

**(1992) 03 DEL CK 0036**  
**In the Delhi High Court**  
**Case No : ITC No. 65 of 1991**

Commissioner of Income Tax

APPELLANT

Vs

J.K. Synthetics Ltd.

RESPONDENT

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**Date of Decision :** 09-03-1992

**Acts Referred:**

**Citation :** (1992) 03 DEL CK 0036

**Hon'ble Judges :** S. Duggal, J;B.N. Kirpal, J

**Bench :** Division Bench

**Advocate :** Deokinandan, Adv K.M.L. Majele, for the Appellant;

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## Judgement

The Court

1. The petitioner seeks reference of the following questions :

"(1) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that cash allowance could not be considered as part of perquisite in the computation of disallowance under s. 40 of the IT Act ?

(2) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that the assessed was entitled to deduction towards provisions of excise duty created at Rs. 9,52,908 ?

(3) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that retainership fee at Rs. 1,53,300 could not be considered for disallowance under s. 80 of the IT Act ?"

(4) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that the assessed was entitled to deduction under s. 80 of the IT Act in respect of Acrylic Unit and Cement Unit 2 ?

(5) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that expenses on presentation articles at Rs. 70,160 could not be disallowed under r. 6B of IT Rules ?

(6) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that expenses of Rs. 1,41,935 on presentation articles debited in sale promotion account could not be disallowed under r. 6B of the IT Rules ?

(7) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that expenses of Rs. 43,420 on traveling of personal assistant of the President of the Company were incurred wholly and exclusively for the purposes of the business, even though no evidence in support thereof was available ?

(8) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that expenses of Rs. 1,14,785 in respect of traveling by wives relatives of top executives were normal business expenses incurred wholly and exclusively for the purpose of business ? (9) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that traveling expenses of Rs. 70,494 were business expenses incurred wholly and exclusively for the purpose of business ?

(10) Whether on the facts and circumstances of the case, the ITAT was correct in law in confirming the directions of CIT(A) prescribing the method of computation of deduction under s. 80 of the IT Act in respect of Cement and Acrylic Units ?

(11) Whether on the facts and circumstances of the case, the ITAT was correct in law in holding that expenses of Rs. 6,35,754 on aircraft were business expenses incurred wholly and exclusively for the purposes of business, even though no evidence in support thereof was produced by the assessed ?"

2. As regards question No. 1, it is contended by the learned counsel for the respondent that in the respondent's own cases for earlier years this Court had not called for this question on the Department's applications under s. 256(2) relating to the asst. yrs. 1976-77, 1977-78 and 1978-79. He draws our attention to Commissioner of Income Tax Vs. J.K. Synthetics Ltd. (No. 2), . We, however, find that while deciding the earlier cases of the assessed a decision of this Court in Commissioner of Income Tax Vs. Jay Engineering Works Ltd., was called for by a Division Bench of this Court in the case of CIT vs. Jay Engg. Works (supra). Following the said decision we have recently issued mandamus under s. 256(2) in a number of cases including ITC 116/89 on 29th November, 1990. As the question involves the interpretation of s. 40, we, Therefore, direct the Tribunal to state the case and refer the same to this Court.

3. As regards question No. 2, a similar question was referred by the Tribunal itself under s. 256(1) for earlier years, in the case of the respondent and this fact is noticed in Commissioner of Income Tax Vs. J.K. Synthetics Ltd. (No. 2), . Following the same we direct the Tribunal to refer the second question as well.

4. As regards question No. 3, a similar question has been called for by this Court in ITC 74/88 on 24th July, 1990 and ITC 57/91 (CIT vs. J. K. Synthetics Ltd.) on 3rd December, 1991. Following the said decisions we direct the Tribunal to refer

the said decisions we direct the Tribunal to refer the said question as well.

5. As regards question No. 4, a similar question was not called for as is evident from our order reported as Commissioner of Income Tax Vs. J.K. Synthetics Ltd. (No. 1), . We, Therefore, decline to call for this question.

6. Question Nos. 5 & 6 are similar. In ITC 91/90 decided on 21st March, 1991 (Chinar Exports P. Ltd. vs. CIT) similar question were called for under s. 256(2). Following the said decision we direct the Tribunal to refer questions Nos. 5 and 6 as well.

7. As regards question No. 7, a similar question was not called for by this Court in the assessed's case in Commissioner of Income Tax Vs. J.K. Synthetics Ltd. (No. 2), and also ITC 134/88 (CIT vs. J. K. Synthetics Ltd.). Following the same we reject the request for calling for reference of this question.

8. As regard question No. 8, we find that before the Tribunal two appeals had been filed, one by the Department and the other by the assessed. With regard to the decision on the assessed's appeal, the Department had earlier come up with an application under s. 356(2) being ITC 57/91. This question was called for by this Court and, Therefore, the question of our directing the Tribunal to refer this question again does not arise.

9. As regards question No. 9 the position is similar to question No. 8 except that the Department in ITC 57/91 had sought reference of this question but the reference was not called for. Therefore, this question cannot be called for.

10. As regards question No. 10, in view of the decision of the Supreme Court in the case of Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, answer to this question has become academic.

11. As far as question No. 11 is concerned in our opinion the same is a question of law. We, Therefore, direct the Tribunal to refer this question.

12. From the aforesaid it will follow that the Tribunal is directed to state the aforesaid question Nos. 1, 2, 3, 5, 6 and 11 to this Court.

13. There will be no order as to costs.