

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITR 203/1987

**M/S. DALMIA DAIRY Petitioner
Through Mrs. P.L. Bansal, Adv.**

versus

**THE COMMISSIONER OF INCOME TAX Respondent
Through Mr.V.P. Gupta with Mr.Basant Kumar
and Mr.Javed Muzaffar, Advs.**

WITH

2. ITR Nos. 204/1987 and 205/1987

**THE COMMISSIONER OF INCOME TAX Respondent
Through Mr.V.P. Gupta with Mr.Basant Kumar
and Mr.Javed Muzaffar, Advs.**

versus

**M/S. DALMIA DAIRY Petitioner
Through Mrs. P.L. Bansal, Adv.**

**CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR**

HON'BLE MR. JUSTICE V.B. GUPTA

O R D E R

04.01.2008

In these references pertaining to the Assessment Year 1980-81, the following questions of law have been referred for our opinion: -

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the Income by way of outstanding price, contractual interest and interest as per the awards upto 20.7.77 arose in the assessment year 1978-79 and therefore the question of taxability of the amount computed on that basis could not arise for consideration in the assessment year 1980-81 in question?

2. Whether on the facts and in the circumstances of the case, it was relevant or necessary for the Tribunal while considering the appeals for the assessment year 1980-81 to give a finding that income by way of outstanding price, contractual interest and interest as per the awards upto 20.7.77 arose in the assessment year 1978-79?

2. In so far as the second question is concerned, learned counsel for the Assessee, at whose instance the question is referred to us, does not press this

question and, therefore, we return the reference in this regard unanswered.

3. In so far as the first question is concerned, the sum and substance is whether the amount of interest in terms of the awards which were eventually

upheld by the House of Lords by dismissing the Special Leave to Appeal filed by

the National Bank of Pakistan on 20th July, 1977 could be taxed on accrual basis or on receipt basis.

4. Broadly the facts are that the Assessee owned and possessed cement factories in Districts Jhelum and Karachi, both being in Pakistan. The Assessee

entered into a Sale Agreement dated 24th July, 1962 with a party in Karachi and

in terms of the agreement as well as the supplemental agreements entered into,

both the factories were sold for an amount of Rs.2,33,66,678/- (Pakistani Rupees). The amount was to be paid to the Assessee in India and in the event of

failure to make the payment, the disputes between the parties could be referred

to arbitration of the International Chamber of Commerce.

5. Armed hostilities broke out between India and Pakistan on 5th September, 1965 with the result that a state of emergency was declared in Pakistan and there was a prohibition of exports to India. At this stage, it may

be mentioned that a part of the sale consideration was to be made by exporting

cement manufactured in Pakistan to the Assessee in India. As a result of the

embargo placed by the Government of Pakistan, the amounts that were due to the

Assessee in cash and in kind were not remitted. Consequently, disputes arose

between the parties and they were referred for arbitration to the International

Chamber of Commerce.

6. The Arbitrator gave a decision in favour of the Assessee and the National Bank of Pakistan, which had stood guarantee for payment to the Assessee, challenged the arbitration awards. The High Court in London, in the

first instance, by its order dated 14th April, 1976 held the awards to be valid,

binding and enforceable. While upholding the award of the principal amount to

the Assessee, interest and costs were also directed to be paid to the Assessee.

In compliance with the decision of the High Court in London, the National Bank

of Pakistan deposited the entire decretal amount with the London branch of the

Bank of India on 3rd May, 1976. In terms of the direction given by the High Court in London, the Assessee placed the amount in fixed deposit for 18 months.

7. The National Bank of Pakistan filed an appeal against the decision of the High Court. The appeal was taken up by the Court of Appeal (Civil Division)

and dismissed on 4th May, 1977. The National Bank of Pakistan then took the

matter to the House of Lords but it refused to grant leave to appeal on 20th

July, 1977.

8. It is the contention of the Assessee, on these facts, that the interest amount became due and payable to the Assessee on 20th July, 1977 when the House

of Lords declined to grant leave to the National Bank of Pakistan to file an appeal against the order of the Court of Appeal (Civil Division).

9. Nevertheless, the Revenue sought to tax the interest amount in the assessment year 1977-78 on receipt basis notwithstanding the fact that the

Revenue had earlier taxed the interest amount due and payable to the Assessee on

accrual basis. This was, of course, objected to by the Assessee and eventually

the Income Tax Appellate Tribunal took a decision in favour of the Assessee and

came to the conclusion that the interest amount was liable to be taxed on accrual basis.

10. Feeling aggrieved, the Revenue preferred an application for referring

some questions of law to this Court under Section 256 (1) of the Income Tax Act,

1961 (for short the Act) said to be arising out of the decision of the Tribunal.

However, it appears that the Tribunal declined to refer any question of law and,

therefore, the Revenue preferred a petition under Section 256(2) of the Act in

this Court being ITC No. 159/1987 requiring the High Court to direct the Tribunal to refer certain questions of law to this Court.

11. One of the questions of law that the Revenue sought reference of was to the effect whether the Tribunal was correct in law in deleting the addition

of Rs.2,11,51,264/- taxed as interest income on receipt basis.

12. The petition filed by the Revenue was dismissed by this Court by an order dated 8th November, 1990 and it was held as follows: -

?Question No.3 arises from the fact that interest awarded by the arbitrator was

being taxed both on accrual and receipt basis. According to the department, the

interest was chargeable on accrual basis while the assessee had been contending

that it was chargeable on receipt basis. Counsel for the respondent informs us

that the respondent has accepted the contention of the department and as a

result thereof, the said interest is chargeable in the hands of the respondent

on accrual basis. The question now proposed, therefore, would not arise because

this interest is to be taxed on accrual basis.?

We are given to understand that the view expressed by this Court has been

accepted by the Revenue and, therefore, the interest income is finally required

to be taxed on accrual basis.

13. In these references that we are now dealing with, the Tribunal has also come to the same conclusion. The Tribunal has held in paragraph 18 of its

order under consideration that the relevant date is 20th July, 1977 when the

House of Lords refused to grant leave to appeal to the National Bank of Pakistan. It is only on this date that the Assessee was entitled to receive the

decretal amount as well as the interest thereon. The date (20th July, 1977) falls in the Assessment Year 1978-79 and, therefore, the amount could be taxed

only in the Assessment Year 1978-79 on an accrual basis.

14. Learned counsel for the Revenue has contended before us that since the

amount was to be received by the Assessee in India, the amount is liable to be

taxed on receipt basis and in the Assessment Year under consideration, that is,

1980-81 because the amount was actually received by the Assessee in the previous

year relevant to the assessment year 1980-81.

15. We find that this contention urged by learned counsel for the Revenue is completely contrary to the contention urged by the Revenue for the last several years, namely, that the amount is liable to be taxed on an accrual basis. We say this because as held by this Court on 8th November, 1990 while

disposing of ITC No.159/1987 that the stand of the Revenue is that the interest

is taxable on accrual basis. Even the Assessee had accepted this contention of

the Revenue and, therefore, there can be no doubt that the amount is liable to

be taxed only on accrual basis. It is now too late in the day, after 17 years,

for the Revenue to raise the contention that the amount is liable to be taxed on

receipt basis. Even otherwise, we find no reason to differ with the view already expressed by this Court on an earlier occasion.

16. Following the view expressed by this Court in the case of the Assessee

in ITA No. 159/1987 decided on 8th November, 1990, we answer the question of law

referred to us in the affirmative, in favour of the Assessee and against the Revenue.

17. The references are disposed of accordingly.

MADAN B. LOKUR, J

JANUARY 04, 2008 V.B. GUPTA, J
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