(1985) 12 MP CK 0067

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 145 of 1981

Commissioner of Income Tax — APPELLANT

Vs

Ganga Engineering Works — RESPONDENT

Date of Decision : 06-12-1985

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 80J

Citation : (1986) 25 TAXMAN 61

Hon'ble Judges : K.L. Shrivastava, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant;

Judgement

Sohani, J.—By this reference u/s 256(1) of the income tax, Act, 1961 (''the Act''), the Tribunal, has referred the following question of law to this Court for its opinion:

Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in directing the allowance of deduction u/s 80J of the income tax Act, 1961, to the assessee in respect of the assessment year 1975-76 ?

The material facts giving rise to this reference are as follows:

The assessee is a firm carrying on business in the manufacture of spare parts of machinery. The assessment year in question is 1975-76. While framing assessment for the assessment year in question the ITO did not allow any deduction u/s 80J of the Act as the assessee had not in the return, made any claim for deduction u/s 80J. When the matter came up in appeal before the Commissioner (Appeals), it was contended on behalf of the assessee that though no formal claim u/s 80J, was made by the assessee at the assessment stage, necessary data was available with the ITO and he could have allowed deduction u/s 80J. This contention was upheld by the Commissioner (Appeals). Aggrieved by that decision, the department preferred an appeal before the Tribunal. The Tribunal, relying on the decision of the Andhra Pradesh High Court in

Commissioner of Income Tax Vs. Gangappa Cables Ltd., held that in a case, where there was material on record on the basis of which deduction u/s 80J could be allowed, necessary relief under that provision could be given. The Tribunal did not accept the contention advanced on behalf of the department that there was no material on record for allowing deduction u/s 80J. The Tribunal held that there was material on record to justify allowance of the claim u/s 80J. The Tribunal, therefore, upheld the decision of the Commissioner (Appeals) and dismissed the appeal. Hence, at the instance of the department, the Tribunal has referred the aforesaid question of law to this Court for its opinion.

2. Having heard the learned counsel for the revenue, we have come to the conclusion that the reference has to be answered in the affirmative and against the revenue. In view of the finding of the Tribunal that there was material on record to justify allowance of the claim u/s 80J, the Tribunal had jurisdiction to uphold the order of the Commissioner (Appeals) allowing the claim of the assessee u/s 80J. In Gangappa Cables Ltd.''s case (supra) the Andhra Pradesh High Court has held that if there was material on record for allowing the claim of the assessee, the Tribunal would be justified in allowing that claim. We respectfully agree with that view. Our answer to the question referred to us is, therefore, in the affirmative and against the revenue. As none appeared on behalf of the assessee, parties shall bear their own costs of this reference.