(1990) 03 BOM CK 0105

In the Bombay High Court

Case No : Income-tax Application No. 56 of 1988

Commissioner of Income Tax APPELLANT

Vs

Morris Electronics Ltd. RESPONDENT

Date of Decision : 26-03-1990

Acts Referred:
Income Tax Act, 1961 — Section 35(1), 35(2)(ia), 80(J), 80J(1A)

Citation : (1990) 03 BOM CK 0105

Hon'ble Judges : T.D. Sugla, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, for the Appellant;

Judgement

T.D. Sugla, J.—The Department''s application requesting the Tribunal to refer the following two questions to this court as questions of law was rejected by the Tribunal on the ground that no referable questions of law arose out of its order :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assets under erection are entitled for relief u/s 80J of the Income Tax Act, 1961 ?

2. Whether, on the facts and circumstances of the case and in law, the Tribunal was right in holding that the assets used for scientific research were used for the purpose of the assessee''s business and that, consequently, the cost of such scientific research is to be included for computing the capital employed in the business for the purpose of section 80J of the Act ?"

2. We find that the first question is covered by the decision of our court in the case of Commissioner of Income Tax, Bombay City-I Vs. Alcock Ashdown and Co. Ltd., . No purpose is, thus, going to be served in directing the Tribunal to refer this question as a question of law to this court.

3. The Department''s case appears to be that the assets used for scientific research are not as such used for the business of the industrial undertaking and

that the entire cost of such assets was allowed as deduction u/s 35(2)(ia) of the Income Tax Act, 1961. In our judgment, both the contentions are untenable on the face of it. Deduction u/s 35(2)(ia) is, admitted, available in view of section 35(1)(iv) on the scientific research assets relating to the business carried on by the assessee. The requirement of section 80J is not that the assets must be used for the business of the industrial undertaking as such. The requirement is that such assets should form part of the capital employed in the industrial undertaking. The scientific research assets relating to the business of the assessee obviously form part of the capital employed in the industrial undertaking.

4. The second contention that hundred per cent. deduction was allowed u/s 35(2)(ia) and, therefore, the value of the assets could not have been included in the capital employed as assets is, in our view, equally fallacious. It is to be borne in mind that the capital employed in the industrial undertaking for the purpose of section 80J is to be computed under rule 19A or section 80J(1A). The provision is that, in the case of assets entitled to depreciation, their written down value and in the case of assets acquired by purchase and not entitled to depreciation, their cost of acquisition should be treated as the value of the assets. There is, admittedly, no provision for not including the value of scientific research assets in respect of which expenditure was allowed in full u/s 35(1)(iv) read with section 35(2)(ia). The second question is, thus, also not referable as a question of law.

5. In the circumstances, the rule is discharged.

6. No order as to costs.