

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Lucas T.V.S. Ltd.

(S Bharucha and D Mohapatra JJ.)

10.12.1998

ORDER

1. The order of the Tribunal states that Clause 4(ii) of the agreement dated November 27, 1962, between Lucas, the English company, and the respondent would show that the purchase price of the plant and machinery, which had been advanced to the respondent by Lucas (England), would be satisfied with the issue by the respondent to Lucas (England) of its equity shares at par of an equivalent value. The question that arose, therefore, was whether the said agreement had created any debt towards the supply of plant and machinery by Lucas (England). The Tribunal took the view that the obligation of the respondent in respect of the price of the plant and machinery had to be satisfied by the issue of the respondent's shares to Lucas (England). The view of the Tribunal was upheld by the High Court and the Revenue is in appeal.

2. It was contended by learned counsel for the Revenue that on the relevant date, for the purpose of Section 80J of the Income-tax Act, the shares had not been allotted by the respondent to Lucas (England) and that the value thereof had been shown in the respondent's balance-sheet. In his submission, therefore, there was a debt and it had to be taken into account for the purposes of computing the respondent's capital in the application of Section 80J.

3. Our attention was drawn to the judgment of this court in *Kesoram Industries and Cotton Mills Ltd. v. CWT* [1966] 59 ITR 767. This court there referred to English judgments and the judgments

of this court to determine what a debt was. It held that a debt was a sum of money which is now payable or will become payable in future by reason of a present obligation. It added that (page 780) "a liability depending upon a contingency is not a debt in praesenti or in future till the contingency happened. But if there is a debt the fact that the amount is to be ascertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount. In short, a debt owed within the meaning of Section 2(m) of the Wealth-tax Act can be defined as a liability to pay in praesenti or in future an ascertainable sum of money."

4. What is relevant for our purpose is that a liability depending upon a contingency is not a debt in praesenti or in future till the contingency has happened. In the present case, the liability of the respondent to Lucas (England) is to issue to Lucas (England) equity shares of a value equivalent to the amount advanced by Lucas (England) for the plant and machinery. It is only if, for any reason, the shares cannot be allotted that the question of compensating Lucas (England) in cash might arise. We do not think that, in these circumstances, it can be said that there was a debt owed by the respondent to Lucas (England) to be taken into account for the purposes of computing the capital under Section 80J.

5. The appeals are, therefore, dismissed. No order as to costs.