

Union of India and Another

Vs

J. K. Synthetics Ltd.

C.A. No. 1111 of 1976

(S. Ranganathan, N.D. Ojha, Smt. M.S. Fathima Beevi JJ)

15.01.1992

JUDGMENT

1. Three points were decided by the High Court in this matter. The first pertained to a cancellation by the income-tax officer of a change in the previous year allowed to the assessee from the year ending 30th June to 31st December. The second point raised the question whether the assessee's liability to excise duty in certain matters had ceased justifying action under Section 41(1) of the Income-tax Act. The third point related to a claim for deduction in respect of expenditure on scientific research. The High Court has held that the cancellation of the order regarding the previous year was not justified, that the liability had not ceased as an appeal was still pending in the matter in the Supreme Court and that the expenditure on scientific research was allowable as a deduction. The Union of India has preferred this appeal.

2. So far as the third question is concerned, it is not pressed before us on behalf of the Department in view of the fact that the concerned authority has approved of the institution under Section 35(3) of the Act. So far as the second question is concerned, it is obvious that the liability to tax under Section 41 of the Act will depend on the outcome of the appeal before this Court. It is also stated that as regards another part of the liability, the issue is pending before the Tribunal. It would, therefore, appear that no cessation of liability can be postulated until the Tribunal has decided the matter. There is no prejudice to the Department if the assessment is modified depending upon the outcome of the decision of this Court as well as the final outcome of the proceedings which are now pending before the Tribunal. This leaves only the first question for consideration.

3. So far as the first question is concerned, learned counsel for the respondent submitted that the present appeal relates to the assessment year 1972-73. Subsequently, assessments have been made on the footing of the calendar year being the previous year almost up to the assessment year 1984-85, the position subsequently not being clearly known. In these circumstances, it is submitted that having regard to the fact that the Department has recognised the change for several years subsequently, it will be very inequitable to allow the cancellation of the order permitting change of previous year in 1972-73. This will involve the upsetting of assessments for over 10 years and more and create undue hardship. It is also pointed out that recently the Statute itself has been amended to make the financial year the previous year for all assessees. Having regard, therefore, to the subsequent developments as well as the subsequent history of the assessments in the present case, we are of the opinion that we need not express any opinion on the question decided by the High Court exercising our jurisdiction under Article 136. We, however, make it clear that we express no opinion on the question whether the change of previous year was rightly revoked or not.

4. With these observations, the civil appeal is disposed of. There will be no order regarding costs.

Order accordingly.

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