

Shell Company of India Ltd.

Vs

Commissioner of Income-tax, Calcutta, Respondent.

Civil Appeal No. 1429 (NT) of 1976

(P. B. Sawant, G. N. Ray JJ)

23.01.1992

JUDGMENT

1. The question involved in this appeal is whether the appellant-company was entitled to deduct the loss of £1,59,896 in V.S.A. in the accounting year 1957 corresponding to the assessment year 1958-59, The Income-tax Officer held that, if at all, the company was entitled to write off the loss only in the accounting year, 1956 and the Assistant Commissioner did not disturb the order of the Income-tax Officer. However, the Tribunal observed that the V.S.A. had come to a close on 20th May, 1958 which was the date agreed to by both the parties to the V.S.A. agreement as being the date from which the agreement ceased to operate. The Tribunal also found that the appellant-company had intimated that the net balance in the V.S.A. as on 20th May, 1958 would be written off and the Government also consented to it. The Tribunal, therefore, held that the claim that the V.S.A. came to an end in 1957 could not be accepted and the loss had to be held as not having arisen in the year 1957.

2. In the reference to the High Court the finding of the Tribunal was held to be sustainable being a possible and reasonable view in the circumstance of the case. In other words, the High Court also held that the loss had not occurred in 1957. It is this decision of the High Court which is challenged in the present appeal by the company.

3. Dr. Shankar Ghosh, learned counsel appearing for the appellant-company states that in view of the aforesaid finding of the High Court, the company in the accounting year 1958 corresponding to the assessment year 1959-60 claimed the said loss and it has been allowed by the Income-tax Authorities. Those proceedings have been concluded with the Tribunal and the High Court also allowing the loss to be adjusted in the said accounting year. Shri Ranbir Chandra, learned counsel appearing for the department is unable to tell us as to whether the department has preferred an appeal to this court against the order of the High Court dt. 26-7-1974 in I.T.R. No. 84 of 1969 which related to the accounting year 1958 corresponding to the assessment year 1959-60. We may state here that this court had adjourned this matter at least on three prior occasions to enable the learned counsel to get information on the point and as stated above, no such information is available till date. In view of the fact that the company had already got the benefit of writing of the said loss in the accounting year 1958. We feel that no interference is called for in the finding of the High Court which is challenged before us. Needless to say that we also proceed on the basis that there is no appeal filed by the department against the decision of the High Court dated 26-7-1974 in I. T. R. No. 84 of 1969.

4. The appeal is accordingly disposed of with no order as to costs. Order accordingly.

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