(1999) 10 KL CK 0074

In the High Court Of Kerala

Case No : IT Reference No''s. 98 of 1995, 181 of 1996, 175 and 176 of 1997 6 October 1999 A.Y.

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

ASIAN TECHS LTD. — RESPONDENT

Date of Decision : 06-10-1999

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

Citation : (2000) 108 TAXMAN 56

Hon'ble Judges : Arijit Pasayat, C.J;K.S. Radhakrishnan, J

Bench : Full Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Revenue Joseph Markos and Joseph Kodianthara, for the Assesee, for the Appellant;

Judgement

Pasayat, CJ.

All these applications involve identical questions relating to legality of the direction given for working out entitlement of the assessee to get deduction under sections 80HH, 80I and 80J of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''). The assessee was engaged in a business of engineering contracts. Vide order dated 4-6-1993, the Tribunal directed the assessing officer to work out the entitlements, if any, of the assessee by finding which part of the income is relatable to manufacturing activities. The learned counsel for the revenue with reference to the decision of the Apex Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, submitted that the direction given is contrary to the law as settled by the Apex Court.

2. The learned counsel for the assessee submitted that the question as to the benefit of section 80HH on the value of articles manufactured or produced by him which have gone into the construction of the dam, was left open. On a reading of the decision of the Apex Court, it is clear that the activities carried on by the assessee appear to be the same as that of the party in the case before the Apex

Court. Where the articles manufactured go into the construction of the dam, it was observed that such situation makes little difference to the principles in the case. There is no scope for finding out whether the part of the activity generated an income for the purpose of section 80HH. The business activities were conducted as a whole and it is almost impossible as accepted by the learned counsel for the assessee to decipher one of the activities for the purpose of finding out whether any profit is relatable thereto.

3. In that view of the matter, we are of the opinion that the decision of the Apex Court in N. C. Budharaja & Co.''s case (supra) is clearly applicable to the facts of the case and direction as given by the Tribunal is contrary to the principles laid down by the Apex Court. We, accordingly, answer the question in favour of the revenue and against the assessee. Our answer shall govern the second limb of the question and it will be, therefore, of academic interest to consider the first limb of the question.

The Income Tax references are disposed of as above.

