(1998) 150 CTR 256

High Court Of Kerala

Case No: IT Ref. No. 86 of 1994 22 May 1998

TRAVANCORE CHEMICAL and MANUFACTURING CO. LTD.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: May 22, 1998

Acts Referred:
Income Tax Act, 1961 â€" Section 256, 41

Citation: (1998) 150 CTR 256

Hon'ble Judges: Mrs. K.K. Usha, J; K.K. Usha, J; K.A. Mohamed Shafi, J

Bench: Full Bench

Judgement

Mrs. K.K. Usha, J.:

Reference, at the instance of the assessee u/s 256(1) of the Income Tax Act, 1961 arises out of a decision of the Tribunal, Cochin Bench in ITA

145/Coch/79. The relevant assessment year is 1977-78. Three questions are raised for the opinion of this Court. It is admitted by both sides that

instead of the words "excise duty" the words "electricity charges" are to be substituted in question No. 1. So also, in question No. 3, the words

"capable of being used" are to be read as . capable of being obtained". The questions are therefore re-framed as follows:

1. Was the Tribunal justified in holding that the amount of Rs. 5,58,697 received by the assessee by way of refund of electricity charges in the

subsequent year is taxable in the year under consideration u/s 41(1) of the Income Tax Act, 1961?

2. Was the Tribunal justified in its view that the Supreme Court decision rendered during the accounting period relevant to the assessment year

under consideration created a vested right in the assessee to claim refund and as per the system of accounting followed by the assessee make the

amount received in the subsequent year would become taxable in the year under consideration.

3. Was the Tribunal justified in its interpretation of the word "obtained" in s. 41(1) of the Act is to be understood as "capable of being obtained".

Is not the said interpretation contrary to the plan meaning of the word and the various decisions of Court? Was the Tribunal justified in relying on

Motilal Ambaidas v. CIT 1977 CTR (Guj) 165 : (1977) 108 ITR 136 overruled in Commissioner of Income Tax Vs. Bharat Iron and Steel

Industries, in support of the above view?

2. The relevant facts are as follows:

Assessee is engaged in the business of manufacture of chemical products. Assessee complained against the higher rate of charges collected by the

Electricity Board from the assessee- company. The dispute was ultimately resolved by judgment of the Supreme Court dt. 21st Nov., 1975,

wherein it was held that higher tariff was not applicable to assessee"s case. Copy of the judgment was received by the assessee on 6-3-1976.

Assessee, by letter dt. 29-3-1976, demanded from the Electricity Board refund of an amount of Rs. 8,50,282 being higher amount of tariff

charged by the Electricity Board. Ultimately, assessee was granted a refund of Rs. 5,58,597 by the Electricity Board in a later year. Assessing

authority took the view that the assesseecompany had become eligible for refund of the amount by virtue of the judgment of the Supreme Court dt.

21st Nov., 1975, and therefore, the amount has to be assessed as income of the assessee for the assessment year 1977-78. On appeal, the first

appellate authority confirmed the above view, but addition was limited to Rs. 5,58,597. Tribunal affirmed the above order. Assessee filed a

reference application 179/Coch/1982 before this Court and this Court remanded the matter back to the Tribunal for considering the contention

raised by the assessee that the receipt could be assessed only u/s 41(1) of the Income Tax Act and not as a trading receipt. Thereafter, the matter

was decided by the Tribunal by its order dt. 30th Dec., 1992.

3. Tribunal took the view that the amount of refund is taxable for the year 197778 under the provisions of s. 41(1) of the Income Tax Act, 1961.

According to the Tribunal, once the judgment of the Supreme Court was pronounced, it laid down the rate of duty that could be levied by the

electricity supply company and the actual quantification of the amount need not postpone the accrual of income. It distinguished Full Bench

decision of Gujarat High Court in CIT v. Bharat Iron & Steel Industries (supra), relied on by the assessee. The contention raised by the Revenue

was that since assessee has been following mercantile system of accounting, the refund due, that too, on the basis of a decision of the Supreme

Court has to be fixed on accrual basis even though the same was received in the subsequent year. The word "obtained" in s. 41(1) of the Income

Tax Act has to be understood as "capable of being obtained".

4. It is pointed out by learned counsel for the assessee that the assessee had accounted the amount when the amount was received and had offered

the same for assessment during the assessment year 1979-80. According to him, only quantified amount can be brought into the net of assessment.

In Commissioner of Income Tax, Gujarat-I Vs. Rashmi Trading, .- , the scope of s. 41(1) of the Income Tax Act, 1961 came up for

consideration. Sec. 41(l) reads as follows-.

41(l) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by

the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any

amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the

amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly

chargeable to Income Tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction

has been made is in existence in that year or not"".

A Division Bench of the Gujarat High Court took the view in the above case that it must be the obtaining of the actual cash which is contemplated

by the legislature when it used the words, ''has obtained whether in cash or in any other manner whatsoever any amount in respect of such loss or

expenditure''.

It took the view that the date of the order pursuant to which refund was granted, is not relevant. A contra view was taken in Motilal Ambaidas v.

CIT (supra) by the very same High Court. It was held therein that in view of s. 41(1), it was a previous year in the course of which a right to

receive the amount by way of refund of sales-tax collected accrued to the assessee that is a relevant year. In view of the conflict of views between

the two Benches, the matter was considered by a Full Bench in Commissioner of Income Tax Vs. Bharat Iron and Steel Industries, . The Full

Bench accepted the view expressed in Commissioner of Income Tax, Gujarat-I Vs. Rashmi Trading, that the only meaning that could be attached

to the words ''obtained whether in cash or in any other manner whatsoever any amount in respect of such loss of expenditure'' incurred in any

previous year is actual receiving of cash or income. 1977 CTR (Guj) 165 : (1977) 108 ITR 136 , was therefore overruled.

5. According to learned counsel for the assessee, even going by the dictionary meaning of the term ''obtain'', the contention raised by the assessee

has to be accepted. Black''s Law Dictionary gives the meaning of the word ''obtain'' as ''to get possession of''. Webster''s Comprehensive

Dictionary (International Edition) gives the meaning as "to gain possession of". Shorter Oxford Dictionary gives the meaning as "to possess".

Therefore, according to learned counsel, since the words used in s. 41(1) are "has obtained", the element of physical possession is necessary. It is

not enough that a vested right is accrued in the assessee to obtain the amount. The amount should have been actually received by the assessee.

6. Learned standing counsel for the Revenue would submit that in the case of an assessee following mercantile system, the moment it incurs the

liability, it is entitled to claim deduction. The same principle should apply for the purpose of addition also.

7. The Supreme Court had occasion to consider a similar position, even though, not identical, in Commissioner of Income Tax (Central), Calcutta

Vs. Moon Mills Ltd., .- . In that case, the assessee was a company maintaining its account on the mercantile system. It has adopted the calendar

year as its accounting period. On 6-8-1948, its stock-in-trade, machinery and buildings were destroyed by fire. It received a sum of Rs. 65 lakhs

from the insurers in respect of the loss on 27-3-1950. Out of the above sum, Rs. 27,06,593 represented the deemed profits under the fourth

proviso to s. 10(2)(vii) of the Indian Income Tax Act, 1922. The Incomd Tax Officer included the sum in the taxable income of the Company for

the assessment year 1949-50 on the ground that it became "receivable" in the relevant calendar year since insurers have accepted the assessee"s

claim on 13th Dec., 1948. Supreme Court took the view that the fiction introduced by the fourth proviso to s. 10(2)(vii) that a part of the

insurance, salvage or compensation money received in respect of building, plant or machinery would be deemed to be profits of the previous year

in which such money was received, though, in fact, such money represented a capital asset, could not be enlarged by importing another fiction,

namely, that if such an amount was receivable during the previous year, it must be deemed to have been received during that year. The expression

''received'' cannot be given a technical meaning which it might bear in the mercantile system of accounting and the expression cannot be understood

as ''receivable''. Supreme Court proceeded to observe that s. 13 of the Income Tax Act, 1922 is concerned only with the computation of profits of

the business of an assessee on the principles of accountancy adopted by him. The profit and loss of a business concern is ascertained on

commercial principles. Sec. 13 imposes a duty on the Revenue to compute the profits of a business in accordance with the method of accounting

adopted by the assessee. The concept of assessable income under the Act is different from profit and loss in a commercial sense. Allowances,

deductions and deemed profits should be ascertained in terms of the statutory provisions unless statute itself accepts the principles of commercial

accountancy in a particular case.

8. By applying the above principle, we are of the view that the term ''obtained'' used in sub-section (1) of s. 41 of the Income Tax Act, 1961

cannot be given a meaning I capable of being obtained''. This is the view taken by the Full Bench of Gujarat High Court in (1992) 105 CTR (Guj)

331 : (1992) 199 ITR 67 .- (supra). While considering the provisions u/s 41(1), the system of accounting followed by the assessee is of no

relevance or consequence. As mentioned earlier, even though, the assessee had put forward a claim for refund of Rs. 8,50,282, what has been

ultimately refunded was only Rs. 5,68,597. This would also show that quantification was not done simultaneously along with the judgment of the

Supreme Court rendered on 21st Nov., 1975. The quantification was done only in August, 1978. Therefore, we are of the view that the amount

received as refund of electricity charges cannot be added back to the total income of the assessee during the year 1977-78.

In the light of the above discussion, we answer question No. 1 and 2 in the negative against the Revenue and in favour of the assessee. The first

part of Question No. 3 is answered in the negative, against the Revenue and in favour of the assessee. Second part is answered in the affirmative,

in favour of the assessee and against the Revenue. Third part is answered in the negative, against the Revenue and in favour of the assessee.