

Indian Aluminium Co., Ltd.

Vs

Commissioner of Income-Tax, West Bengal

(T. L. Venkatarama Ayyar, S. K. Das, J. C. Shah, M. Hidayatullah, J. L. Kapur JJ)

Civil Appeal No. 176 of 1959

24.04.1961

JUDGMENT

S. K. DAS J. –

This is an appeal with special leave from an order dated May 29, 1956, passed by the Income-tax Appellate Tribunal (Calcutta Bench), Calcutta, disallowing the assessee's claim for deducting a sum of Rs. 1,24,199 odd under the provisions of section 10(2)(xv) of the Indian Income-tax Act, 1922.

The assessee, appellant before us, is a public limited company with its registered office in Calcutta. Its principal business is the manufacture of aluminium ingots, sheets circles, aluminium alloys, etc., and production of various aluminium or alloy products. Under a deed of agreement dated January 31, 1947, made with the appellant the Aluminium Laboratories Ltd., Montreal, Canada, a foreign company, having laboratories and research facilities in Canada and the United Kingdom agreed in consideration of an annual retainer fee to provide regularly and diligently technical and engineering informations, advice and service, etc., to the appellant on the basis of research carried on in their laboratories. The case of the appellant was that such technical and engineering informations, etc., were essential for the maintenance of the standard of its products on a par with those of other competitors in the field. The remuneration which the foreign company had to be paid was payable at Montreal in Canadian dollars. Fo

There was an appeal to the Appellate Assistant Commissioner who held that though the sums payable to the foreign company were chargeable to income-tax, the liability to deduct and pay tax under section 18(3A) and 18(3B) arose not when the sums were credited to the account of the foreign company but at the time of actual physical payment. He therefore, set aside the order of the Income-tax Officer.

On appeals against the order of the Appellate Assistant Commissioner, both by the appellant and the Income-tax Officer the Income-tax Appellate Tribunal, Calcutta Bench, held against the appellant on both the points and restored the order of the Income-tax Officer. In consequence of the said decision and to save itself from the consequences of a drastic recovery proceeding the appellant paid the amount on or about April 16, 1953. However, the appellant simultaneously took up the matter with the foreign company and requested the company to reimburse the appellant in the matter of the tax paid on behalf of the foreign company. The foreign company, however, repudiated its liability to pay the tax. Thereupon, as a matter of commercial accedence and necessity the appellant treated the sum of Rs. 1,24,199 odd paid to Government as an extra expenditure incurred in its business and claimed a deduction in respect thereof under section 10(2)(xv) of the Act in the assessment proceedings for the year 1954-55. The appell

The Income-tax Officer concerned disallowed the claim. There was an unsuccessful appeal to the Appellate Assistance Commissioner. An appeal was then taken to the Income-tax Appellate Tribunal and by the order complained of, namely, the order dated May 29, 1956, the Tribunal under section 66(1) of the Act to make a reference to the High Court on the question as to whether the sum of Rs. 1,24,199.3 nP. incurred by the appellant during the relevant accounting year was deductible under section 10(2)(xv) of the Act. The Tribunal rejected the application on the ground that the question did not arise from the order of the Tribunal. The High Court of Calcutta also rejected the appellant's application under section 66(2) of the Act. The appellant then moved this court for special leave to appeal from the order of the Tribunal dated May 29, 1956, and special leave was granted by an order dated February 10, 1958, No special leave to appeal was asked for nor was such leave granted in respect of the subsequent order of t

The question which has arisen in this appeal by way of a preliminary objection is whether in the circumstances set out above, special leave to appeal from the decision of the Tribunal dated May 29, 1956, was properly given under article 136 of the Constitution and whether the appellant is entitled to ask this court to exercise its discretion under the said article when it did not move against the subsequent orders of the Board and the High Court under section 66 of the Act.

This question fell for consideration in very similar circumstances in Civil Appeals Nos. 170-172 of 1959 in which we have delivered judgment to-day. As a matter of fact this appeal was heard along with Civil Appeals Nos. 170-172 of 1959 and full arguments were heard from counsel for both sides. Following the decision in Civil Appeals Nos. 170-172 of 1959 we hold that special leave to appeal from the decision of the Tribunal dated May 29, 1956, was not properly granted in this case and the appellant is not entitled to ask us to exercise our power under article 136 of the constitution when it did not move against the subsequent orders of the Board and the High Court.

We accordingly uphold the preliminary objection and dismiss the appeal with costs. Appeal dismissed.

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