
(1983) 11 DEL CK 0037

In the Delhi High Court

Case No : Income-tax Reference No's. 180 and 181 of 1983

Triveni Engineering Works Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 01-11-1983

Acts Referred:

Citation : (1985) 156 ITR 202 : (1984) 17 TAXMAN 303

Hon'ble Judges : S.S. Chadha, J;H.C. Goel, J

Bench : Division Bench

Judgement

Chadha, J.—These two references, one at the instance of the assessed, and the other, at the instance of the Department, u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), raise the following questions :

At the instance of the assessed :

"1. Whether, on the facts and in the circumstances of the case, the amount of Rs. 4 lakhs debited by the assessed to "Deferred Revenue Expenditure Technical Know-how Payment Account" was expenditure of a capital nature ?

2. If answer to question No. 1 is in the affirmative, whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the assessed-company was not entitled to depreciation in respect of the said amount of Rs. 4 lakhs ?"

2. At the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in upholding the deletion of Rs. 1,49,098 representing the profit on devaluation of pound sterling from the taxable income of the assessed-company for the assessment year 1969-70 ?"

3. The assessed is a public limited company doing business in the manufacture of turbines and other machinery for sugar mills. It entered into two agreements

with two parties of England, namely, the Peter Brotherhood Ltd. (hereinafter referred to as "Brotherhood") and the Bookers Sugar Machinery Group Ltd. (hereinafter referred to as "Sugar Group"). The agreement with the Brotherhood was dated June 1, 1961, and was in connection with turbine. The second agreement with the sugar Group was of June 2, 1961, and concerned sugar mill machinery. In pursuance of these agreements, an amount of Pound 40,000 was paid to Brotherhood and Pound 50,000 was paid to Sugar Group in the accounting year relevant to the assessment year 1963-64 by the assessed-company. The assessment year in question in these references is 1969-70, its previous year having expired on May 31, 1968. At the time of payment of the aforesaid amounts of Pound 40,000 and Pound 50,000 as aforesaid, both the Brotherhood and Sugar Group advanced to the assessed-company Pound 40,000 and Pound 50,000, respectively, to be paid back in ten equal Installments. The amount of 90,000 paid under the agreements was equivalent to Rs. 12 lakhs. The assessed-company in its books of account capitalised an amount of Rs. 8 lakhs and added it to the cost of plant and machinery. In regard to the balance of Rs. 4 lakhs, it debited an account called "Deferred Revenue Expenditure Technical Know-how Payment" with the amount of Rs. 4 lakhs. It carried forward this balance for two years but in the year of account ending on May 31, 1964, it wrote off an amount of Rs. 50,000 out of this amount. In the next three years, it wrote off amounts of Rs. 50,000 and Rs. 90,390, respectively. The assessed claimed these amounts as deductions while determining its profits on the ground that they were expenditure of revenue nature. The Income Tax authorities however, disallowed those deductions on the ground that they were clearly of capital nature resulting in a benefit of lasting nature to the company. Those decisions of the Revenue were upheld by two different Benches of the Tribunal. For the four assessment years, namely, assessment years 1965-66 to 1968-69, two identical questions, besides other questions, were referred to this court for its opinion.

4. By order dated April 5, 1965, in *The Triveni Engineering Works Ltd. Vs. The Commissioner of Income Tax, New Delhi*, this court answered question No. 1. The court came to the conclusion that on a totality of the terms of the contract, this court was convinced there was no absolute parting of the secret process and technical knowledge by the collaborators to the assessed, that as such no assets of enduring advantage had been acquired by the collaborators and that the assessed has only got a license for a limited use of the knowledge and information possessed by Brotherhood. The question was answered in the negative and in favor of the assessed and, as such, the amount of Rs. 4 lakhs debited by the assessed to "Deferred Revenue Expenditure Technical Know-how Payment" was held to be of the nature of revenue expenditure.

5. Mr. Agnihotri states at the Bar that in pursuance of the question of law answered by this court, the amount of Rs. 4 lakhs stands fully allowed in the assessment year 1965-66. The effect has been given by the Income Tax authorities and there is no appeal to the Supreme Court against the decision of

this court in *The Triveni Engineering Works Ltd. Vs. The Commissioner of Income Tax, New Delhi*, . He further states that this court need not answer questions framed at the instance of the assessed as they are purely academic and we agree to it.

6. So far as the question at the instance of the Department is concerned, it need not detain us. There has been some confusion on the record which has resulted in some misunderstanding by Mr. Wazir Singh, the learned counsel for the Department. The order of rectification dated November 25, 1974, however, clarifies the factual position. Under the original order of the Tribunal dated May 28, 1974, it was noticed that under the collaboration agreement entered into between the assessed and its foreign collaborators (referred to which has been made earlier), one of the collaborators agreed to lend to the assessed a sum of Pound 50,000 free of interest for a period of 10 years to be repaid in equal annual Installments. The rectification order has substituted the aforesaid sentence by "A loan of Pound 50,000 was received by the assessed from M/s. Bookers Brothers McConnell & Co. convertible into equity shares as will be clear from the chart filed before us". The case of the assessed was that the accretion of Rs. 1,49,098 on account of devaluation was not in regard to the loan of Pound 90,000 received from Brotherhood and Sugar Group but in regard to a loan of Pound 50,000 received by the assessed from M/s. Bookers Brothers McConnell & Co. convertible into equity shares. This was made clear from the statement showing the effect of the devaluation of sterling/pound, a copy of which had been filed before the Tribunal and that is also noticed in the statement of case.

7. The law has been declared by the Supreme Court in *Sutlej Cotton Mills Limited Vs. Commissioner of Income Tax, Calcutta*, , that where profit or loss arises to an assessed on account of appreciation or depreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss if the foreign currency is held by the assessed on revenue account or as trading asset or as part of circulating capital embarked in the business. But, if on the other hand, the foreign currency is held as a capital asset or as fixed capital, such profit or loss would be of capital nature. On the facts before us from the statement of the case and on record, it is clear that the assessed obtained a loan of Pound 50,000 from M/s. Bookers Brothers McConnell & Co. convertible into equity shares. This amount of Pound 50,000 was not part of circulating capital embarked in the business of the assessed. It was a fixed capital earmarked for a particular purpose of being converted into equity shares of the borrowers M/s. Bookers Brothers McConnell & Co. The Tribunal was, Therefore, justified in coming to the conclusion that it was borrowed capital. We answer the question posed for the opinion at the instance of the Department, against the Department and in favor of the assessed.

8. On the facts and circumstances of the case, we make no order as to costs.