(1989) 08 AHC CK 0034

In the Allahabad High Court

Case No : Income-tax Reference No. 27 of 1981

Commissioner of Income Tax — APPELLANT

Vs

Khattar Cold Storage — RESPONDENT

Date of Decision : 09-08-1989

Acts Referred:
Income Tax Act, 1961 — Section 80J

Citation : (1990) 181 ITR 229

Hon'ble Judges : K.C. Agrawal, Acting C.J.;R.K. Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.C. Agrawal, Actg. C.J.

1. The Income Tax Appellate Tribunal has referred the following question u/s 256(2) of the Income Tax Act for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the words ''Capital employed'' used in Section 80J of the Income Tax Act, 1961, would include borrowed money and that such borrowed money could not be deducted under Rule 19A(3) of the Income Tax Rules, 1962, from the value of the assets computed in accordance with Rule 19A(2) of the Income Tax Rules, 1962?"

2. Relying on a decision of this court in Kota Box Mfg. Co. Vs. Income Tax Officer and Others, , the Income Tax Appellate Tribunal allowed the appeal in favour of the assessee and remanded the case to the Assistant Commissioner (Judicial) for fresh consideration, holding that borrowed money was not liable to be excluded in computing the capital employed. This decision of the Allahabad High Court has been set aside by the Supreme Court in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, . The view taken by the Supreme Court is that borrowed capital would have to be excluded from the capital employed by the assessee". That being so, this reference is answered in favour of the Department

and against the assessee by taking the view that borrowed capital could not be included for considering the capital employed u/s 80J of the Act.

3. We answer the reference in the negative, in favour of the Department and against the assessee.