

indag Rubber Ltd. Vs. Cit

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Court : Delhi

Decided On : May-24-2001

Reported in : [2001]119TAXMAN736(Delhi)

Appeal No. : Civil Writ Petition No. 3091 of 2000 24 May 2001

Appellant : indag Rubber Ltd.

Respondent : Cit

Advocate for Pet/Ap. : C.S. Aggarwal an; Salil Aggarwal, for the assessed; R.D. Jolly and;

Judgement :

In this petition under articles 226 and 227 of the Constitution, orders passed by the authorities under the Income Tax Act, 1961 (hereinafter referred to as the Act) are assailed.

2. A reference to the factual aspects in some detail would be necessary.

3. The petitioner filed an appeal before the Commissioner (Appeals) relating to the assessment year 1989-90. One of the points related to the grant of depreciation on amounts which became payable due to fluctuation in foreign currency. By order dated 31-1-1996, the Commissioner (Appeals) directed the assessing officer to look into the claim of the assessed and allow depreciation, as per law. Pursuant to the direction given, the assessing officer examined the matter afresh and by order

dated 23-9-1996 decided part of the issue.

4. It has to be noted that the assessing officer had passed the order under section 154/250/143(3) dated 12-12-1997 in addition to an earlier order dated 23-9-1996. Legality of the course adopted by the assessing officer by passing an order under section 154 need not be examined at the present juncture. Before the Commissioner the issue was relating to grant of depreciation. assessed relied on a decision of the Apex Court in CIT v. Arvind Mills Ltd. : [1992]193ITR255(SC) . Commissioner did not accept the plea of the assessed-petitioner on the ground that Arvind Mills Ltd.'s case (supra) related to development rebate and not to the claim of depreciation. It appears to us that the Commissioner did not take note of certain observations made by the Apex Court in Arvind Mills Ltd.'s case (supra), more particularly at pages 262 to 264, where it dealt with the question of depreciation allowance. In the circumstances, we direct the Commissioner to reconsider the matter, keeping in view the principles laid down in Arvind Mills Ltd.'s case (supra) and its applicability to the facts of the present case. It shall be open to the petitioner to bring to the notice of the Commissioner, if any, other decisions that are applicable to the facts of the case.

The petition is disposed of accordingly.

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