

SUPREME COURT OF INDIA

Bongaigaon Refinery and Petrochemicals Ltd.

Vs.

Commissioner of Income-Tax

(S.P. Bharucha, Y.K. Sabharwal and B.N. Kumar JJ.)

24.07.2001

ORDER

1. The order under challenge was passed on a reference to the High Court (see [2000] 245 ITR 708), under the Income-tax Act, 1961, made at the instance of the Revenue. The High Court answered in the negative and against the assessee the following question (page 709):

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the items of income derived by the assessee during the formation period for the main business, were not taxable income but were to be adjusted against the project cost for the oil refinery and petrochemicals, the main business for which the company was set up ?"

2. It did so based upon the decision of this court in *Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT*¹.

3. That was a case in which the question related to interest earned by a company during its formative period by investments. This court has held in *CIT v. Boharo Steel Ltd.*², that it is so confined and did not apply where the receipts were directly connected with or were incidental to the work of construction of the assessee's plant. The decision in *CIT v. Boharo Steel Ltd.*(*Supra*) has been followed by a two-judge Bench of this court in *CIT v. Karnal Co-operative Sugar Mills Ltd.*³ and by a three-judge Bench in *CIT v. Karnataka Power Corporation*⁴. In fact, in the latter case, it was not disputed by the Revenue that the question that related to hire charges paid by contractors had to be answered in the light of the judgment in *Bokaro Steel Ltd.*'s case . It is, therefore, not possible now to take any view different from that taken in *Boharo Steel Ltd.*'s case.

4. The High Court has already held that the interest income derived by the assessee during its formative period was taxable income. What remains for consideration is the income which the assessee derived from house property, its guest house, charges for equipment and recoveries from the contractors on account of water and electricity supply. These items are covered by the decision in *Boharo Steel Ltd.*'s case⁵. To the extent that it relates to these items, i.e., items excluding interest, the question must be, answered in the affirmative and in favour of the assessee. The order under challenge will stand modified to that extent.

5. Appeal allowed accordingly.

6. No order as to costs.

¹[1997] 227 ITR 172

²[1999] 236 ITR 515

³[2000] 243 ITR 2

⁴[2001] 247 ITR 268

⁵[1999] 236 ITR 315 (SC)