(2005) 03 AHC CK 0277

In the Allahabad High Court

Case No : IT Reference No. 10 of 1994 23 March 2005

Commissioner of Income Tax agra — APPELLANT

Vs

H.M. Cold Storage — RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:
Income Tax Act, 1961 — Section 256, 80J

Citation : (2006) 154 TAXMAN 158

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : AN. Mahajan, for the Revenue and Shakeel Ahmad, for the Assessee, for the Appellant;

Judgement

The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, (hereinafter referred to as ''the Act'') for opinion to this court:

"Whether the Hon''ble Tribunal, on the facts and in the circumstances of the case, was correct in law in entertaining the assessee''s claim with regard to relief u/s 80J of the Income Tax Act, 1961, ignoring the real effect of the transfer of amount in the capital accounts of the partners of the firm which, in fact, represented loan account and does not fall within the purview of capital employed, disregarding the spirit of rule 19A of the Income Tax Rules, 1962

2. The present reference relates to the assessment years 1981-82,1983-84 and 1984-85.

3. We have heard Sri AN Mahajan, learned standing counsel for the revenue and Sri Shakeel Ahmad, learned counsel appearing for the respondent-assessee.

4. We find that the Apex Court in the case of Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, , has held that borrowed capital has to be excluded for the purposes of determining the capital employed u/s 80J of the Act. The amount in the present case has been transferred from loan account to

the capital account of the partners and, therefore, for all practical purposes was borrowed capital and ought to have been excluded while determining the capital employed.

5. We, accordingly, answer the question referred to us in the negative, i.e., in favour of the revenue and against the assessee. However, there shall be no order as to costs.

