

# CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Calcutta Electric Supply Corporation Ltd

(Dipak Kumar Sen, J.)

08.09.1986

## JUDGEMENT

**Dipak Kumar Sen, J.**

( 1. ) THIS reference arises out of the assessment of the Calcutta Electric Supply Corporation Ltd., the assessee, in the assessment year 1967-68, the accounting year ending on March 31, 1967. On the applications of both the assessee and the Revenue under Section 256(1) of the Income-tax Act, 1961, the Tribunal has referred the following questions as questions of law arising out of its order, for the opinion of this court : "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 13,65,116 being the actuarial valuation of the assessee's liability on account of gratuity as on March 31, 1967 in accordance with the Industrial Employment (Standing Orders) Act, 1946, and under the provisions of the Industrial Disputes Act, 1947, payable to its employees constituted an allowable deduction in the computation of the profits and gains of its business for the assessment year 1967-68? 2. Whether, on the facts and in the circumstances of the case, and having regard to the fact that the assessee is a sterling company maintaining accounts in pound sterling, the Tribunal was right in holding that the written down value of the fixed assets should be determined on the basis of the rate of exchange with reference to the date of contract or the date of delivery or the date of payment for the assessment year 1967-68 ? 3. Whether, on the facts and in the circumstances of the case, a revision of the written down value of the assets comprising service lines acquired prior to April 1, 1961, which written down value had been correctly arrived at under the Indian Income-tax Act, 1922, was required for the assessment year 1967-68 by virtue of the definition of 'actual cost introduced by the Income-tax Act, 1961, with effect from the assessment year 1962-63? 4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the disallowance of the loss of Rs. 51,844 suffered by the company on the remittance of the profits from Calcutta to its head office in the U. K. ? 5. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 15,73,806 being the additional expenses incurred by the assessee due to devaluation of Indian rupee in redeeming its Sterling Debentures constituted an allowable

expenditure deductible in the computation of its business income in the assessment year 1967-68 ?"

( 2. ) QUESTION No. 2 which has been referred at the instance of the assessee is covered by a decision of this court in the case of the same assessee in *Calcutta Electric Supply Corporation Ltd. v. Addl. CIT* [1982] 136 ITR 777. Following the said decision, we answer the said question in the affirmative and in favour of the Revenue. Similarly, question No. 3 which has also been referred at the instance of the assessee is covered by a decision of this court in *Riverside (Bhatpara) Electric Supply Co. Ltd. v. CIT*<sup>1</sup> Following the said decision, we answer this question by stating that the written down value is to be computed in accordance with the provisions of the Act of 1961 even with reference to assets in use in the previous year prior to the April 1, 1961. The facts relevant to question No. 4 which has been referred at the instance of the assessee are, inter alia, that the assessee remitted its profits to its head office in the United Kingdom periodically for payment of dividends to the foreign shareholders. Any surplus remaining after such distribution in the United Kingdom was invested. During the relevant previous year, by reason of fluctuations in the rate of exchange, the assessee suffered a loss in the sense that it had to remit an extra amount of Rs. 51,844 for payment of such dividend. The assessee claimed deduction of the said amount from its total income. The Income-tax Officer disallowed the claim. On appeal, the Appellate Assistant Commissioner held that the assessee was not entitled to such deduction inasmuch as the same did not fall within Section 36 of the Income-tax Act, 1961. The Appellate Assistant Commissioner held further that this was not an expenditure laid out or expended wholly or exclusively for the purpose of business of the assessee under Section 37 of the Act. Following *Sutlej Cotton Mills Ltd. v. CIT*, the Appellate Assistant Commissioner held that the loss arising out of the change in the rate of exchange in the remittance of the profit was not an allowable business expenditure. The Tribunal upheld the decision of the Appellate Assistant Commissioner.

( 3. ) WE note that the decision of this court in *Sutlej Cotton Mills Ltd.* [1971] 81 ITR 641(Supra) has been partly overruled by the Supreme Court in *Sutlej Cotton Mills Ltd. v. CIT*<sup>2</sup> In our view, once dividend was declared, the assessee as a company was bound to pay the same to the shareholders and a liability arose which had to be met by the assessee. As has been held by this court in *CIT v. Tingri Tea Company Ltd*<sup>3</sup>. where money was borrowed in India on an overdraft account and deposited in the United Kingdom banks for the purpose of payment of dividends to the non-resident shareholders, the said transaction was for the purpose of business of the assessee. In that view, the extra amount which had to be paid by the assessee in the instant case for the purpose of remittance of dividends must be held to be for a similar purpose, viz., for the business of the assessee and to that extent there is no reason why the same should not be considered to be a legitimate business expenditure of the assessee and deductible. Accordingly, we answer question No. 4 in the negative and in favour of the assessee. ;

Cases Referred.

1[1977] 109 ITR 399  
2[1979] 116 ITR 1  
3[1971] 79 ITR 294