
(1995) 12 BOM CK 0023
In the Bombay High Court
Case No : IT Ref. No. 206 of 1982

Associated Cement Cos. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Income Tax Act, 1961 — Section 32, 33, 33(6), 35, 35B

Citation : (1996) 136 CTR 1 : (1996) 221 ITR 215

Hon'ble Judges : M.L. Dudhat, J;B.P. Saraf, J

Bench : Division Bench

Advocate : P.F. Kaka, instructed by Payne and Co, for the Appellant; Dr. V. Balasubramaniam and P.S. Jetly, instructed by H.D. Rathod, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference under s. 256(1) of the IT Act, 1961, the Tribunal, Bombay "A" Bench, Bombay, has referred the following questions of law to this Court for opinion :

At the instance of the assessee :

"1. Whether the assessee was entitled to a deduction under s. 80-O of the sums of Rs. 62,27,077 and Rs. 22,63,000 in its assessment for asst. yrs. 1972-73 and 1973-74?

2. Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction for the legal expenses of Rs. 4,84,742 in its assessment for 1972-73 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly disallowed the claim of the assessee for development rebate under s. 33(6) on the cost of the water works in respect of the assessment for asst. yr. 1973-74 ?

4. Whether, on the facts and in the circumstances of the case, deduction was allowable as revenue expenditure in the assessment for asst. yr. 1973-74 for the

expenditure of Rs. 9,473 incurred by the assessee for travelling by Shri Joshi ?

5. Whether, on the facts and in the circumstances of the case, deduction was allowable as revenue expenditure in the assessment for 1973-74 for the expenditure of Rs. 28,262 incurred by the assessee for travelling by Sarva Shri S. R. Vakil and R. M. Khatau ?

6. Whether, the expenditure of Rs. 3,16,552 incurred by the assessee in India on account of travelling qualifies for relief under s. 35B(1)(b)(iii) in its assessment for 1973-74 ?"

At the instance of the CIT :

"7. Whether the assessee is entitled to depreciation allowance in its assessments for asst. yrs. 1972-73 and 1973-74 on the cost or written down value of the assets purchased by it in earlier years for scientific research and used by it for scientific research in these two years, though deduction for the relevant capital expenditure had been fully allowed in the corresponding assessments for earlier years ?"

The questions referred to us have been numbered consecutively for the sake of convenience.

2. The controversy in the first question pertains to rejection of claims of the assessee for deduction under s. 80-O of the IT Act, 1961 (the "Act") for the asst. yrs. 1972-73 and 1973-74. The relevant facts pertaining to the said question are as follows :

The assessee entered into a contract with Kuwait Cement Company for construction of a cement factory at Kuwait. The agreement was dt. 8th April, 1970. According to the agreement, the assessee was entitled to 9,10,000 Kuwait Dinars as the contract price convertible into U. S. Dollars at the rate of 2.8 one Kuwait Dinar. The contract price equivalent to freely convertible U. S. Dollars thus was 25,48,000 U. S. Dollars. The assessee was described in the contract as contractor and the Kuwait Cement Company as the purchaser. Under the contract, the assessee was required to undertake supply, delivery, construction, erection, testing and handing over the whole of the works as set forth in the contract documents within 18 calender months from the date of signing of the contract in accordance with the specifications set-out therein.

The assessee made an application to the Central Government on 8th July, 1970 for approval of the contract under s. 80-O of the Act which, it appears from the letter of the Government of India in the Ministry of Foreign Trade dt. 30th Sept., 1970 addressed to the assessee, was granted by the Government. In the previous year relevant to the asst. yr. 1972-73, the assessee-company received a sum of Rs. 3,36,000 from the Kuwait Cement Company and for the first time it claimed deduction under s. 80-O of the Act in respect of this amount. According to the assessee, this sum was received by it by way of fees for preparing designs of the proposed cement plant. The ITO allowed deduction under s. 80-O of the

Act as claimed by the assessee in respect of the above receipt. The assessee received further sums of Rs. 62,27,077 and Rs. 22,63,000 in the asst. yrs. 1972-73 and 1973-74 from the Kuwait Cement Company in accordance with the terms of the contract. The assessee claimed deduction under s. 80-O in respect of these two receipts. It did so by filing a revised return for the asst. yr. 1972-73 and by making the claim in the original return for the asst. yr. 1973-74. The claim of the assessee for deduction under s. 80-O of the Act in respect of the above receipts was rejected by the ITO on the ground that no profit or income arose to the assessee from the above receipts. The assessee appealed to the AAC. The AAC rejected the claim of the assessee on the ground that the receipts in question did not come in any convertible foreign exchange in India as required by s. 80-O (as amended with retrospective effect from 1st April, 1972). The AAC rejected the claim of the assessee also on the ground that the construction of the cement factory including civil and engineering works did not result in use of any technical knowledge and skill which was a pre-condition for deduction under s. 80-O. The AAC was also of the opinion that the receipts in question were not royalty, commission, fees or any similar payments and were not related to use of any patent, invention, model, design, etc., as required by the provisions of s. 80-O of the Act.

Against the above order of the AAC, the assessee appealed to the Income Tax Appellate Tribunal (Tribunal). The Tribunal observed that there was nothing to show that the receipts in question (apart from the sum of Rs. 3,36,00 which the Department itself accepted as being receipt for drawings and designs and qualified for relief under s. 80-O), included any sum or receipts by way of "royalty, commission, fees or any similar payments received by the assessee.... in consideration for the use outside India of any patent, invention, model, design, secret formula or process or similar property right or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided by the assessee or in consideration of technical services rendered or agreed to be rendered outside India by the assessee". According to the Tribunal, the receipts came in as a result of execution of a contract for the installation of a cement grinding and packing plant and the construction of the factory including civil and engineering construction as a result of a turn-key project. The Tribunal observed that in the first place, the receipts did not partake the character of royalty, commission, fees or any similar payment. In the second place, the receipts had not come in consideration for the use of any patent, invention, model, design, secret formula or process or similar property right or information concerning industrial, commercial or scientific knowledge, experience or skill made available by the assessee to the Kuwait cement company. In the third place, according to the Tribunal, it was not a receipt in consideration of any technical services rendered or to be rendered by the assessee to the Kuwait company. The Tribunal also observed that the approval of the agreement by the Government by itself did not clinch the issue in favour of the assessee because the approval was subject to

the relevant receipts or income fulfilling the conditions prescribed under s. 80-O of the Act. The Tribunal held that the receipts in question were merely for execution of a civil and engineering contract and not in the nature of royalty, commission, etc., for supply of technical know-how, etc., and there was no profit or income from these receipts. The Tribunal, however, observed that the assessee had received the amount in India in convertible foreign exchange by virtue of the legal fiction contained in s. 80-O itself. In view of its opinion in regard to the nature of the services rendered by the assessee and the nature of the receipts, the Tribunal held that the assessee-company had failed to fulfil the conditions prescribed under s. 80-O of the Act in respect of amounts in question and hence, was not entitled to deduction under s. 80-O of the Act in respect of the said amounts.

Aggrieved by the above decision of the Tribunal, the assessee sought for reference of the question of law arising out of the above finding to this Court, which the Tribunal has done by referring question No. 1.

3. Mr. P. F. Kaka, learned counsel for the assessee submits that the Tribunal committed a manifest error of law in holding that the payments in the instant case having been received by the assessee in execution of turn-key project, receipts would partake the character of royalty, commission, fees or any similar payment. Counsel submits that the project undertaken by the assessee being a turn-key project, the contract in question was not an ordinary contract and the assessee had to make use of its commercial, industrial and scientific knowledge, experience and skill in the execution of the same. According to the counsel, the assessee-company had rendered substantial technical services in the execution of the said contract and, hence, it was entitled to deduction under s. 80-O of the Act in respect of receipts on account of such services. It is stated by the learned counsel that the fact whether there was loss or profit in carrying out the project is not a relevant consideration in deciding the claim for deduction under s. 80-O of the Act. Counsel submits that the assessee is entitled to deduction under s. 80-O if the receipt in question or any part of it meets the description of the receipts mentioned in s. 80-O of the Act. In support of this contention reliance is placed on the decision of the Supreme Court in *M/s. Continental Construction Ltd. Vs. Commissioner of Income Tax, Central-I*, .

4. We have considered the above submissions. We have carefully perused the contract in question. It appears from a reading of the contract as a whole that though in the contract there is no specific mention of the amount attributable to any of the services falling under s. 80-O of the Act, it is obvious that the consideration was payable for a contract which is a contract for a turn-key project and not a contract of ordinary type. In the execution of the said contract, the assessee is undoubtedly required to use very specialised industrial, commercial and scientific knowledge, experience and skill and to render highly sophisticated technical services. In that view of the matter, in such a case, the claim of the assessee for deduction under s. 80-O of the Act cannot be disallowed

on the ground that in the contract there is no bifurcation or apportionment of the amount attributable to the services rendered by the assessee which fall under s. 80-O of the Act.

5. Sec. 80-O, as it stood at the material time, read as follows :

"80-O. Deduction in respect of royalties, etc., from certain foreign enterprises. (1) Where the gross total income of an assessee, being an Indian company, includes any income by way of royalty, commission, fees or any similar payment received by the assessee from the Government of a foreign State or a foreign enterprise in consideration for the use outside India of any patent, invention, model, design, secret formula or process or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to such Government or enterprise by the assessee, or consideration of technical services rendered or agreed to be rendered outside India to such Government or enterprise by the assessee, under an agreement approved by the Board in this behalf, and such income is received in convertible foreign exchange in India, is brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction of the whole of the income so received in, or brought into, India in computing the total income of the assessee :

Provided that the application for the approval of the agreement referred to in this sub-section is made to the Board before the 1st day of October of the assessment year in relation to which the approval is first sought.

Provided further that approval of the Board shall not be necessary in the case of any such agreement which has been approved for the purposes of the deduction under this section by the Central Government before the 1st day of April, 1972, and every application for such approval of any such agreement pending with the Central Government immediately before that day shall stand transferred to the Board for disposal.

Explanation : The provisions of the Explanation to s. 80N shall apply for the purposes of this section as they apply for the purposes of that section."

6. It is clear from a plain reading of this section that where the gross total income of an assessee includes any income by way of royalty, commission, fees or any similar payment received by the assessee from the Government of a foreign State or a foreign enterprise in consideration for the use outside India of any patent, invention, model, design, secret formula or process, or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to such Government or enterprise by the assessee, or in consideration of technical services rendered or agreed to be rendered outside India to such Government or enterprise by the assessee, under an agreement

approved by the Board in this behalf, the assessee shall be entitled to a deduction of the whole of the income so received in or brought into India in computing the total income of the assessee on fulfilment of the conditions laid down in the said section.

7. So far as the approval of the Board is concerned, there is no dispute that the agreement in this case was approved by the Board for the purpose of this section. The claim of the assessee for deduction under s. 80-O of the Act was rejected on two grounds. First, that the receipts in question were not receipts for services, etc., of the type specified in s. 80-O of the Act. Second, though it was received in convertible foreign exchange outside India, it was not brought into India by the assessee as required by the above section. We have considered both these two grounds. So far as the second ground is concerned, in our view, rejection on that ground is erroneous in view of the Explanation to sub-s. (1) of s. 80-O which provides that the provisions of the Explanation to s. 80N shall apply for the purpose of this section as they apply for the purposes of that section. The Explanation to s. 80N which was inserted by the Finance Act, 1974, with retrospective effect from 1st April, 1969, reads :

"80N. - Deduction in respect of dividends received from certain foreign companies.....

Explanation. - for the purpose of this section, -

(i) "Convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India (RBI) as convertible foreign exchange for the purposes of the law for the time being in force for regulating payments and dealings in foreign exchange;

(ii) any income used by the assessee outside India in the manner permitted by the RBI shall be deemed to have been brought into India in accordance with the law for the time being in force for regulating payments and dealings in foreign exchange, on the date which such permission is given."

Clause (ii) of the above Explanation thus creates a legal fiction and provides that any income used by the assessee outside India in the manner permitted by the RBI shall be deemed to have been brought into India in accordance with the law for the time being in force for regulating payments and dealings in foreign exchange on the date on which such permission is given. In the case before us, there is no controversy about the fact that the amounts received by the assessee in the foreign country on account of the turn-key project in question were received in convertible foreign exchange and the said amounts had been used by the assessee outside India with the permission of the RBI in the manner set-out in the permission of the Reserve Bank. In that view of the matter the claim of the assessee for deduction under s. 80-O cannot be rejected on that ground.

8. The only question that remains to be decided is whether the receipts in question or any part of it can be held to be royalty, commission, fees or any

similar payment received by the assessee in consideration for the use outside India of information concerning industrial, commercial or scientific knowledge, experience or skill, etc., or in consideration of technical services rendered by the assessee. There is no finding of the Tribunal or any of the authorities below in this regard except a casual observation that the project in question being a turn-key project and there being no specific clause in the agreement in question to provide for payment for any such services, the receipts would not partake the character of royalty, fees, commission, etc. We have given our careful consideration to the question whether non-specification of a particular amount as consideration for such services would, by itself, disentitle the assessee to deduction under s. 80-O. On a careful perusal of s. 80-O and the well settled legal principles, we are of the clear opinion that the claim for deduction under s. 80-O cannot be rejected on that ground. The mere fact that the contract did not specifically assign the nomenclature mentioned in s. 80-O to the payments made to the assessee could not be a factor to reject the claim of the assessee for deduction under s. 80-O. Similarly, the mere fact that the assessee was carrying on the business as engineers and contractors and the receipts followed to it in the course of its business as such, would not necessarily preclude relief under s. 80-O, if they could be brought within the categories of receipts mentioned in the section. The contract executed by the assessee was not an ordinary contract, it was a contract for execution of a turn-key project. Obviously, in such cases, though it is a single project, it comprises of various elements including elements referred to in s. 80-O. As observed by the Supreme Court in *Continental Construction Ltd. vs. CIT* (supra), there is no antithesis between the categories of income specified in s. 80-O and the profits and gains of a business. Contracts of the type envisaged by s. 80-O are usually very complex ones and cover a multitude of obligations and responsibilities. It is not always possible or worthwhile for the parties to dissect the consideration and apportion it to the various ingredients or elements comprised in the contract. For the purpose of Income Tax, the principle of apportionment has always been applied in different contexts. Consolidated receipts and expenses have always been considered apportionable in the contexts : (a) of the capital and revenue constituents comprised in them; (b) portions of expenditure attributable to business and non-business purposes; (c) of places of accrual or arising; and (d) of agricultural and non-agricultural elements in such receipts or payments". It was held by the Supreme Court in *Continental Construction Ltd.* (supra) that once a contract is approved by the Board having regard to the nature of receipts flowing therefrom, the assessee is entitled to seek deduction under s. 80-O in respect of the receipts under the contract "the consideration for which is traceable to the three ingredients" irrespective of the assessment year in which the receipts fall for assessment. The ratio of the above decision of the Supreme Court is squarely applicable to the facts of the present case and following the same, it is clear that the assessee is entitled to get deduction under s. 80-O if he can satisfy the authorities that the amounts received by him on account of a contract approved under s. 80-O or any part of it is legitimately attributable to any information or

services, etc., specified under s. 80-O of the Act.

9. Reference may also be made in this connection to a recent decision of the Supreme Court in *M/s. Prakash Cotton Mills Pvt. Ltd. Vs. Commissioner of Income Tax (Central), Bombay*, . In that case, dealing with the controversy whether interest payable for delayed payment of sales-tax can be apportioned as damages or penalty or interest for the purposes of deduction under s. 37(1) of the Act, the Supreme Court held that wherever such impost is found to be of a composite nature, that is, partly of compensatory nature and partly of penal nature, the authorities have to bifurcate the two components of the impost and give deduction of that component which is compensatory in nature and refuse to give deduction of that component which is penal in nature. This decision of the Supreme Court is also an authority for the proposition that the principles of apportionment can be applied in different contexts for the purposes of Income Tax.

10. In view of the above decisions of the Supreme Court, we are of the clear opinion that the claim of the assessee in the instant case for deduction under s. 80-O of the Act requires reconsideration. It is not possible for us to decide it in this reference in the absence of a factual finding whether the consideration received by the assessee or any part of it is attributable to any of the services or informations, etc., specified under s. 80-O. We therefore, remand the matter to the Tribunal to decide the claim of the assessee for deduction under s. 80-O of the Act afresh in the light of our above observations and the ratio of the decisions of the Supreme Court in *Continental Construction Ltd.* (supra) and *Prakash Cotton (P) Ltd.* (supra), after giving opportunity to the assessee to adduce or bring on record any evidence or material it may like to adduce or produce in support of its contention that the receipts in question or any part of it, is attributable to any of the activities specified under s. 80-O of the Act.

11. The controversy in the second question pertains to the rejection of claim of the assessee for deduction of a sum of Rs. 4,84,742 incurred by it in Pakistan by way of legal expenses. The material facts pertaining to the above claim are as follows :

The assessee-company had factories in the territory of West Pakistan which were sold by it to the Government of West Pakistan in March, 1965. According to the assessee, the sale price was Rs. 326 lakhs. The Government of West Pakistan, however, determined the same at Rs. 278.64 lakhs. The assessee-company protested against the above determination by the Government of West Pakistan as according to it, it was contrary to the terms and conditions of the agreement entered into with and the Government of West Pakistan. The Government of West Pakistan thereupon filed a suit in the Court of Senior Civil Judge, Lahore, seeking a declaration that a sum of Rs. 278.64 lakhs only was payable to the assessee as consideration for sale of the undertaking by the assessee to it. The assessee contested the above suit. An expenditure of Rs. 4,84,742 was incurred by the assessee as legal expenses in connection with the above litigation in

Pakistan. The assessee claimed deduction of this expenditure in computation of its income for the asst. yr. 1972-73. The ITO rejected this claim of the assessee. The order of the ITO was confirmed by the AAC and the Tribunal. The Tribunal held that the ITO was justified in rejecting the claim of the assessee for deduction of the above amount in computing the income of the assessee as it was not an expenditure incurred for the purpose of the business of the assessee. The assessee sought for reference of the question of law arising out of the rejection of the above claim of the assessee by the Tribunal. The Tribunal has, accordingly, referred question No. 2 for our opinion.

12. The learned counsel for the assessee submits that the Tribunal erred in law in holding that the expenditure in question was not an expenditure incurred for the purpose of the business of the assessee. He submits that the expenditure of Rs. 4,84,742 was incurred by the assessee for recovering the amount due to it from the Government of West Pakistan as consideration for the sale of its business in West Pakistan in the year 1965. The litigation expenditure incurred by the assessee in this case, according to the learned counsel for the assessee, is an expenditure incurred for the purpose of the business. A number of decisions of different Courts dealing with the deductibility of expenditure were referred in support of his contention. Dr. Balasubramaniam, learned counsel for the Revenue, on the other hand, supports the finding of the Tribunal and submits that the expenditure in question is not an expenditure incurred by the assessee for the purpose of its business. According to him, this is an expenditure incurred in connection with the business which had been sold long back in the year 1965 and in connection with the litigation which had arisen in connection with the determination of the sale price of such business.

13. The learned counsel for the assessee, in reply, submits that the main business of the assessee being manufacture and sale of cement, sale of its business in Pakistan, which comprised of cement factories, cannot be held to be discontinuation of business and any expenditure incurred for the recovery of the sale proceeds of the said business in Pakistan would be expenditure for the purpose of the business of the assessee.

14. We have carefully considered the rival submissions. The claim for deduction in this case is based on s. 37 of the Act, which provides that any expenditure laid out or expended wholly and exclusively for the purpose of business or profession shall be allowed in computing the income chargeable under the head "profits and gains of business or profession", the only exception being capital expenditure or personal expenditure of the assessee. The question that arises for consideration is whether the expenditure in question is incurred wholly and exclusively for the purpose of the business of the assessee. The scope and ambit of the expression "for the purpose of the business" is very wide. It may take within its ambit not only the expenditure incurred on the day-to-day running of a business but also on rationalisation of its administration and modernisation of its machinery; it may include measures for the preservation of the business and for the protection

of its assets and property from expropriation, coercive process or assertion of hostile title. It may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence business or for the carrying on of a business. Even expenditure incurred in connection with acts incidental to the carrying on of the business would fall within the ambit of this expression. But as held by the Supreme Court in *Commissioner of Income Tax, Kerala Vs. Malayalam Plantation Ltd.*, , however wide the meaning of this expression may be, its limits are implicit in it. The purpose shall be "for the purposes of business", that is to say, that the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in its capacity as a person carrying on the business". In the instant case, the expenditure has been incurred by the assessee in connection with one of its business ventures in West Pakistan which had been sold by it to the Government of Pakistan long back in the year 1965. The question is whether the expenditure incurred in litigation for determination of the sale price of such business, which is closed, can be allowed as a deduction under s. 37 of the Act against the income of other business of the assessee in that year. We are of the clear opinion that no such deduction is permissible under s. 37 of the Act. The reason is obvious. The business in West Pakistan, which had been sold by the assessee years back, was neither a "business" carried on by the assessee nor was it a part of the other business carried on by the assessee. The submission of the counsel that because the assessee continued to carry on business of manufacture and sale of cement, expenditure incurred by it in litigation for recovery of the sale price of its factories in West Pakistan which were sold to Government of West Pakistan would be expenditure for the purposes of its business is too far-fetched and untenable in law. It is well settled that if an assessee carries on several distinct and independent businesses, and one of such businesses is closed before the previous year, he cannot claim allowance under s. 37 of the IT Act, 1961, of an outgoing attributable to the business which is closed against the income of his other businesses in that year.

15. Reference may be made in this connection to the decision of the Supreme Court in *L.M. Chhabda and Sons Vs. Commissioner of Income Tax, Gujarat*, . The assessee in that case was carrying on the business of exhibiting cinematograph films in Ahmedabad and in Bombay. The lease in respect of one cinema theatre, the Prakash Talkies, expired in 1952 and thereafter the landlord filed a suit in ejectment against the assessee and obtained a decree for possession and an order for payment of mesne profits. Out of the mesne profits paid by the assessee, they claimed deduction of the sum of Rs. 92,240 in determining their business income for the calendar year 1954 relevant to the asst. yr. 1955-56. The ITO disallowed the claim on the ground that the business of Prakash Talkies was not carried on by the assessee during 1954. The Tribunal affirmed the disallowance holding that the cinema theatres acquired by the assessee from time to time on lease or otherwise were run independently of one another and with separate identifiable books and that the opening of a new theatre or closure

of another did not affect the working of the remaining theatres. On a reference, the High Court also held that the amount in question was not allowable as a deduction in determining the business income of the assessee for the asst. yr. 1955-56. The assessee appealed to the Supreme Court. Before the Supreme Court it was contended on behalf of the assessee in support of its claim for deduction of expenditure on account of the closed cinema hall from the income of the other business that the assessee was conducting cinema theatres in Ahmedabad and Bombay and the result of the gains of the different ventures was entered in the accounts maintained at the head office. The Supreme Court rejected the claim of the assessee and dismissed the appeal. While doing so, it was observed :

"It is true that the appellants were conducting cinema theatres in Ahmedabad and Bombay, and the result of the accounts of the different ventures was entered in the accounts maintained at the head office, but from that circumstance no inference necessarily arises that the exhibition of films in different theatres constituted the same business. It was for the appellants to establish that different ventures constitute parts of the same business."

The ratio of this decision in our view, squarely applies to the facts of the present case and following the same, we answer the question No. 2 in the negative and in favour of the Revenue.

16. We now turn to question No. 3. The dispute therein pertains to disallowance of a part of the claim of the assessee for development rebate under s. 33(6) of the Act in respect of cost of the water works in the assessment for the asst. yr. 1973-74. The facts relevant for determination of the above controversy are as follows :

The assessee claimed development rebate in respect of a sum of Rs. 18,30,944 spent towards the cost of additions made to the existing water works. The above expenditure of Rs. 18,30,944 comprised of the following components.

The ITO allowed development rebate only on the cost of pumps, electrical items and the cost of pipes and disallowed the claim in respect of amount spent on civil works. The AAC allowed the claim of the assessee for development rebate on the full amount of Rs. 18,30,944. While doing so, the AAC accepted the contention of the assessee that the entire construction of water works including civil engineering operations had to be treated as one plant. However, on appeal by the Revenue against the order of the AAC, the Tribunal affirmed the order of the ITO and set aside the order of the AAC. Hence, reference of question No. 3.

17. The learned counsel for the assessee submits that the Tribunal has committed manifest error of law in bifurcating the amount spent by it on the water works into amounts spent on pipes, pumps, etc., and amounts spent on civil works and restricting development rebate claim only to that part which pertains to pipes, pumps, etc. According to the counsel, water work as a whole has to be considered as a plant. Reliance is placed in support of this contention

on the decision of this Court in Commissioner of Income Tax Vs. Mazagaon Dock Ltd., .

18. We have carefully considered the submission of learned counsel. The controversy in this case is squarely covered by the ratio of the above decision of this Court. Following the same, we hold that civil work was an integral part of the water work, because, without civil work, pipes and pumps cannot perform the function of a water work. The expenditure incurred by the assessee on the water work as a whole including that on the civil work is, therefore, to be treated as a part and parcel of the expenditure incurred on the water work and development rebate has to be given on the entire amount. In this view of the matter, in our opinion, the Tribunal went wrong in bifurcating the expenditure into expenditure on civil works and expenditure on pipes, pumps, etc., and restricting the development rebate only to the expenditure incurred on pipes and pumps. In view of the above, question No. 3 is answered in the negative and in favour of the assessee.

19. So far as question Nos. 4 and 5 are concerned the same are not pressed by the assessee in view of the relatively small amount involved and long lapse of time. These two questions are, therefore, returned unanswered.

20. The controversy involved in question No. 6 is covered in favour of the Revenue by the decision of this Court in M.H. Daryani Vs. Commissioner of Income Tax, . Following the same, it is answered in the negative and in favour of the Revenue.

21. The controversy in question No. 7, which is referred at the instance of the Revenue, also stands concluded in favour of the Revenue by the decision of the Supreme Court in Escorts Limited and Others Vs. Union of India and others, . Following the same, it is answered in the negative and in favour of the Revenue.

This reference is disposed of accordingly.

In the facts and circumstances of the case, there shall be no order as to costs.