumstances the learned counsel submitted that in the alternative the assessee is entitled for the benefit of section 37(1). We are in agreement with the submission made by the learned counsel for the assessee and we hold that the assessee is entitled for deduction of the interest in computing the income.

4. With this observation the reference is answered in the affirmative and against the revenue.

