

Supreme Court of India

Cesc Ltd. vs Commissioner Of Income-Tax on 16 July, 1997

Equivalent citations: 1998 233 ITR 50 SC, (2000) 10 SCC 513

Bench: S Sen, S Kurdukar

JUDGMENT

1. The following three questions at the instance of the assessee really survive for consideration in this appeal, out of the four questions referred to in the judgment of the High Court (see [1989] 179 ITR 580, 583 (Cal)) :

(i) Whether, on the facts and in the circumstances of the case and having regard to the fact that the assessee is a sterling company maintaining accounts in pound sterling, the Tribunal was right in holding that for the purpose of computation of the admissible amounts of depreciation under Section 32(l)(iii) and/or development rebate and profit under Section 41(2) of the Act for the assessment years 1968-69 and 1969-70, the written down value of the fixed assets should be determined not in pound sterling, but in equivalent amount of rupees ?

(ii) Whether, on the facts and in the circumstances of the case, a revision of the written down value of the assets comprising service lines acquired prior to April 1, 1961, which written down value had been correctly arrived at under the Indian Income-tax Act, 1922, was required for the assessment years 1968-69 and 1969-70 by virtue of the definition of 'actual cost' introduced by the Income-tax Act, 1961, with effect from the assessment year 1962-63 ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income-tax Officer was justified in withdrawing the interest of Rs. 14,64,130 granted by him in the original assessment for the assessment year 1968-69 and Rs. 12,09,093 for the assessment year 1969-70 ?

2. We are not concerned with the third question, referred to in the judgment of the High Court in this appeal by the assessee, as it has been answered by the High Court in favour of the assessee.

3. So far as the first question is concerned, we agree with the view expressed by the High Court. Assessment of total income in India will have to be in Indian rupees. The company may keep its accounts in foreign currency. But depreciation will have to be calculated in Indian currency at the point of time of acquisition of the asset. The assessee-company maintains its accounts in pound sterling but while making assessment in India, the rupee value of the capital asset has to be taken into account for calculating its actual cost at the time of acquisition of the asset. Subsequent fluctuations in the value of pound sterling are immaterial for this purpose. Hence, the first question was rightly answered by the High Court.

4. The second question has also been rightly decided by the High Court against the assessee.

5. The fourth question is about the interest payable on regular assessment. It has been contended that since a fresh assessment order was directed to be made, the matter is not covered by the

decision of this court in *Modi Industries Ltd. v. CIT*. In that case the court held specifically that the first order of assessment under Section 143 or 144 will be the regular assessment. Any order passed in consequence of a finding or a direction given by the higher authority will not be a regular assessment. The higher authority may direct the Income-tax Officer to modify his order. The higher authority may also set aside the order and direct the Income-tax Officer to pass a fresh order of assessment. In neither of these two cases will the consequential order be a regular assessment order. It will "be an assessment made pursuant to a direction given by a higher authority. This position has been made clear at page 787 of the report in *Modi Industries' case* [1995] 216 ITR 759 (SC). The date up to which interest under Section 214 will be paid is the date of the regular assessment, i.e., the date of the first order of assessment under Section 143. The quantum of interest, however, may be varied as a result of subsequent orders modifying the assessment pursuant to the direction of any higher authority.

6. In the premises, we are of the view that the fourth question was also rightly answered by the High Court against the assessee.

7. The appeal is dismissed. No order as to costs.