(2004) 11 AHC CK 0059

In the Allahabad High Court

Case No : IT Reference No. 136 of 1987 5 November 2004

Commissioner of Income Tax APPELLANT

Vs

Kraft Palace RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:
Income Tax Act, 1961 — Section 256, 35B

Citation : (2005) 145 TAXMAN 209

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, for the Revenue Shambhoo Chopra, for the Assessee, for the Appellant;

Judgement

1. The Income Tax Appellate Tribunal, Delhi has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as the Act, for opinion to this Court.

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has come to a correct legal conclusion in holding that the assessee firm is entitled to weighted deduction in respect of expenditure incurred in India which is attributable to the sales made by the firm to the foreign tourists at the counter in Agra?"

2. Briefly stated the facts giving rise to the present reference are as follows:

The reference relates to the assessment year 1979-80. The respondent/ assessee is a registered firm and enjoys income from purchase and sale of items made of marbles and clothes mostly to the foreign tourists during assessment years in question. It claimed weighted deduction u/s 35B of the Act in respect of sales made by it to foreign tourists at its counter/ showroom against foreign exchange. The claim was not accepted by the Income Tax Officer which was upheld by the Commissioner, Income Tax (Appeals). However, the Tribunal, has accepted the claim and directed allowance of weighted deduction u/s 35B in respect of the claim made by the respondent towards sales made to the foreign tourists at its counter/showroom.

3. We have heard Shri A.N. Mahajan, learned Standing counsel for the revenue. Shri Shambhu Chopra, learned counsel for the respondent/ assessee stated that he has no instructions in the matter.

4. It is well settled that the weighted deduction u/s 35B of the Act is admissible if the case falls under any of the Clauses of section 35B of the Act, as held by the Apex court in the case of Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., , this court in the case of Commissioner of Income Tax Vs. Ganeshi Lal and Sons, has held that weighted deduction u/s 35B of the Act is not admissible to the sales made within India. Recently in CIT v. Marble Emporium (IT Reference No. 119 of 1986, dated 1-11-2004), we have followed the aforesaid decision and have held that weighted deduction u/s 35B of the Act is not admissible to sales made to the foreign tourists in India.

5. Respectfully following the aforesaid decisions, we answer the aforesaid question referred to us in the negative i.e., in favour of the revenue and against the assessee. There will be no order as to costs.