(2002) 01 RAJ CK 0183

In the Rajasthan High Court

Case No : IT Reference No. 54 of 1985

Commissioner of Income Tax — APPELLANT

Vs

Associated Stone Industries — RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 35B(1)(b)(iii)

Citation : (2002) 123 TAXMAN 592

Hon'ble Judges : Y.R. Meena, J;A.C. Goyal, J

Bench : Division Bench

Advocate : J.K. Singhi, for the Appellant; S.M. Mehta, R.S. Mehta and Ms. Preeti Sharma, for the Respondent

Judgement

1. On an application u/s 256(1) of the income tax Act, 1961 (''the Act'') , the Tribunal has referred the following question for the opinion of this Court :

Common question in RA Nos. 14 and 15 :

Whether, on the facts in the circumstances of the case, the Tribunal was justified in holding in law that weighted deduction u/s 35B(1)(b)(iii) of income tax Act, 1961 was allowable on freight inclusive of transport charges, cartage, coolie and B.P.T. charges ?

Question in RA No. 16

Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that expenditure of Rs. 32,727 was not the nature of entertainment and in deleting the same ?

The assessment years involved are 1977-78 and 1978-79. The return was filed declaring Rs. 27,04,560 in the assessment year 1977-78 and Rs. 24,77,520 in the assessment year 1978-79. The assessee-company is mainly engaged in excavation of limestone which is sold as ''Kotah Stone''. The assessee owns a number of quarries which were taken on lease from the Government of

Rajasthan on royalty basis. During the course of assessment, Assessing Officer did not allow the weighted deduction u/s 35B(1)(b)(iii) of the Act, was allowable on freight inclusive of transport charges, cartage, collie and B.P.T. charges. Issue in the second question relates to whether Rs. 32,727 should be treated as entertainment expenses and should be disallowed or not.

2. At the outset learned counsel for the assessee Mr. Mehta submits that the issue regarding weighted deduction u/s 35B(1)(b)(iii) has been answered against the assessee in the earlier years also. Therefore, he is not serious if question is answered against the assessee. Regarding the disallowance of Rs. 32,727, whether it is in the nature of entertainment, he submits that issue has been decided in his favour is his own case and answered in favour of the assessee and against the revenue, in the case of the same assessee in the earlier assessment years in IT Reference No. 16 of 1982, dated 3-7-1986.

3. In the result we answer question No. 1 in negative, i.e., in favour of the revenue and against the assessee. We answer question No. 2 in affirmative, i.e., in favour the assessee and against the revenue. The reference, so made, is disposed of accordingly.

