

# **BOMBAY HIGH COURT**

Lubrizol India Ltd

Vs

Commissioner of Income-Tax

(B.P Saraf, and D Dhanuka, JJ.)

13.09.1993

## **JUDGMENT**

### **B.P. Saraf J.**

1. By this reference under section 256(1) of the Income-tax Act, 1961, made at the instance of the assessee, the Income-tax Appellate Tribunal has referred the following four questions of law to this court for opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the surtax liability in respect of the assessment years 1976-77 and 1977-78 is not a revenue deduction while computing the total income of the assessee-company ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee-company is not entitled to depreciation on research and development expenditure in respect of the assets where full value thereof has been allowed as a deduction in the previous years in view of the retrospective amendment of section 35, even though such retrospective amendment is illegal, ultra vires and contrary to the provisions of law, for the assessment years 1976-77 and 1977-78 ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest charged by the Department under section 215 of the Income-tax Act, 1961, in respect of the earlier assessment year and paid during the accounting year is not an allowable revenue deduction under the Income-tax Act, for the assessment year 1976-77 ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the rent paid by the company on the rent-free accommodation provided to the employees of the company less the amount of rent recovered from them is the amount of expenditure incurred by the company for the purposes of calculating the disallowance

under section 40(c) or section 40A(5) of the Act, as the case may be, for the assessment year 1977-78 ?"

2. Counsel for the parties are agreed that question No. 1 is covered by the decision of this court in *Lubrizol India Ltd. v. CIT*<sup>1</sup> in favour of the Revenue. Question No. 2 is also covered in favour of the Revenue by the decision of the Supreme Court in *Escorts Ltd. v. Union of India*<sup>2</sup> Question No. 4 is not pressed by counsel for the assessee.

3. The only question, which according to the assessee, requires consideration is question No. 3 which pertains to the allowability of the claim of the assessee for deduction of the amount of interest charged by the Revenue under section 215 of the Income-tax Act, 1961, in respect of the earlier assessment year and paid during the accounting year relevant to the assessment year under reference. According to counsel for the assessee, this question needs consideration. Mr. P. S. Jetley, learned counsel for the Revenue, however, submits that the issue involved in this question is fully covered in favour of the Revenue by the decision of this court in *Ferro Alloys Corporation Ltd. v. CIT*<sup>3</sup>

4. We have considered the rival submissions. We find that the controversy regarding allowability of deduction of interest payable by the assessee under section 215 of the Act specifically came up for the consideration of this court in *Ferro Alloys Corporation Ltd. v. CIT* [1992] 196 ITR 406(Supra), wherein following its earlier decisions in *Aruna Mills Ltd. v. CIT*<sup>4</sup> and *CIT v. Ghatkopar Estate and Finance Corporation (P.) Ltd*<sup>5</sup>. and also the ratio of the decisions of the Delhi High Court in *Bharat Commerce Industries Ltd. v. CIT*<sup>6</sup> and the Kerala High Court in *Federal Bank Ltd. v. CIT*<sup>7</sup> it was held that such interest is not an allowable deduction under section 37(1) of the Act.

5. Learned counsel for the assessee, after going through the above decisions, submits that though the issue is covered by the above decision, no elaborate reasons for the conclusion are given therein. This decision, according to learned counsel, therefore, needs reconsideration. We have perused the above decision and considered the submissions of learned counsel for the assessee. We find that the question of allowability of interest under section 215 of the Act as business expenditure under section 37 specifically came up for consideration before this court in the above case. It was observed by this court as under (at page 407) :

"The point stands concluded against the assessee by the consistent view of this court right from *Aruna Mills Ltd. v. CIT* [1957] 31 ITR 153 (supra) to *CIT v. Ghatkopar Estate and Finance Corporation (P.) Ltd*<sup>8</sup>. The Delhi High Court in the case of *Bharat Commerce Industries Ltd. v. CIT*<sup>9</sup> and the Kerala High Court in the case of *Federal Bank Ltd. v. CIT*<sup>10</sup> have also taken the same view. Very fairly, Shri Bhide learned counsel for the assessee, informs us that there is no

decision which has taken a contrary view."

6. In view of the above observations, the claim for deduction of interest under section 215 was held to be not allowable under section 37 of the Act. We find that the above judgment squarely covers the controversy before us. The ratio of this decision is quite clear and unambiguous that interest under section 215 cannot be allowed as a deduction under section 37 of the Act. We are in full agreement with the above conclusion. No case has been made out for reconsideration of the above decision of this court. Therefore, respectfully following the same, we answer question No. 3 in the affirmative and in favour of the Revenue.

7. In the result, the question are answered as under :

Question No. 1 : Answered in the affirmative, i.e. in favour of the Revenue and against the assessee.

Question No. 2 : Also answered in the affirmative, i.e. in favour of the Revenue and against the assessee.

Question No. 3 : Answered in the affirmative, i.e. in favour of the Revenue and against the assessee.

Question No. 4 : Not pressed. Hence returned unanswered.

8. No costs.

9. Oral leave to appeal is rejected.

Cases Referred.

1[1991] 187 ITR 25

2[1993] 199 ITR 43

3[1992] 196 ITR 406

4[1957] 31 ITR 153 (Bom)

5[1989] 177 ITR 222 (Bom)

6[1985] 153 ITR 257

7[1989] 180 ITR 37

8[1989] 177 ITR 222 (Bom)

9[1985] 153 ITR 275

10[1989] 180 ITR 37