Commissioner Of Income Tax, Gujarat-I, ... vs Shri Arbuda Mills Ltd., Ahmedabad on 23 January, 1996

Equivalent citations: JT1998(9)SC101, (1998)9SCC702, AIRONLINE 1996 SC 639, 2017 (11) SCC 559, (1998) 144 TAXATION 627, (1998) 147 CURTAXREP 474, (1998) 231 ITR 50, (1998) 98 TAXMAN 457, 1998 (9) SCC 702, (2014) 124 REVDEC 1, (2014) 2 ALL RENTCAS 1

Bench: J.S. Verma, S.P. Bharucha, Sujata V. Manohar

ORDER

1. The Income Tax Appellate Tribunal has referred under Section 257 of the Income Tax Act, 1961 the following question of law for decision of this Court, namely: "Whether on the facts and in the circumstances of the case, the order of assessment passed by the ITO under Section 143(3) read with Section 144-B on 31-7-1978 had merged with that of the Commissioner (Appeals) dated 15-12-1979 in respect of the three items in dispute so as to exclude the jurisdiction of the Commissioner of Income Tax under Section 263(7)"

2. The assessee is a company. The relevant assessment year is 1975-76 ending on 31-12-1974. The assessment was completed under Section 143(3) read with Section 144-B on 31-3-1978 in which the net business loss was computed at Rs. 3,61,086 and the income under the head "capital gains" at Rs. 38,874. The Income Tux Officer had made certain additions and disallowances while computing the loss and income as above and had also accepted, inter alia, the following three claims:

(i) Deduction of a sum of Rs. 23,82,621 by way of provision for gratuity;

(ii) Depreciation on Rs. 4,21,000 which was paid by the assessee to United Textile Industries as consideration for transfer of installed property of 17,480 spindles and 400 looms of Old Manek Chowk Mills;

(iii) Loss on account of difference in exchange rate which was referable to the purchase of machinery etc. as revenue expenditure.

For the purposes of the present matter, it is only these three items of claim which are relevant.

3. In the appeals filed by the assessee, the items in respect of which the decision was in its favour were not the subject-matter of the appeals. In respect of these three items the Commissioner exercised his power under Section 263 of the Income Tax Act. The above question arises in this context.

4. The main contention of the assessee which was considered by the Tribunal was whether or not the

order of the Income Tax Officer regarding the said three items in respect of which the assessee had no occasion to prefer an appeal had merged in that of the Commissioner on appeal so as to exclude the jurisdiction of the Commissioner of Income Tax under Section 263 of the Act.

5. We may refer to the amendment made in Section 263 of the Income Tax Act by the Finance Act, 1989 with retrospective effect from 1-6-1988. The relevant part thereof for the present case is as under:

> "Explanation.--For the removal of doubts, it is hereby declared that , for the purposes of this sub-section-
>
> (a)-(b) * * *
>
> (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject-matter of any appeal (filed on or before or after the 1st day of June, 1988), the powers of the Commissioner under this sub-section shall extend (and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal)."

The consequence of the said amendment made with retrospective effect is that the powers under Section 263 of the Commissioner shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the Commissioner under Section 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred.

6. The question referred is, therefore, answered in the negative in favour of the Revenue and against the assessee.