(2007) 02 AHC CK 0007

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Hindustan Computers Ltd. RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 43B

Citation : (2007) 02 AHC CK 0007

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 256(1) of the Income Tax Act, 1961,hereinafter referred to as ''the Act'' for opinion to this court :

Whether, in view of the facts and circumstances of the case, the Hon''ble ITAT was legally correct in directing the assessing officer to entertain the claim of the assessee regarding deduction of Rs. 1,43,03,853 representing the aggregate of customs and excise duty included in the value of closing stock?

2. The present Reference relates to the assessment year 1985-86. Briefly stated the facts giving rise to the present Reference are as follows:

During the year under consideration, the assessee claimed the reduction of Rs. 1,43,03,833, representing the aggregate of customs and excise duty included in the value of closing stock, u/s 43B of the Act. The assessee had also offered to add a sum of Rs. 1,47,05,868 which was claimed by it in the preceding year. The assessing officer in the light of the order of the Tribunal, Delhi Bench ''C'' in ITA No. 334/Delhi/1987 rejected the claim of the assessee. The Commissioner (Appeals) also, upheld the finding of the assessing officer. The Tribunal following the decision of the Tribunal, Special Bench in the case of (1994) 49 ITD 56 directed the assessing officer to entertain the claim of the assessee in the light of the above decision.

3. We have heard the learned Standing counsel for the revenue. Nobody has

appeared on behalf of the respondent-assessee.

4. We find that the decision of the Special Bench in the case of Indian Communication Network (P.) Ltd. (supra), which has been relied upon by the Tribunal in upholding the claim of the respondent-assessee has since been affirmed by the Apex court in the case of Berger Paints India Ltd. Vs. Commissioner of Income Tax, Calcutta, , thus, there is no infirmity in the order of the Tribunal.

5. Respectfully following the aforesaid decision, the question of law referred to us is answered in the affirmative, i.e., in favour of the assessee and against the revenue. However, there shall be no order as to costs.