(1989) 06 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax Reference No. 173 of 1984

Rockwell Engineering Co. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Citation : (1989) 180 ITR 277 : (1990) 48 TAXMAN 332

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P. Balachandran, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the assessee, the Income Tax Appellate Tribunal has referred the following two questions of law for the decision of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of Rs. 2,25,265 was a revenue receipt liable to be taxed for the assessment year 1975-76 ?

(2) Whether the entire amount was taxable in the assessment year 1975-76 ?"

2. As stated, the applicant is an assessee to Income Tax. The respondent is the Revenue. The matter relates to the assessment year 1975-76. The previous year ended on March 31,1975. The applicant-assessee is a firm. It is carrying on the business of manufacture of transmission towers and lines for the Kerala State Electricity Board. It entered into four different contracts with the Electricity Board in 1963. There were disputes between the Board and the assessee. The Board filed four suits for compensation for breach of contract. Three of them were dismissed. In the last suit, the assessee had filed a counter-claim which related to payments outstanding in respect of towers manufactured and supplied by the assessee. Finally, the suit and the counter-claim were settled. The Board agreed to pay the assessee Rs. 10,15,585 with 4% interest from June 3, 1969, till the

date of payment. The order of the Board is annexure-D dated December 11, 1974. Accordingly, the Board paid the assessee a sum of Rs. 12,40,250. It included a sum of Rs. 2,25,265 representing interest. The payment was made during the accounting period relevant to the assessment year 1975-76, The assessee claimed that the interest amount was not assessable to tax. It was negatived by the Income Tax Officer. The decision was affirmed by the Commissioner of Income Tax (Appeals). The Appellate Tribunal, by order dated October 19, 1983, concurred with the decision of the authorities below. Thereafter, at the instance of the assessee, the Appellate Tribunal has referred the two questions of law, formulated hereinabove, for the decision of this court.

3. We heard counsel. Counsel for the assessee urged two grounds : (1) the sum of Rs. 2,25,265 was not a revenue receipt ; (2) the assessee was maintaining accounts in the mercantile system and even if the amount is taxable, it should be spread over the relevant previous years and should not be taxed wholly in the assessment year 1975-76. Counsel for the Revenue submitted that the decision of the Appellate Tribunal is legal and valid and that no interference is called for.

4. It is by virtue of the order passed by the Kerala State Electricity Board, dated December 11, 1974, that the assessee received Rs. 12,40,250 during the relevant accounting period, out of which Rs. 2,25,265 represented interest. The order passed by the Board, annexure-D, dated December 11, 1974, states that the dispute between the assessee and the Board is settled and sanction is accorded for paying out of court Rs. 10,15,585 with 4% "interest" from June 3, 1969, till the date of payment. The receipt dated December 20, 1974, available at page 25 of the paper book, shows that the assessee received the entire amount in final settlement of all claims including compensation and "interest" claims. The Appellate Tribunal found that the amount was paid only as a result of the settlement arrived at between the parties. In paragraph 13 of the order, the Appellate Tribunal states that though the original agreement between the assessee and the Board did not provide for payment of interest on delayed payments and the Board declined the plea of the assessee that the agreement should contain a provision to pay interest for delayed payment, it is evident that the amount was paid only as a result of the settlement arrived at between the parties and it is only as a part of the settlement that the amount was paid. The findings in this regard are not specifically challenged by framing appropriate questions. We have to proceed on the basis that the entire amount of Rs. 12,40,250 inclusive of interest of Rs. 2,25,265 was received by the assessee as per the settlement arrived at between the parties and as part of the settlement. Annexure-D, order of the Board dated December 11, 1974, as also the receipt issued by the assessee dated December 20, 1974, refer to the claim by way of interest and payment thereof. In the light of the above facts and the findings of the Tribunal, we have no hesitation in holding that the sum of Rs. 2,25,265, which represented the interest portion of the amount awarded or paid to the assessee as per annexure-D order of the Board, dated December 11, 1974, is a revenue receipt. We answer question No. 1 referred to us in the affirmative,

against the assessee and in favour of the Revenue.

5. The only further question is whether the interest receipt should be spread over the relevant previous years. The assessment order does not show that the assessee is maintaining its accounts on the mercantile basis. It should be stated that the amount became due and payable only as per the order of the Board dated December 11, 1974, annexure-D. As a result of the agreement between the assessee and the Board, annexure-D orders of the Board, dated December 11, 1974, ensued. The right of the assessee to receive the amount sprang into existence only during the accounting period relevant to the assessment year 1975-76. In such circumstances, the entire amount was rightly held to be taxable for the assessment year 1975-76. We answer question No. 2 in the affirmative, against the assessee and in favour of the Revenue.

6. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

