
(1987) 03 AP CK 0038
In the Andhra Pradesh High Court
Case No : R.C. No. 208 of 1982

Mopeds India Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-03-1987

Acts Referred:

Income Tax Act, 1961 — Section 261, 37

Citation : (1988) 172 ITR 555

Hon'ble Judges : S.S. Mohammed Quadri, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : M.J. Swamy, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—The following two questions are referred to us u/s 256(1) of the Income Tax Act :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the sums of Rs. 55,897, Rs. 1,47,787 and Rs. 1,82,620 represented the capital expenditure for acquisition of plant and machinery ?

2. Whether, in view of the fact and the cost of plant and machinery having already been fixed and commissioned to business, the Appellate Tribunal is justified in holding that the payments of Rs. 55,897, Rs. 1,47,787 and Rs. 1,82,620 from part of the plant and machinery whose acquisition was completed long prior to the "previous year" for the assessment year 1974-75 ?"

2. The assessment years concerned herein are 1974-75, 1975-76 and 1976-77. Identical questions were referred to this court for the assessment year 1973-74 in R.C. No. 13 of 1979 (see Mopeds India Ltd. Vs. Commissioner of Income Tax, . A Bench of this court consisting of Raghuvir J. and Ramanujulu Naidu J. answered the first question in the affirmative, i.e., in favour of the Revenue and against the assessee, and on that basis declined to answer the second question as

unnecessary. When this reference came up before us, it was contended by learned standing counsel for the Revenue that in view of the decision of the Bench relating to the earlier assessment year, it is not necessary to argue the matter over again and that the same answers should be recorded by us also in this reference.

3. Sri Ch. Srirama Rao, learned counsel for the assessee, however, contended very strongly that the facts of the assessment years concerned herein and the facts relevant to the assessment year 1973-74 are different. In particular, he submitted that the statements of facts submitted by the Tribunal in both the references are not identical and that, therefore, the earlier judgment does not govern the present reference. He requested that we should hear and dispose of this reference on the basis of the facts stated in the statement of facts submitted in this reference.

4. We are not, however, satisfied that there is any difference or distinction in the basic facts in both the references. The basic facts are these :

The assessee is a public limited company with its registered office at Tirupathi. It is engaged in the process of manufacture and sale of mopeds. The machinery required for manufacturing the mopeds was purchased by the assessee from a French manufacturer, M/s. Moto-becane, Pantrin, France. The assessee was granted a foreign exchange loan of Deutsche Marks 900,000 by a German financier, Kreditanstalt fur Wiederaugbau. This entire arrangement was made through the Industrial Credit and Investment Corporation of India Ltd. The arrangement appears to be that the German creditor shall pay the price of the machinery to the French manufacturer. The assessee was to repay the said loan in instalments to be remitted through the ICICI. The assessee has to pay the sum in rupees, i.e., the rupee equivalent of the instalment to the ICICI, which was to remit the instalment in foreign currency. These are the basic facts relevant for the assessment year 1973-74 (which was the subject-matter of Mopeds India Ltd. Vs. Commissioner of Income Tax, as also for the assessment years 1974-75 to 1976-77 which are the subject matter of the present reference. There is absolutely no change in the basic facts. The questions referred for the opinion of this court in R.C. No. 13 of 1979 are the following :

"1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 10,558 paid by the assessee as exchange difference cannot be allowed as a revenue loss ?

2. If the answer to the first question is in the affirmative, whether, on the facts and in the circumstances of the case, the said payment can be added to the cost of plant and machinery for the purpose of calculating the admissible depreciation ?"

5. Mr. Ch. Srirama Rao, however, argued that the decision of the Bench in R.C. No. 13 of 1979 is based upon a particular statement in para. 5 of the statement of case in that referred case to the effect : "It was part of the instalments

payable to the foreign supplier for supply of plant and machinery. Its nature cannot, therefore, be different from that of the instalments themselves." Learned counsel says that no such statement is found in the statement of facts submitted in the present referred case. We are, however, not satisfied that there is any such difference in facts in both cases. The Tribunal obviously thought it unnecessary to repeat all the facts in the present statement of case inasmuch as all of them were stated in the statement of case submitted in R.C. No. 13 of 1979. Indeed, the statement of case in R.C. No. 13 of 1979 is made a part of the statement of the case in this case. Para. 5 of the statement of the case herein reads as follows :

"The same questions that are now sought to be referred to the High Court have already been referred to the High Court in R.C. No. 308/ Hyd./1976-77, dated 29-1-1977, for the assessment year 1973-74, and a copy of the statement drawn in this reference application will form part of the present statement as "other document"."

6. We are, therefore, unable to see any distinction between the facts in both the references. We do not, therefore, think it necessary to hear counsel over again on merits, also because the judgment in R.C. No. 13 of 1979 has become final. We cannot take a different view in this referred case.

7. For the above reasons, we answer the first question in the affirmative, i.e., in favour of the Revenue and against the assessee. We decline to answer the second question. No costs.

8. Learned counsel for the assessee make an oral request for grant of certificate for leave to appeal to the Supreme Court u/s 261 of the Income Tax Act. We do not, however, think that this is a fit case to be certified under the said provision - more particularly in view of the fact that the judgment of this court in R.C. No. 13 of 1979 relating to an earlier assessment year has become final. The request is, therefore, rejected.