(1998) 09 MAD CK 0171

In the Madras High Court

Case No : Tax Case No. 1742 of 1986 (Reference No. 1175 of 1986)

Commissioner of Income Tax APPELLANT

Vs

Jayant Patel RESPONDENT

Date of Decision : 21-09-1998

Acts Referred:

Income Tax Act, 1961 — Section 80J, 80J(1), 80J(6A)

Citation : (2001) 248 ITR 199

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : R. Sivaraman, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha Babu, J.—Section 80J(6A) of the Income Tax Act, 1961, requires the audit report to be furnished along with the return. The Tribunal has held that the requirement is directory and not mandatory and that production of the audit report before the appellate authority was sufficient compliance with the requirements of the section. The Tribunal has directed the Commissioner to consider the audit report that has been filed by the assessee before him and decide the claim u/s 80J of the Act on the merits.

2. It is contended by counsel for the Revenue that this order is untenable as the audit report had not been enclosed with the return and had in fact, been filed after the assessment before the appellate authority. Counsel relied on the decision of the Punjab and Haryana High Court in the case of Commissioner of Income Tax Vs. Jaideep Industries, to contend that the requirement of the section is mandatory.

3. This contention of the Revenue is wholly untenable. The Gujarat High Court in the case of Commissioner of Income Tax Vs. Gujarat Oil and Allied Industries, considered Section 80J of the Act and held that the stage which is relevant for considering the merits of the claim of the party is the stage when the assessing authority sits down to assess the income for the purpose of computing Income

Tax after framing appropriate assessment and it is at that stage that the requirements of Section 80J(1) read with Sub-section (6A) thereof can be taken into consideration. The court also held that the main purpose and object of Section 80J(1) is to give incentive and development benefit to the new industries covered by the provisions of the Act and, consequently, while considering the provision, care has to be taken to see that the relevant purpose underlying Section 80J is augmented and fortified and not frustrated by the construction put upon the said provision.

4. It is no doubt true that in the case before the Gujarat High Court, the assessee had filed the audit report before the assessment came to be made and in this case, the audit report was produced only before the appellate authority. That fact, however, does not make any difference in so far as the purpose and object of that section are concerned and the manner in which they are to be advanced. The appellate authority under the Act has also the powers of the original authority. It is open to the appellate authority to direct the Income Tax Officer to receive the audit report or to direct him to consider the audit report filed before the appellate authority on the merits or to consider the report himself. The appellate authority, therefore, ought to have considered the report on the merits.

5. We answer the question referred to us, namely, "whether the Tribunal was correct in law in holding that Section 80J(6A) is directory and not mandatory and hence the assesses is eligible for relief u/s 80J even though the audit report was not filed along with the return of income as required u/s 80J(6A) ?"

6. in favour of the assessee and against the Revenue.

