

Commissioner Of Income Tax vs Tata Iron & Steel Co. Ltd. on 17 December, 1997

Equivalent citations: (1998)2SCC366

Bench: S.C. Sen, S.S.M. Quadri

ORDER

1. Although several questions of law were raised before the High Court, we are here concerned only with the following two questions:

"(2) Whether on the facts and in the circumstances of the case, and having regard to the fact that the net gain of Rs. 48,984 was made by the assessee-company from fluctuations in the rate of foreign exchange while repaying the instalments of the foreign loan for the Assessment Year 1960-61, the appropriate part of the said gain (i.e. after excluding that portion of it which is attributable to the element of interest) was gain on capital account which went to reduce the 'actual cost' of the depreciable assets for computing depreciation for the Assessment Year 1960-1961?

(3) Whether on the facts and in the circumstances of the case and having regard to the fact that the net loss of Rs. 29,063 and net loss of Rs. 58,28,839 accrued to the assessee-company from the fluctuations in the rate of foreign exchange for the Assessment Year 1961-62, the appropriate part of each of the said two amounts (i.e. after excluding that portion of it which is attributable to the element of interest) was loss on capital account which went to increase the 'actual cost' of the depreciable assets for computing depreciation for the Assessment Year 1961-62?"

2. The High Court has followed its earlier decisions in the case of CIT v. Tata Hydro Electric Power Supply Co. Ltd., (1986) 159 ITR 28 (Bom HC) A point has been taken on behalf of the respondents that the Department not having come up in appeal against that decision, must be taken to have accepted the law stated in that decision as correct. Therefore, it should not be allowed to agitate these questions in this Court.

3. Mr. Murthy, learned Senior Counsel appearing on behalf of the Department, has pointed out that we are concerned in this case with assessment for the Assessment Years 1960-61 and 1961-62. The relevant assessment years in the judgment relied upon by the High Court were 1970-71 and 1971-72. The High Court in those cases relied on the provisions of Section 43-A of the Income Tax Act which came into force on 1-4-1967. In the instant case, there is no scope for application of Section 43-A. Therefore, the decision rendered in the case relied upon by the High Court cannot have any bearing to the controversy now raised. We are of the view that Mr. Murthy is right in his contention on this aspect of the matter.

4. Coming to the questions raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee. But even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, cost of the asset will not change. What has to be borne in mind is that cost of an asset and cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with no repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs.