

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs.

Indian Smelting and Refining Co.Ltd

Income-tax reference No. 319 of 1975

(Bharucha and Sugla, JJ.)

02.04.1987

JUDGMENT

Sugla, J.

1. The questions of law referred to us in this reference at the instance of the Revenue are :

"(1) Whether, on the facts and in the circumstances of the case, the assessee-company was a company in which the public were substantially interested during the previous years relevant to the assessment years 1966-67 to 1969-7 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the value of 'building and machinery under erection' and 'advance for purchase of machinery and raw material' should be included in the capital base under rule 19A for the purpose of working out the relief under section 80J of the Income Tax Act, 1961, for the assessment years 1967-68 to 1969-7 ?"

2. It is common ground that the Income Tax Appellate Tribunal has followed its earlier orders for the assessment years 1964-64 and 1965-66 for deciding the above two questions in favor of the assessee and though the Revenue had come up in reference against the said earlier orders of the Tribunal, the reference was not pressed and, therefore, the questions were not answered.

3. However, Sri Jetly, learned counsel for the Department, submits that his instructions in the present case are to press the reference. In this context, he invites our attention to section 2(18)(b)(B)(iii) and Explanation 1 thereto of the Income Tax Act, 1961, for the proposition that for the purpose of finding whether shares carrying more than 50% of the total voting power were held by five or less persons, the persons who are nominees of any other person shall be treated as a single person. It was stated that the United Commercial Bank and at the Central Bank are shareholders of the assessee-company as nominees of Hindustan Charity Trust and, therefore, are

to be treated as one single person. If that is done, he argued, more than 50% shares of the said company would be found to be held by less than five persons. Shri Mehta, learned counsel for the assessee-company, on the other hand, relied upon the Supreme Court's decision in the cases of *Howrah Trading Co. Ltd. v. Commissioner of Income Tax*¹, and *Commissioner of Income Tax v. Shakuntala*², for the

¹(1959) 36 ITR 215 (SC)

²(1961) 43 ITR 352 (SC)

proposition that while counting the number of shareholders, it is the number of registered shareholders which matters.

4. The short point that requires consideration in this reference thus is whether the shares held by the two banks are to be treated as shares held by one person or two persons. The registered shareholders are the two banks in their own right. It is true that both the banks are nominees of Hindustan Charity Trust. However, the Tribunal has given a clear-cut finding that they have never acted in concert and unison and they are the registered shareholders. In the above view of the matter, following the Supreme Court decisions, we hold that the two banks are to be treated as two persons and not as one single person as contended by the Revenue. Accordingly, the first question of law is answered in the affirmative and in favour of the assessee.

5. As regards the second question, both the parties agree that the issue is squarely covered by this court's decision in the assessee's own case *Commissioner of Income Tax v. Alcock Ashdown & Co. Ltd*³, and the question is to be answered in the affirmative and in favor of the assessee. The second question is, therefore, answered accordingly.

6. In the result, both the question of law are answered in the affirmative and in favour of the assessee with no order as to costs.

³(1979) 119 ITR 164 (Bom)