(1996) 11 MAD CK 0095

In the Madras High Court

Case No : Tax Cases No''s. 1137 and 1138 of 1983 (References No''s. 589 and 590 of 1983)

Sivananda Steels Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:
Income Tax Act, 1961 — Section 37, 43A

Citation : (1998) 229 ITR 197

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Aravind Pandian, for M/s. Subbaraya Aiyar, Padmanabhan and Ramamani, for the Appellant; C.V. Rajan, for the Respondent

Judgement

K.A. Thanikkachalam, J.—At the instance of the assessee, the Tribunal referred the following question, for the opinion of this court, u/s 256(1) of the Income Tax Act, 1961, for the assessment years 1975-76 and 1976-77 :

"Whether, on the facts and in the case circumstances of the case and having regard to the provisions of section 43A, the Tribunal was right in holding that the sum of Rs. 93,223 and Rs. 1,13,085 for the assessment years 1975-76 and 1976-77, respectively, being the excess of the instalments paid on account of fluctuation in exchange rates, was not allowable as a revenue expenditure ?"

2. The assessee is a public limited industrial company. It had borrowed a loan for financing the import of machinery from West Germany. The repayment of the loan was to be made in instalments spread over several years. On account of fluctuations in the exchange rate, the amount of instalments repaid in the period relevant to the assessment year 1975-76 was greater than the amount of the instalments agreed upon at the time of borrowal by a firm (sic) of Rs. 93,223 and for the assessment year 1976-77 by Rs. 1,13,085. The assessee claimed these amounts as revenue expenditure. The Income Tax Officer in nature (sic). On appeal, the Tribunal, following an earlier Special Bench order of the Tribunal

of the Bombay Bench, held that the amount claimed by the assessee is capital in nature. In T.C. Nos. 87 and 88 of 1984 in the case of the same assessee in the assessment years 1974-75 and 1977-78, this court by judgment dated October 9, 1995, held that the higher instalments paid due to exchange fluctuation is capital in nature. Accordingly, we answer the question referred to us in the affirmative and against the assessee. No costs.

