

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Pioneer Trading Company Pvt Ltd

(Banerjee, J.)

29.06.1967

JUDGEMENT

Banerjee, J.

(1.) THIS is a reference under s. 66(1) of the Indian IT Act.

(2.) THE year of assessment is 1959-60, corresponding to the accounting period ending with the calendar year 1958. The question of law referred to this Court is : "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding, that the sum of Rs. 22,627 was a speculative receipt within the meaning of Explanation 2 to the third proviso to s. 24(1) of the IT Act, 1922, and could not therefore be assessed as a business receipt ?" The reference to "Explanation 2 to the third proviso to s. 24(1)" is somewhat misleading. There is no third proviso to s. 24(1) at present. There are only two, the first proviso having been omitted by Act XLI of 1954.

(3.) THEN again, Explanation 2 is referable to the second proviso, which is now really the first proviso, because the Explanation explains the expression "speculative transactions" used in that proviso. We should, therefore, read the question in a somewhat changed manner and instead of the words "Explanation 2 to the third proviso to s. 24(1) "read" Explanation 2 to s. 24(1), "in order to obviate all criticism. This was agreed upon by the learned counsel appearing for the parties. The above question of law arises in circumstances hereinafter stated in brief. The assessee, a private limited company, entered into a contract, dated July 6, 1953, with M/s Iwai and Co. Ltd. of Tokyo, Japan, and agreed to supply 52,000 long tons of Indian iron ore. This contract was latter on varied by mutual consent and the supply of the agreed quantity of iron ore was split up into three parts, namely, a consignment of 24,0000 long tons to be supplied by way of first delivery, thereafter a delivery of 8,000 long tons, and lastly, a delivery of 20,000 long tons. The agreed basis of payment was by an irrevocable letter of credit in pound sterling at the rate of 71 shillings per dry long ton. In terms of the contract, as varied the assessee completed the first and the second part of the contract by consigning the full quantity of ore to be consigned

under those two parts. So far as the third part of the contract was concerned, under which the assessee was to consign 20,000 long tons of iron ore, there was a quantity of 12,010 long tons only consigned and accepted by the Japanese company. Out of the third part of the contract, there remained a quantity of 7,990 long tons to be consigned by the assessee to the Japanese company. This could not be supplied- because the Japanese company defaulted in performance of their part of the contract and did not open a letter of credit as agreed upon. For breach of the contract, the assessee-company claimed from the Japanese company the difference of price for the said quantity of 7,990 long tons of iron ore, not supplied because of the default on the part of the purchasing company. The claim for difference was ultimately settled and the Japanese company agreed to pay the difference amounting to Rs. 22,627 and actually paid the same in settlement of the claim. ;