

Commissioner of Income Tax Vs Indian Smelting and Refining Company Ltd.

Court: Bombay High Court

Date of Decision: April 2, 1987

Acts Referred: Income Tax Act, 1961 " Section 2(18)

Citation: (1987) 169 ITR 562

Hon'ble Judges: T.D. Sugla, J; Bharucha, J

Bench: Division Bench

Judgement

Sugla, J.

The questions of law referred to us in this reference at the instance of the Revenue are :

(1) Whether, on the facts and in the circumstances of the case, the assessee-company was a company in which the public were substantially

interested during the previous years relevant to the assessment years 1966-67 to 1969-7 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the value of "building and machinery under

erection" and "advance for purchase of machinery and raw material" should be included in the capital base under rule 19A for the purpose of

working out the relief u/s 80J of the Income Tax Act, 1961, for the assessment years 1967-68 to 1969-7 ?

2. It is common ground that the Income Tax Appellate Tribunal has followed its earlier orders for the assessment years 1964-64 and 1965-66 for

deciding the above two questions in favour of the assessee and though the Revenue had come up in reference against the said earlier orders of the

Tribunal, the reference was not pressed and, therefore, the questions were not answered.

3. However, Shri Jetly, learned counsel for the Department, submits that his instructions in the present case are to press the reference. In this

context, he invites our attention to section 2(18)(b)(B)(iii) and Explanation 1 thereto of the Income Tax Act, 1961, for the proposition that for the

purpose of finding whether shares carrying more than 50% of the total voting power were held by five or less persons, the persons who are

nominees of any other person shall be treated as a single person. It was stated that the United Commercial Bank and at the Central Bank are

shareholders of the assessee-company as nominees of Hindustan Charity Trust and, therefore, are to be treated as one single person. If that is

done, he argued, more than 50% shares of the said company would be found to be held by less than five persons. Shri Mehta, learned counsel for

the assessee-company, on the other hand, relied upon the Supreme Court's decision in the cases of Howrah Trading Co. Ltd. Vs. Commissioner

of Income Tax, Central, Calcutta., and Commissioner of Income Tax, Bombay City II Vs. Shakuntala and two Ors. etc., , for the proposition that

while counting the number of shareholders, it is the number of registered shareholders which matters.

4. The short point that requires consideration in this reference thus is whether the shares held by the two banks are to be treated as shares held by

one person or two persons. The registered shareholders are the two banks in their own right. It is true that both the banks are nominees of

Hindustan Charity Trust. However, the Tribunal has given a clear-cut finding that they have never acted in concert and unison and they are the

registered shareholders. In the above view of the matter, following the Supreme Court decisions, we hold that the two banks are to be treated as

two persons and not as one single person as contended by the Revenue. Accordingly, the first question of law is answered in the affirmative and in

favour of the assessee.

5. As regards the second question, both the parties agree that the issue is squarely covered by this court's decision in the assessee's own case

Commissioner of Income Tax, Bombay City-I Vs. Alcock Ashdown and Co. Ltd., and the question is to be answered in the affirmative and in

favour of the assessee. The second question is, therefore, answered accordingly.

6. In the result, both the question of law are answered in the affirmative and in favour of the assessee with no order as to costs.