(1992) 11 BOM CK 0060

In the Bombay High Court

Case No : Income-tax Reference No. 385 of 1977 & Income-tax Reference No. 507 of 1976

Hindustan Construction Co. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:
Income Tax Act, 1961 — Section 139(8), 215, 276C, 277, 33

Citation : (1993) 112 CTR 79 : (1994) 208 ITR 298

Hon'ble Judges : U.T. Shah, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : S.J. Mehta, for the Appellant; Dr. V. Balasubramaniam, for the Respondent

Judgement

Smt. Sujata Manohar, J.—This reference pertains to the assessment years 1970-71 and 1971-72. The following two questions are referred to us u/s 256(1) of the Income Tax Act, 1961 :

"1. Whether, on the facts in the circumstances of the case, the assessee is entitled to development rebate at the rate of 35/25 per cent. on the new plant and machinery added and brought to use in its construction business during the accounting periods relevant to the assessment years 1970-71 and 1971-72 ?

2. Whether, on the facts and in the circumstances of the case, the appeal by the assessee for the accounting period relevant to the assessment year 1971-72 against the levy of interest u/s 215 of the Income Tax Act, 1961, to the Appellate Assistant Commissioner of Income Tax was competent ?"

2. As far as the first question is concerned, by reason of our judgment of today''s date in Income Tax Reference No. 507 of 1976, Hindustan Construction Co. Ltd. Vs. Commissioner of Income Tax, , the first question has to be answered as follows :

"The assessee is entitled to development rebate at the rate of 25 per cent. on the new plant and machinery added and brought to use in its construction business during the accounting periods relevant to the assessment years 1970-71 and 1971-72."

3. Question No. 2 : For the assessment year 1971-72, the Income Tax Officer had levied interest u/s 215 of the Income Tax Act, 1961. The assessee had contended before the Appellate Assistant Commissioner that the Income Tax Officer had erred in charging interest, inter alia, u/s 215 of the Income Tax Act, 1961, and had submitted that the difference between the assessed income and the returned income was on account of reduction in the appellant''s claim for depreciation and development rebate. There were also certain other submissions made by the assessee in that connection. The submission of the assessee were rejected by the Appellate Assistant Commissioner.

4. Before the Tribunal also, one of the grounds of appeal taken by the assessee was to the effect that the Income Tax Officer erred in charging interest, inter alia, u/s 215 of the Income Tax Act. The Tribunal relied on a decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Sharma Construction Co., being Income Tax Reference No. 15 of 1973 decided on August 23, 1974, and upheld the preliminary objection of the Revenue to the effect that the appeal of the assessee against charging of interest, inter alia u/s 215 was not competent. Hence, the Tribunal did go into the merits of the contentions of assessee in this connection.

5. Out attention however, is drawn to a decision of the Supreme Court in the case of Central Provinces Manganese Ore Co. Ltd. Vs. Commissioner of Income Tax, . The Supreme Court considered the provision relating to levy of interest u/s 139(8) or section 215 of the Income Tax Act, 1961. It said that the levy of interest is a part of the process of assessment of tax liability of the assessee. Inasmuch as the levy of interest is a part of the process of assessment, it is open to an assessee to dispute the levy of interest in appeal provided he limits himself to the ground that he is not liable to the levy at all. Therefore, in the light of this judgment, the Tribunal was wrong in coming to the conclusion that, in no circumstances, can an assessee appeal against the levy interest u/s 215 of the Income Tax Act, 1961. The Tribunal is required to consider whether the challenge of the assessee to the levy of interest falls within the ratio of the Supreme Court judgment in the above case depending upon the manner of challenge to the levy of interest by the assessee. If the challenge to the levy of interest u/s 215 is on the ground that the assessee is not liable to the levy at all, the assessee is entitled to question such levy of interest in appeal. The Tribunal, therefore, is required to apply the ratio of the above Supreme Court case to the facts and circumstances of the present case and consider the question of appealability in the light of this judgment.

6. In the premises, the second question is answered as follows :

"The appeal by the assessee for the accounting period relevant to the assessment year 1971-72 against the levy of interest u/s 215 to the Appellate Assistant Commissioner of Income Tax was competent provided the Tribunal is satisfied on the facts and circumstances of the case that the assessee had challenged the levy on the ground that the assessee was not liable to the levy at all."

7. The questions are answered accordingly.

8. No order as to costs.

