(1998) 09 MAD CK 0006

In the Madras High Court

Case No : Tax Case No. 1742 of 1986 21 September, 1998 A. Y. 1979-80

COMMISSIONER OF INCOME TAX APPELLANT

Vs

JAYANT PATEL RESPONDENT

Date of Decision : 21-09-1998

Acts Referred:

Citation : (2000) 163 CTR 367

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

Bench : Full Bench

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

Judgement

R. Jayasimha Babu, J:

Section 80J(6A) of the Income Tax Act requires the audit report to be furnished along with the return. The Tribunal has held that requirement is

directory any not mandatory and that production of audit report before the appellate authority was sufficient compliance with the requirements of

section. The Tribunal has directed the Commissioner (Appeals) 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 merits.

2. It is contended by counsel for 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 & Haryana High Court in the case of CIT v.

Jaideep Industries (1989) to content 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 income for the purpose of computing Income Tax after framing appropriate assessment

and it is at that stage that the requirements of section 80J(I0 read with 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 appellant 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 merits or to consider the report himself. The appellate authority, therefore,

ought to have considered the report on merits.

5. We answer the question referred to us, namely, ""Whether the Tribunal was correct in law in holding that section 80J(6A) are directory and not

mandatory and hence the assessee 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)"" in favour of the assessee and against the revenue.

