(1982) 05 AHC CK 0008

In the Allahabad High Court

Case No : Income-tax Reference No. 986 of 1978

Commissioner of Income Tax APPELLANT

Vs

G.S. Rice Mills RESPONDENT

Date of Decision : 11-05-1982

Acts Referred:
Income Tax Act, 1961 — Section 80J

Citation : (1982) 30 CTR 276 : (1982) 136 ITR 761

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : M. Katju, for the Appellant; O.P. Agarwal, for the Respondent

Judgement

Seth, J.—The assessee-firm was constituted with effect from October 10, 1970. For the assessment years 1972-73 and 1973-74, the assessee failed to put up any claim u/s 80J of the LT. Act before the ITO. In appeal before the AAC, the assessee claimed benefit u/s 80J on the ground that it was a newly constituted firm and was entitled to the benefit of that provision. The AAC rejected the claim on the reasoning that no relief u/s 80J was claimed either in the returns or in the assessment proceedings before the ITO. Aggrieved by the order of the AAC, the assessee went up in appeal before the Tribunal. The Tribunal, following the decision of the Gujarat High Court in Amilal Agrawalla Vs. Commissioner of Income Tax, , held that the assessee was entitled to claim benefit u/s 80J and directed that for both the years under consideration the ITO will examine the claim of the assessee on merits after giving an opportunity to the assessee and pass orders according to law. At the instance of the revenue, the following question has been referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was in law justified in entertaining the assessee''s appeal regarding relief u/s 80J even though the assessee had not made such claim either in the returns or before the Income Tax Officer during the course of the assessment proceedings ?"

2. It may be noted that by the Finance (No. 2) Act, 1967, Section 80J was inserted in place of Section 84, which was deleted. The basis of the Tribunal''s order is the decision of the Gujarat High Court referred to above. That decision was taken up to the Supreme Court in The Additional Commissioner of Income Tax, Gujarat Vs. Gurjargravures Private Ltd., , which reversed the decision of the High Court observing that since neither any claim was made before the ITO nor was there any material on record supporting such a claim it was not open to the AAC to entertain the question of relief u/s 84 or to direct the ITO to allow the relief. It is apparent from the order of the AAC that no claim was made either in the returns filed or in the assessment proceedings before the ITO nor was there any material on record supporting such a claim. The Tribunal was, therefore, not justified in entertaining the claim of the assessee for relief u/s 80J and directing the ITO to examine the claim of the assessee on merits.

3. Our answer to the question referred, therefore, is in the negative, against the assessee and in favour of the department. The department is entitled to costs which we assess at Rs. 250.

