

Additional Commissioner of Income-tax

Vs

East Coast Floor Mills Pvt. Ltd.

Civil Appeals Nos. 2464-66 (NT) of 1977 with 1406 - 1407 of 1976 with 1129 (NT), 784(NT) and 799(NT) of 1977

(S. Ranganathan, B. P. Jeevan Reddy JJ)

25.09.1992

JUDGMENT

1. C. As. Nos. 1406-07 of 1976. The High Court answered the question referred to it under the Income-tax Act, 1961 in favour of the assessee, following its earlier decision in the case of C.I.T. v. Elecon Engineering Co. Ltd. (1976) 104 ITR 510 : (1977 Tax LR NOC 102) (Guj). The decision in the said case has been affirmed by this Court in C.I.T. v. Elecon Engineering Co. Ltd. (1987) 167 ITR 639 : (AIR 1987 SC 2014). In the circumstances, the High Court's decision has to be upheld and these two appeals have to be dismissed. We direct accordingly. There will, however, be no order as to costs.

Civil Appeal No.784(NT) of 1977

2. Two questions were referred to the High Court under the Income-tax Act, 1961. So far as the first question is concerned the answer of the High Court which was in favour of the assessee has to be upheld in view of the decision of this Court in C.I.T. v. Elecon Engineering Co. (1987) 167 ITR 639: (AIR 1987 SC 2014).

3. So far as the second question is concerned, the grievance of the Commissioner of Income-tax in the reference before the High Court was that the Tribunal should not have allowed the assessee to raise an additional ground for the first time before it. Both the High Court and the Tribunal have pointed out that the additional ground sought to be raised was purely one of law and was only an aspect of a question raised at earlier stages. We see no reason to differ from the view of the High Court on the second question as well. In the result, the answers given by the High Court are upheld. The appeal is dismissed. There will, however, be no order as to costs.

4. Civil Appeal No. 799(NT) of 1977

This appeal has to be dismissed in view of the decision of this Court in the case of C. I. T. v. Elecon Engineering Co. Ltd. (1987) 167 ITR 639 : (AIR 1987 SC 2014). The appeal stands dismissed accordingly. However, there will be no order as to costs.

5. Civil Appeals Nos. 2464-66(NT) of 1977

These appeals have to be dismissed in view of the decision of this Court in the case of C.I.T. v.

Elecon Engineering Co. Ltd. (1987) 167 ITR 639 : (AIR 1987 SC 2014). The appeals stand dismissed accordingly. However, there will be no order as to costs.

6. Civil Appeal No. 1129(NT) of 1977

There is no appearance on behalf of the assessee/ appellant in the present case.

7. The appeal has been preferred against the judgment of the High Court of Calcutta answering a question referred to it in the negative and against the assessee. The question referred to it under S. 256(1) of the Income-tax Act, 1961, was in the following terms: "Whether, on the facts and in the circumstances of the case, and on a proper interpretation of Rule 19(5) of the Income-tax Rules, 1962, the assessee was eligible for any adjustment in computing the relief under S. 84 of the Income-tax Act, 1961 in respect of the profits earned during the year?"

8. The question arose out of the assessment of the company under the Income-tax Act for assessment year 1967-68, a period before the insertion of Rule 19A of the Income-tax Rules, 1962.

9. We find that the above question has been answered by this Court in favour of the assessee by its recent decision in C.I.T. v. Elecon Engineering Co. Ltd. (1987) 167 ITR 639 : (AIR 1987 SC 2014). Having regard to the above decision we have to hold that the answer given by the High Court to the question referred to it is not correct and that the question should have been answered in the affirmative and in favour of the assessee. We, therefore, allow this appeal and answer the question accordingly. There will, however, be no order as to costs.

Order accordingly.

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