(1986) 02 DEL CK 0030

In the Delhi High Court

Case No : Income Tax Ref. No. 7 of 1982

Commissioner of Income Tax — APPELLANT

Vs

M.R. Gupta Industries — RESPONDENT

Date of Decision : 25-02-1986

Acts Referred:

Citation : (1986) 02 DEL CK 0030

Hon'ble Judges : T.P.S Chawla, J;J.D. Jain, J

Bench : Division Bench

Judgement

T.P.S. Chawla, J.—This is a reference made by the ITAT at the instance of the CIT.

The following two questions have been referred for decision by this Court :

"1. Whether, on the facts and in the circumstances of the case, Tribunal is correct in law in holding that for computing capital employed, the borrowed capital should also be taken into account for the purpose of s. 80J of IT Act, 1961 ?

2. Whether the Tribunal was correct in law in ignoring r. 19A(3) of IT Rules, 1962, in connection with the computation of capital employed for the purpose of s. 80J of the IT Act, 1961 ?" Previously, there was a conflict of view amongst the High Courts as to the question whether borrowed capital should or should not be included in determining the ''capital employed'' for purposes of s. 80J of the IT Act, 1961. However, the question has been set at rest by the Supreme Court in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, . In that case, the Supreme Court has held that borrowed capital is not to be included for purposes of determining the amount of ''capital employed'' while granting the deduction under s. 80J. It has, also been held that r. 19A of the IT Rules is not unconstitutional, from which it follows that there is no inconsistency between that rule and s. 80J. We answer both the questions referred by the Tribunal in the negative.

3. Having regard to all the circumstances of the case, we make no order as to

costs.

