(1991) 08 PAT CK 0019

In the Patna High Court

Case No : Taxation Case No. 78 of 1981

Commissioner of Income Tax — APPELLANT

Vs

Bhawani Textiles — RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Citation : (1991) 08 PAT CK 0019

Judgement

G. C. Bharuka, J.—This reference u/s 256(1) of the Income tax Act, 1961, involves the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the Income Tax Officer to include loans and borrowings in the capital employed for grant of relief u/s 80J of the Act ?"

2. The reference relates to the assessment year 1977-78. For answering the question referred by the Tribunal, it is not necessary to deal with the facts of the case since the issue at hand is no more res integra and stands conclusively decided by the Supreme Court in the case of Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, , wherein it has been held that (at page 356) :

" Sub-rule (3) of Rule 19A of the Income Tax Rules, 1962, in so far as it provided for the exclusion of borrowed monies and debts and particularly long-term borrowings in the computation of the '' capital employed'' by a new industrial undertaking for the purposes of the tax exemption could not be said to be outside the rule-making authority conferred on the Central Board u/s 80J(1) of the Income Tax Act, 1961, and was a perfectly valid piece of subordinate legislation."

3. In the above view of the matter, the Tribunal was not justified in law in directing the Income Tax Officer to include loans and borrowings in the capital employed for grant of relief u/s 80J of the Act. Consequently, the question referred to this court is answered in the negative, i.e., against the assessee and

in favour of the Department. In the circumstances of the case, there shall be no order as to costs.

4. Let a copy of this judgment be transmitted to the Assistant Registrar, Income Tax Appellate Tribunal, Patna Bench, Patna, in terms of Section 260 of the Act.

B.C. Basak, C.J.

5. I agree.

