Commissioner of Income-Tax, West Bengal-I

Vs

Associated Electrical Industries (India) P. Ltd.

Civil Appeal No. 1404 of 1973

(V. D. Tulzapurkar, R. S. Pathak JJ)

10.10.1985

JUDGMENT

PATHAK J. –

This appeal by special leave is directed against the judgment of the Calcutta High Court answering the following question of law against the Revenue on a reference made by the Income-tax Appellate Tribunal :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the difference between Rs. 2,09,920.88 and the amount that had been allowed by the Appellate Assistant Commissioner was a business expenditure incurred by the assessee in the relevant previous year and in allowing the same as a deductible expenditure ?"

The assessee, who is the respondent before us, carries on business as electrical engineers and contractors with its head office in Calcutta and branches in different parts of the country. The assessee put into effect a pension and life assurance plan for its European employees in about the year 1948. Pursuant to the plan, it took out policies with the Scottish Widows' Fund and Life Assurance Society in the name of those employees. Under the plan, rules were framed and the assessee paid its part of the contribution to the premium in respect of the policies taken with the Society. The employees whose lives were insured also paid their portion of the premium and thereupon became plan members. The original rules under the plan enabled the assessee to obtain receipt of the moneys assured in certain circumstances and the assessee had also a right to direct a particular mode of disposal of the funds of the plan. The assessee claimed deduction every year of the sums paid by it by way of its contribution to the premium in respect of the said policies. Originally, the amount so contributed by the assessee towards payment of the premium was allowed by the Income- tax Department as a deductible expense. For the first time, however, the Income-tax Officer disallowed the claim in respect of the assessment year 1956-57. On appeal by the assessee against assessment, the Appellate Assistant Commissioner found that the assessee had treated its contribution to the premium as part of the salary of the respective employees on whose lives the policies had been taken and also deducted tax at source from the salary and the contributions made by the assessee constituted a revenue expenditure falling within the terms of clause (xv) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922. The Appellate Assistant Commissioner, however, dismissed the appeal on the ground that the provisions of clause (c) of sub-section (4) of section 10 of the Act barred the allowance claimed by the assessee inasmuch as no effective arrangements had been made by the assessee to secure that tax would be deducted at source from the amounts paid finally to the employees by the society in terms of the policies. The Income-

tax Appellate Tribunal allowed in part the second appeal preferred by the assessee, holding that all the contributions made in the relevant year by the assessee to the premium on the life policies of the plan members were not allowable as deductions in the hands of the assessee, and what was allowable were the contributions made by the assessee to the policies of such employees who had actually been paid pensionary and retirement benefits by the society.

After completing the assessment for the year 1956-57, the Income-tax Officer reopened the assessments of the assessee for the assessment years 1948-49 to 1955-56 under section 34 of the Act and disallowed the deductions which had been allowed earlier. On appeal by the assessee against the several assessments, the Appellate Assistant Commissioner followed the approach adopted by the Appellate Tribunal in the appeal for the assessment year 1956-57, and allowed the deductions claimed in respect of payments made by the assessee on policies respecting which payments had been made by the society to the employees in those years.

Subsequently, the relevant rules under the plan which were construed as enabling the assessee to receive the moneys assured or to enjoy the power of control over disposal of the fund were amended on December 21, 1957, by the board of directors of the assessee. In the result, the rules now provided that the amounts due under the policies would be paid to the plan members entitled thereto. The assessee was left with no control over the moneys.

For the assessment year 1959-60 with which we are concerned and for which the relevant previous year is the year November 1, 1957, to October 31, 1958, the assessee claimed deduction of all the contributions made by it towards the payment on the policies. The Income-tax Officer allowed Rs. 27,069, being the contribution made in the relevant previous year, on the footing that the offending rules had been amended, but he did not allow the claim in respect of contributions made in earlier years. The assessee appealed against the disallowance of the claim respecting contributions made in earlier years. Before the Appellate Assistant Commissioner, a statement was filed by the assessee showing the total contribution made by the assessee to the pension fund and the payment made by the society in the assessment years 1959-60 and 1960-61 amounting to Pound 8,932-7-9 and Pound 3,315-8-3. The Appellate Assistant Commissioner allowed these amounts only and rejected the remaining claim. The assessee filed a second appeal before the Income-tax Appellate Tribunal and restricted the claim to the amount that stood disallowed out of Rs. 2,09,920.88 after deducting therefrom the equivalent of the two sterling payments. The assessee contended that on amendment of the rules, the amount representing the balance out of Rs. 2,09,920.88 was liable to be considered as an outgoing from the assessee during this year and should, therefore, be considered as an allowable business expenditure. The appeal was allowed by the Appellate Tribunal, which held that the deductions were permissible under clause (xv) of sub- section (2) of section 10 of the Act and clause (c) sub-section (4) of section 10 of the Act did not come in the way.

At the instance of the Commissioner of Income-tax, the Appellate Tribunal made a reference to the Calcutta High Court for its opinion on the question of law set forth earlier. The High Court has answered the question of law in favour of the assessee and against the Commissioner of Income-tax.

In this appeal, learned counsel for the Commissioner of Income-tax contends that the expenditure cannot be said to have been incurred during the accounting year relevant to the assessment year 1959-60 inasmuch as the assessee had made payments by way of contribution to the premium in earlier years and no part of the amount in question could be said to have been paid in the relevant accounting year. Learned counsel has cited Indian Molasses Co. (P.) Ltd. v. CIT [1959] 37 ITR 66 (SC), CIT v. Anderson Wright Ltd. [1962] 46 ITR 715 (Cal), CIT v. Indian Molasses Co. P. Ltd.

[1970] 78 ITR 474 (SC) and CIT v. Lakshmi Ratan Cotton Mills Co. Ltd. [1976] 104 ITR 319 (All). The contention appears to us to be without substance. It is true that the payments were made as contributions to the premium in the earlier years. But they were made at a time when the rules permitted the assessee to receive back the amounts contributed by it under the plan. According to the construction put on the rules, it was deemed that the assessee continued to retain its hold on those amounts. It cannot be said then that when those payments were made, they could be regarded as expenditure laid out or expended within the terms of clause (xv) of sub-section (2) of section 10 of the Act. The control over the moneys passed on December 21, 1957, when pursuant to a resolution by the board of directors, the rules were revised and amended. On that day, payments made earlier over which, under the original rules, the assessee had maintained its control, now passed from that control to the plan members. The entire amount must be regarded as having been expended by the assessee during the accounting period relevant to the assessment year 1959-60. In the circumstances, the cases relied on by learned counsel for the Commissioner of Income-tax can be of no assistance to the Revenue.

It was further contended by learned counsel for the Commissioner of Income-tax that the bar of clause (c) of sub-section (4) of section 10 of the Act operated in the instant case as there was no scope for assuming that tax had been deducted at source by the assessee. It appears to be too late in the day for such a contention, because a finding of fact has been recorded by the Appellate Assistant Commissioner and thereafter confirmed in appeal by the Appellate Tribunal that tax had been deducted at source by the assessee when making payment of its contributions to the premium due on the life policies. That finding of fact was never challenged and we cannot permit it to be assailed now.

In the result, we hold that the High Court is right in answering the question referred to it in the affirmative, in favour of the assessee and against the Commissioner of Income-tax.

The appeal is dismissed with costs.

Appeal dismissed.

</html