

Commissioner Of Income-Tax vs New India Industries Ltd. on 24 January, 1995

Equivalent citations: [1995]212ITR653(SC), AIRONLINE 1995 SC 629, (1995) 126 CURTAXREP 156, (1995) 127 TAXATION 226, (1995) 212 ITR 653

Bench: J.S. Verma, S.P. Bharucha, K.S. Paripoornan

ORDER

1. The question for decision in these appeals relates to the construction of the proviso to Rule 1(v) of the Second Schedule to the Companies (Profits) Surtax Act, 1964. It may be mentioned that the provision contained in the proviso to Rule 1(v) therein has been omitted from April 1, 1977. This question therefore is not of any practical significance at this stage.

2. The High Court (see) has taken the view that there was a modification of the agreement by the subsequent correspondence between the parties as a result of which the loan fell put of the purview of the aforesaid proviso to Rule 1(v). The finding of the High Court is as under (at page 205) :

Therefore, if the spread over of the repayment has been provided in the terms of the agreement in such a manner that the repayment is completed by a date beyond seven years from the first advance made under the agreement under which the moneys are borrowed, the loan in question will qualify for inclusion in the capital of the company computed for the purposes of surtax. However, once we find that the moneys were advanced as of a particular date and under the terms of agreement under which those moneys were advanced, the final date for the repayment of the entire amount falls beyond the period of seven years counting from the date of the first advance under the agreement, the loan would qualify for inclusion in the capital. In the instant case, the first advance of Rs. 10 lakhs under the agreement was paid in the month of July, 1961. The second amount was paid some time in the month of September, 1961. That too was of Rs. 10 lakhs. These two items aggregating to Rs. 20 lakhs were subsequently adjusted by mutual agreement between the parties against this loan of Rs. 50 lakhs and, therefore, they must be deemed to have been made by agreement between the parties under this loan agreement of December 1, 1961. The terms of the agreement as modified provided for repayment by December 1, 1968, and thus the repayment of this loan was during a period of not less than seven years, that is, so spread over a period of not less than seven years counting from the date of the first advance under this agreement of December 1, 1961. In view of this conclusion, so far as the facts of the present case are concerned, the loan of Rs. 50 lakhs was to be repaid not within a period of seven years.

3. In our opinion, the finding reached by the High Court on the basis of the subsequent correspondence between the parties which resulted in the modification of the agreement does not

suffer from any infirmity in the present case to require us to take a different view. It is, therefore, clear that the High Court's answer to the questions of law referred to it for decision do not suffer from any infirmity. Consequently, the appeals are dismissed.

4. No costs.