
(1997) 11 MAD CK 0182

In the Madras High Court

Case No : N.V. Balasubramanian and P. Thanwavel, JJ. TC No's. 458 and 459 of 1980 20th October, 1997

CARBORANDUM UNIVERSAL LTD.

APPELLANT

Vs

COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 20-11-1997

Acts Referred:

Citation : (1999) 154 CTR 104

Hon'ble Judges : P. Thanwavel, J;N.V. Balasubramanian, J;N. V. Balasubramanian, J

Bench : Full Bench

Judgement

N. V. BALASUBRAMANIAN, J. This is a combined reference for the asst. yr. 1974-75 both at the instance of the assessee as well as at the instance of the Revenue. The Tribunal at the instance of both the assessee and the Revenue has stated a case and referred the following questions of law for our opinion under s. 256(1) of the IT Act, 1961 (hereinafter referred to as "the Act"), for the asst. yr. 1974-75. "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not entitled to the deduction of the surtax payable for the year in computing its total income for the asst. yr. 1974-75.

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the gratuity fund has already been approved and accordingly directing the ITO to allow it if the other conditions under s. 40A(7) are satisfied for the asst. yr. 1974-75 ?

2. In so far as the first question of law referred to at the instance of the assessee is concerned, the point that arises is whether the assessee would be entitled to deduction of surtax paid by the assessee in the computing the total income for the asst. yr. 1974-75. A similar question whether the surtax paid by a company is deductible in the computation of the company's business income came up for consideration before the Supreme Court in the case of Smith Kline and French

(India) Ltd. and Others Vs. Commissioner of Income Tax, and the apex Court in that case held that the surtax levied on the company's profit, cannot be allowed as deduction while computing the business income of the assessee as per the provisions of the IT Act, 1961. Following the said decision of the apex Court, we answer the question of law-referred to us at the instance of the assessee in the affirmative and against the assessee.

3. In so far as the second question of law referred to at the instance of the Revenue is concerned, as already seen, it is a reference for the asst. yr. 1974-75 and the Tribunal has followed its earlier order in ITA No. 1555/Mad/76-77, dt. 21st Dec., 1978. As against that earlier order for the asst. yr. 1973-74, we answered the question referred to us at the instance of the Revenue in Tax Case Nos. 220 and 221 of 1981 [reported as Carborandum Universal Ltd. vs. CIT (1998) 148 CTR (Mad) 5411 by judgment of even date and therein we upheld the order of the Tribunal and answered the question of law referred to us against the Revenue. Following the said decision in Tax Case Nos. 220 and 221 of 1981 (supra) of even date, we answer the question of law referred to us in this reference at the instance of the Revenue in the affirmative and against the Revenue for the asst. yr. 1974-75 as well. There will be no order as to costs.

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