

BOMBAY HIGH COURT

Commissioner of Income Tax

Vs

Tata Chemicals Limited

(Kania, J.)

25.10.1985

JUDGEMENT

Kania, J.

(1.) THESE are two references under section 256(1) of the Income -tax Act, 1961, and they relate to the assessment years 1963 -64 and 1964 -65. The questions referred to us for determination in these references are as follows : '(1) On the facts and in the circumstances of the case, whether the assessee was entitled to depreciation on the interest and the foreign tour expenses capitalised in earlier years as reduced by the depreciation directed by the Tribunal to be allowed for those years ? (2) On the facts and in the circumstances of the case, whether the assessee was entitled to development rebate on the following items : (i) capitalized interest and foreign tour expenses, (ii) cost of telephone lines, and (iii) cost of power transformers ? (3) On the facts and in the circumstances of the case, whether the assessee was entitled to relief under section 90 and/or 91 on the gross amount of foreign dividends ?'

(2.) AS far as question No.(1) is concerned, it is agreed between counsel that in view of the decisions of the Supreme Court in *Challapalli Sugars Ltd. v. CIT and CIT v. Hindustan Petroleum Corporation Ltd.*¹ : question No. 1 will have to be answered in the affirmative and in favour of the assessee. The question is, therefore, answered accordingly without further discussion. With regard to question No.(2) as far as item No(i) is concerned, it is agreed between counsel that it will have to be answered in favour of the assessee, in view of the aforesaid decision of the supreme court referred to. As far as item No.(ii) is concerned, it refers to the cost of telephone lines. It is agreed that the telephone lines referred to are in respect of the internal telephone system in the plant of the applicant. As far as item No(iii) is concerned, it is agreed between counsel that the power transformers were for the proper working of the plant in question. It is agreed between counsel that if the principles laid down by the Himachal Pradesh High Court in *CIT v. Mohan Meakin Breweries Ltd.* are to be followed, this question will also have to be decided in the affirmative and in favour of the assessee. Both the counsel state that there is no serious dispute regarding the correctness of these principles which have been laid down in the aforesaid case and they may be followed as far as this court is concerned. In the result, the second question also will have to be answered in the affirmative and in favour of the assessee, as far as these two items are concerned. Hence, question No. (2) is answered in the affirmative and in favour of the assessee in respect of all the items therein.

(3.) AS far as question No.(3) referred to us is concerned, it is agreed between counsel that in view of the decision of this court in *CIT. v. Tata Sons Pvt. Ltd*². this question also will have to be answered in the affirmative and in favour of the assessee. This question is answered accordingly without further discussion. ;

Cases Referred.

1[1975]98ITR167(SC)

2[1978] 111 ITR 636