



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 242 OF 2004

WITH

INCOME TAX APPEAL NO. 829 OF 2004

WITH

INCOME TAX APPEAL NO. 237 OF 2004

M/s. Tolani Ltd.

Bakhtawar Building,
Nariman Point,
Mumbai 400 021

...Appellant

Versus

The DCIT Spl. Reg. 31, Mumbai

Aayakar Bhavan, M.K. Road,
Mumbai 400 020

...Respondent

Mr. Atul K. Jasani, Advocate for the Appellant.

Mr. Suresh Kumar, Advocate for Respondent.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : JULY 05, 2024

ORAL JUDGEMENT: (*Per, Somasekhar Sundaresan J.*)

1. These three Appeals raise a common question of law,
namely:-

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July 05, 2024

Ashwini Vallakati

“Whether the increase in loan liability of the Assessee due to fluctuation in foreign exchange rates in the subsequent years was part of actual cost of the ship by name M/s. M.V. Prabhu Das acquired in September 1988 from the foreign country and the Assessee was entitled to investment allowance on the additional cost in the year of fluctuation ?”

2. The Assessee has filed three Appeals, namely, Income Tax Appeal No.237 of 2004 for assessment year 1990-91; Income Tax Appeal No.242 of 2004 for assessment year 1991-92 and Income Tax Appeal No.829 of 2004 for assessment year 1992-93. Learned Counsel for the Assessee as well as for the Revenue submit that the aforesaid question of law has already been answered by an order of a Division Bench of this Court dated 20th January, 2023, while disposing of five Appeals, namely, Income Tax Appeal Nos.597 of 2003, 595 of 2003, 594 of 2003, 596 of 2003 and 598 of 2003 in the case of M/s. Tolani Shipping Co. Ltd., an affiliate of this Assessee.

3. At all times relevant to these Appeals, the Assessee was engaged in the business of shipping and had acquired a vessel by the name M/s. M.V. Prabhu Das. The acquisition was paid for in foreign currency, for which a foreign currency loan had been taken. In the return of income filed by the Assessee, in terms of Section 32A as that Section then stood, a deduction at the rate of 20% of the actual cost of

the ship owned by the Assessee and wholly used for the purpose of the business of the Assessee was claimed. Section 32A(3) contemplated that the Assessee may carry forward such claim for a period of not more than eight years immediately succeeding the assessment year relevant to the previous year in which the vessel was acquired.

4. What is in dispute is the investment allowance additionally claimed by the Assessee with regard to the additional cost arising out of fluctuation in the foreign currency exchange rate. According to the Revenue, there was no provision under which additional investment allowance could be claimed on the basis of costs incurred due to the exchange rate fluctuation. The Learned Income Tax Appellate Tribunal (“ITAT”), placing reliance on a judgment of this Court Khatau Makanji Spining and Weaving Co. Ltd. Vs. Commissioner of Income-Tax¹, held that the Assessee was not entitled to claim investment allowance to the extent of exchange rate fluctuations. Since ITAT placed reliance upon Khatau Makanji’s case, it would be relevant to note the question of law in that case, and the view expressed on the same:-

“.....So far as the third question is concerned, learned counsel for the Assessee submits that this question is not covered and the Assessee is entitled to investment allowance under section 32A in respect of additional costs of the imported assets

¹ [1996] (Bo.m 222 ITR 472

which has taken place because of the fluctuation in the rate of exchange in the year subsequent to the year of acquisition.

We have heard learned counsel for the Assessee. We have perused section 32A. We do not find anything there which may support the above contention of learned counsel for the Assessee. We, therefore, answer the third question in the affirmative, i.e, in favour of the Revenue and against the Assessee.”

5. Learned Counsel for both parties submit that the view expressed in the *Khatau Makanji* was held to be *per incuriam* in the case of *Associated Bearing Co. Ltd Vs. Commissioner of Income-tax*², and such view was later followed in *Commissioner of Income-tax-2 Vs. Tata Chemicals Ltd.*³.

6. Dealing with these issues, the Division Bench of this Court in its order dated 20th January, 2023 (referred to above) had extracted from and analyzed the decision in *Commissioner of Income-Tax Vs. Gujarat State Fertilizers Co. Ltd.* as follows:-

“.....On a plain reading of section 43A of the Act, one thing is certain, and that is, the increase or reduction in the liability has to take place only in the year of fluctuation and it does not relate back to the year of acquisition/installation/first user. One will therefore have to proceed on the footing that the actual cost figure which was quantified earlier than the previous year in which the fluctuation took place, shall have to be modified in the year of fluctuation. It is well-settled that when the asset was

² [2006] 286 itr 341 (Bom.)

³ [2016] 75 taxmann.com 228 (Bombay)

purchased at a price, liability was to be discharged in installments, it cannot be stated that the liability did not exist or accrue till the installments became due and payable. It is this liability which changes on account of fluctuation in the rate of exchange....."

7. Ruling that since the Hon'ble Supreme Court in Commissioner of Income-Tax vs Ambika Mills Ltd.⁴ had already approved the view expressed by the Gujarat High Court in the aforesaid decision, the Division Bench ruled in its order dated 20th January, 2023, that investment allowance, consequent to exchange rate fluctuation, would be allowable.

8. For these reasons, and in the backdrop of the provisions of Section 32A, and in view of the judgments referred to above, the question of law deserves to be answered in favour of the Appellant and against the Revenue. Consequently, for the relevant assessment years covered by these three Appeals, the investment allowance would necessarily need to factor in the exchange rate fluctuations as claimed in those years.

9. These Appeals are disposed of in the aforesaid terms. No costs.

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]

⁴ [1993] 201 ITR (ST.) 63