
(2003) 05 KL CK 0016

In the High Court Of Kerala

Case No : IT Ref. No's. 24 of 1998 and 187 and 188 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Asian Techs Ltd.

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Income Tax Act, 1961 — Section 32A, 80HH, 80I

Citation : (2004) 187 CTR 321

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant;

Judgement

G. SIVARAJAN, J.—In IT Ref. No. 24 of 1998, the following question of law is referred to this Court at the instance of the Revenue for decision:

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding:

(i) the assessee is an industrial undertaking?

(ii) the assessee is entitled to get deduction under Sections 80HH and 80-I in respect of profits referable to manufacture of any article or product or thing in the course of its construction activities and are not the above finding and decision wrong and unreasonable ?"

2. In IT Ref. Nos. 187 & 188 of 1999, the following two questions of law are referred to this Court at the instance of the assessee :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that though the assessee is an industrial undertaking, it is not entitled to the deduction under Sections 80HH and 80-I of the Act?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to investment allowance u/s

32A in respect of the machinery installed for the purpose of its business?"

3. The assessee in all the three cases is same, i.e., Asian Tech Ltd., Cochin. The assessment years concerned are 1987-88, 1989-90 and 1990-91. For all these years the assessee claimed deductions under Sections 80HH and 80-I and for one year u/s 32A of the Act. This was not allowed by the AO and by the first appellate authority in the appeal filed by the assessee. In the appeal filed before the Tribunal for the asst. yr. 1987-88, the Tribunal remanded the matter to the AO with direction to work out the entitlement of the assessment (sic-assessee) under Sections 80HH and 80-I of the Act and to grant the deduction. However, the Tribunal for the subsequent years 1989-90 and 1990-91 declined the relief under Sections 80HH 80-I and 32A of the Act. The very question in the case of the assessee for another assessment year came up for consideration before this Court in Commissioner of Income Tax Vs. Asian Techs Ltd., and this Court by relying on the decision of the Supreme Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, held that the assessee is not entitled to get the deduction claimed under Sections 80HH and 80-I of the Act. The Division Bench observed that, 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. It was also observed that 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, that there is no scope for finding out whether the part of the activity generated an income for the purpose of Section 80HH and the business activities were conducted as a whole and it is almost impossible as accepted by learned counsel for the assessee to decipher one of the activities for the purpose of finding out whether any profit is relatable thereto.

4. We have heard the learned counsel appearing for the Revenue and the learned counsel for the assessee.

5. In view of the decision of the Division Bench of this Court in the assessee's case itself for another year, the questions referred in all these three cases have to be answered in favour of the Revenue and against the assessee. We accordingly answer the questions in all these cases against the assessee and in favour of the Revenue.

6. These IT references are disposed of as above.