(1997) 02 KL CK 0017

In the High Court Of Kerala

Case No : IT Ref. No''s. 28 and 32 of 1995

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

GEO TECH FOUNDATIONS and CONSTRUCTIONS. — RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:
Income Tax Act, 1961 — Section 32A

Citation : (1998) 146 CTR 273

Hon'ble Judges : Smt. K. K. Usha, J;K.K. Usha, J

Bench : Division Bench

Judgement

SMT. K. K. USHA, J. :

Reference is at the instance of the Revenue. Respondent-assessee is the same in both the cases. In IT Ref. No. 28 of 1995, following questions are referred for opinion of this Court :

"1. Whether, on the facts and in the circumstances of the case and admittedly the assessee being engaged in the business of construction of building is entitled to investment allowance under s. 32A of the IT Act ?

2. Whether, on the facts and in the circumstances of the case, the business of the assessee would amount to "processing of goods or manufacturing of an article or thing" and are not the above findings wrong, unreasonable and inapplicable to the assessee ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and fact in holding that "the assessee-company is an industrial undertaking engaged in the business of manufacturing or processing of goods" and is not the above finding wrong and unreasonable in law and on facts ?"

In IT Ref. 32/95, the following question is referred :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to the benefit of investment allowance under s. 32A of the IT Act ?"

2. We find that questions 2 and 3 referred in IT Ref. No. 28 of 1985 are ancillary to question No. 1 which is the same as the only question referred in IT Ref. No. 32 of 1985. The issues raised therein is covered by a decision of the Supreme Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, and followed by this Court in CIT vs. Khaders International Construction Ltd. (1995) 213 ITR 869 in favour of the Revenue and against the assessee.

3. We, therefore, answer the questions in the negative in favour of the Revenue and against the assessee.