(1998) 03 DEL CK 0107

In the Delhi High Court

Case No : Income Tax R. No. 130 of 1980

Commissioner of Income Tax APPELLANT

Vs

Jay Engineering Works Ltd. RESPONDENT

Date of Decision : 09-03-1998

Acts Referred:
Income Tax Act, 1961 — Section 254, 35B

Citation : (1998) 233 ITR 433

Hon'ble Judges : R.C. Lahoti, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : S.K. Aggarwal, for the Appellant; R.D. Jolly, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, arising out of the assessment year 1969-70 and made at the instance of the Revenue seeking the opinion of the High Court on the following questions of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in directing the Income Tax Officer to admit the assessor?s claim for deduction in respect of the expenses of Rs. 15,03,927 u/s 35B and to decide the issue on the merits ?"

2. The dispute is about the entitlement of the petitioner to weighted deduction on the expenditure of Rs. 13,03,927 u/s 35B(1)(b). The plea was not specifically raised before the Assessing Officer but was raised, for the first time, before the Appellate Assistant Commissioner in appeal. The Appellate Assistant Commissioner did not admit the claim. In a further appeal to the Tribunal by the assessee, the Tribunal has admitted the plea but directed the Income Tax Officer to consider the assessor?s claim and decide the same.

3. No fault can be found with the order of the Tribunal. In fact the approach adopted by the Tribunal finds support from two decisions of the Supreme Court in Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., and Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd.,

Ludhiana, .

4. In our opinion, the Commissioner of Income Tax (Appeals) has jurisdiction to admit a plea raised by the assessed before him. The Income Tax Appellate Tribunal formed an opinion that the plea, though available in law to the assessee, required an adjudication on facts by affording the parties an additional opportunity of making available the relevant material whereupon the plea could be gone into.

5. The question is, Therefore, answered in the affirmative, i.e., in favor of the assessed and against the Revenue.