

Indian Aluminium Co. Ltd. v. Commissioner of Income Tax, West Bengal

Civil Appeal No. 24 of 1967

[1971] 3 SCR 351 | 1971-01-12

TDS default on foreign technical fees: statutory payment not deductible as bad debt or business expenditure.

Indian Income-tax Act, 1922: sections 10(1), 10(2)(xi), 10(2)(xv), 18(3B) and 18(7)

2-judge bench | K. S. Hegde, J. | A. N. Grover, J.

Assessment years: Assessment year not printed; previous year ended 31 December 1954

Default payment distinguished from technical fee

The foreign collaborator's technical fee related to business, but the sum paid because the assessee failed to withhold was treated separately. The agreement contained no obligation to bear that tax.

01 FACTS OF THE CASE

The aluminium manufacturer paid annual technical-assistance retainers to a Montreal company under a 1947 agreement that contained no tax-free or gross-up stipulation. It failed to deduct tax and was treated as an assessee in default for Rs.1,24,199. The collaborator refused reimbursement, and the company wrote off the amount in the previous year ended 31 December 1954, claiming it as a bad debt or business expenditure. The Tribunal and High Court rejected the claim.

Source: [SCR pp. 351-354 / PDF pp. 1-4](#)

02 DISCUSSION BY THE HON'BLE COURT

A deductible trade debt had to arise directly from, and be incidental to, the business. The withholding amount arose from statutory non-compliance, not as a trading debt owed by the collaborator. Preserving the business relationship did not transform it into a bad debt. Nor was the default payment expenditure wholly and exclusively laid out for business: the assessee was bound to withhold, the contract did not shift that liability, and payment followed its own statutory default.

Source: [SCR pp. 354-356 / PDF pp. 4-6](#)

03 JUDICIAL DECISION

The Supreme Court found no basis to disturb the High Court's answer. The assessee's appeal was dismissed with costs.

Source: [SCR p. 356 / PDF p. 6](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of Revenue: the payer's TDS-default payment was not allowed as a bad debt or business expenditure on these facts. The decision did not disallow the underlying technical-assistance fee itself.

Source: [SCR pp. 355-356 / PDF pp. 5-6](#)

05 AKHB REVIEW POINT

AKHB analysis: separate the underlying cross-border service fee, contractual gross-up or indemnity, tax withheld, interest, penalty and any payer-default recovery. Preserve the agreement and remittance evidence. A voluntary commercial decision not to recover tax is not automatically a trading debt; current consequences require the applicable withholding and deduction provisions.

Source: [AKHB analysis based on SCR pp. 354-356 / PDF pp. 4-6](#)

SOURCE & VERIFICATION

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STATUTORY SCOPE

The case applies the 1922 Act to a payer's own historical withholding default. It does not determine current gross-up contracts, section 40 consequences, indemnities, interest or penalty deductibility under later law.

LATER TREATMENT

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