
(1989) 12 DEL CK 0025

In the Delhi High Court

Case No : Income Tax Ref. No's. 113 and 114 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Escorts Ltd.

RESPONDENT

Date of Decision : 01-12-1989

Acts Referred:

Citation : (1989) 12 DEL CK 0025

Hon'ble Judges : S. Ranganathan, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

The Court

1. These are two references under the IT Act, at the instance of the Commissioner of Income Tax References relate to the asst. yrs. 1971-71 and 1972-73. They arise out of the assessments of the respondent company for the said assessment years. It is not necessary to set out the facts at length because the questions referred to this Court can be disposed of without a detailed reference to those facts.

2. The first two questions referred to this Court read as follows :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the computation of capital for the purposes of relief u/s 80J of the IT Act, 1961 should be not as no the first day of the previous year but on the average amount of increase or decrease in the assets and liabilities during the previous year ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the capital for the purposes of relief u/s 80J of the Income Tax Act, 1961 should be computed by including the borrowed money utilised in the industrial undertaking ?"

These questions had also arisen for consideration in respect of the asst. yr. 1970-71 in I.T. Ref. Nos. 219 & 220/80. We have answered the questions in the

negative and in favor of the department following the decision of the Supreme Court in the case of Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, . For the same reasons, we give the same answer to these question for these two assessment years as well.

3. The next question that is referred to this Court is in the following terms :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that deduction u/s 80-I is admissible in respect of the whole of income derived by the assessed from the priority industry and not in respect of the income computed after making the deductions provided in the Income Tax Act ?"

4. This question is covered by a joint reading of the decisions of the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, and Lohia Machines Ltd. and Anr. v. Union of India and Ors. In view of these two decisions, it is clear that the question has to be answered in the negative and in favor of the revenue. We answer the question accordingly.

5. The fourth question referred to this Court reads as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the ITO to work out the disallowable expenditure u/s 40(a)(v) by including cash allowance as part of salary ?"

We are of the opinion that so far as the asst. yr. 1971-72 is concerned, this question has to be obviously answered in the affirmative and in favor of the assessed in view of the decision of this Court in the case of Installment Supply P. Ltd. v. CIT. We answer the question accordingly for the assessment year. So far as the asst. yr. 1972-73 is concerned, however, counsel for the CIT points out that the applicable provision was really s. 1972-73 is concerned, however, counsel for the CIT point out that the applicable provision was really s. 40A(v) introduced with effect from 1-4-1972 by the Finance (No. 2) Act, 1971. It appears that this amendment has not been noticed by the Tribunal. We are, however, expressing no opinion on the scope and interpretation of s. 40A(v) vis-a-vis the disallowance in question

6. References are disposed of as above. No costs.