

Supreme Court of India

Commissioner Of Income Tax, ... vs Warner Hindustan Ltd. on 10 December, 1997

Equivalent citations: 1999 239 ITR 566 SC, (1998) 9 SCC 533

Bench: S Sen, S Quadri

ORDER

1. As many as 19 questions have been raised in these appeals. The Tribunal has more or less come to correct conclusions on most of the questions. There are three questions which have been debated at some length before us. The questions are:

"2. Whether the Appellate Tribunal was justified in law in holding that in working out the amount deductible in terms of Rule 19-A(3) borrowed monies and debts due must mean borrowed monies and debts due payable?

6. Whether the Appellate Tribunal was justified in law in holding that the technical fees paid to M/s. Warner Lambert Pharmaceutical Company of U.S.A. of Rs 51,264 and Rs 1,56,777 for the Assessment Years 1970-71 and 1971-72 respectively was revenue expenditure?

12. Whether the Tribunal erred in holding that the amount of tax recoverable as on the first day of the computation period was not to be included in the capital employed in the assessee's industrial undertaking as till the assessment was completed, the said amount did not constitute a debt due to the assessee?"

2. So far as Question 6 is concerned, the amount is not very large. The assessment years involved are 1970-71 and 1971-72. Prima facie, the Tribunal appears to be right. However, if the amount is not allowed as revenue expenditure, this will have to be treated as capital expenditure. The assessee may be entitled to depreciation on the capital assets. If the matter goes back to the Income Tax Officer then the consequence of non-allowance of this sum as revenue expenditure will have to be considered by the Income Tax Officer.

3. So far as Question 12 is concerned, the problem is whether the assessee is entitled to get any credit for the advance tax paid on the first day of the assessment year. The view taken by the High Court is as under: "The assessee had claimed as assets and capital employed the amount representing the difference between advance tax already paid and the tax liability according to its books. The Income Tax Officer excluded this amount on the ground that till the assessment was completed, this could not be treated as a debt owed to the assessee, or an asset of the assessee. The appellate authority as well as the Tribunal have also taken the same view. It is contended on behalf of the assessee that payments of advance tax are made pursuant to the estimates made in accordance with the books of the assessee. At the end of the accounting year when the balance-sheet is prepared, according to the books of the assessee, it is discovered that payments made towards advance tax are in excess of the tax liability. According to the books, the assessee is entitled to treat the difference, to which it is entitled by way of refund, as an asset. The authorities below have held that the right to refund will arise only after assessment is made and till then it cannot be treated as an asset of the assessee. Payment of advance tax is a statutory liability and maybe in accordance

with the books of the assessee, it may result in a refund. But, till such time the assessment is completed and an order of refund is made, the assessee cannot treat the payment which has been made under a statutory obligation as its asset. Admittedly, the assessee cannot ask for refund of the said amount till the assessment is made, whether provisional or final. In such circumstances, the view taken by the Tribunal is correct. The said amount can neither be said to be a debt due to the assessee nor an asset of the assessee."

4. We are of the view that the High Court has fallen into an error in answering this question. The nature of advance tax was explained by this Court in *Neptune Assurance Co. Ltd. v. LIC of India*, . The principle underlying the refund of tax was explained in the following words: "Now, the Finance Acts for the years 1955 and 1956, like all other such Acts, provided the rates at which income tax was payable for the assessment years commencing from 1st April of the year in which the Acts were respectively passed. It would follow that on the 1st of April in 1955 and in 1956 the amounts of the tax payable by the appellant became determinable for the income was then capable of computation and the rate was also known. So, on these dates, the appellant became entitled to a refund of the amount of tax deducted at the source or treated as paid on its behalf under the provisions of the Income Tax Act earlier mentioned which was in excess of the tax payable by it for each of these years. The assessment only particularised the amounts; it did not create the right, for the right came into existence as soon as according to the relative Finance Act it became ascertainable that the tax deducted at source or treated as paid on its behalf had exceeded the tax payable. That right, therefore, was an asset contemplated in Section 7 of the Act of 1956."

5. According to this judgment the right of the assessee to get refund arose on the very first day of the assessment year. Applying this principle, it was held in the case of *Modi Industries Ltd. v. CIT*, that interest was payable on advance tax from the first day of the assessment year because the right to get refund of the excess amount of advance tax paid arose on the first of April of the assessment year itself. It was observed: "46. It will be seen from the aforesaid that the right to get refund arises because the advance payment of tax being in excess of the tax liability of a particular year. Since this right becomes known and ascertainable because of the provisions of the Income Tax Act and the annual Finance Act on the 1st of April of an assessment year, interest is payable to the assessee on the excess amount under Section 214 from that date. In other words, interest becomes payable as soon as the liability to refund the excess amount arises."

6. In our view the High Court was in error in holding that refund became due to the assessee only after the assessment was made and not before that. The assessment only quantified the excess amount of tax paid by the assessee. The assessee became entitled to get refund of this amount on the first day of his assessment year and not after the assessment was completed. We, therefore, answer Question 12 in the affirmative and in favour of the assessee. The order of the High Court is reversed only to this extent.

7. Our attention has been drawn to Question 2. It has been stated that the High Court did not answer the question because of a decision of the Calcutta High Court which now stands reversed by a judgment of this Court in *Warner Hindustan Ltd. v. ITO*<sup>3</sup>. The Appellate Tribunal was justified in law in its decision in respect of Question 2.

8. The appeals are disposed of as above. No order as to costs.