
(2004) 02 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : ITC No. 100 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Munak Engineers (P) Ltd.

RESPONDENT

Date of Decision : 05-02-2004

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 80I

Citation : (2004) 190 CTR 403 : (2004) 271 ITR 361

Hon'ble Judges : N.K. Sud, J;J.S. Narang, J

Bench : Division Bench

Judgement

N.K. Sud, J.—Revenue has filed this petition u/s 256(2) of the IT Act, 1961 (for short "the Act") seeking a direction to the Tribunal, Chandigarh Bench, (for short the Tribunal"), to state the case and refer the following question of law arising out of its order dt. 11th June, 1991 for the opinion of this Court :

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the activity of construction of building, etc. is an industrial undertaking for the purpose of Section 80-I of the IT Act, 1961."

2. The assessee is a company engaged in construction activities. Its claim for deduction u/s 80-I of the Act for asst. yr. 1985-86 was disallowed by the ITO on the ground that the assessee was not an industrial undertaking carrying on the business of manufacture or production of any article or thing which was a necessary pre-requisite for claiming the said deduction. On appeal, the CIT(A), Chandigarh [for short the "CIT(A)"] vide order dt. 3rd Oct., 1989 accepted the claim of the assessee that it was an industrial undertaking and thus entitled to deduction u/s 80-I of the Act. The Revenue preferred an appeal before the Tribunal against the order of the CIT(A) which was dismissed vide order dt. 11th June, 1991. The Tribunal also rejected Revenue's application u/s 256(1) of the Act seeking reference of the above mentioned question of law for the opinion of this Court vide its order dt. 19th Nov., 1992.

3. The provisions of Section 80-I are analogous to the provisions contained in Section 80HH of the Act which came up for interpretation by the apex Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, . The apex Court held that the construction of a dam or bridge or a building as a whole did not amount to manufacture or production of any article or thing. This view was reaffirmed by the apex Court in Builders Associations of India Vs. Union of India and others, . Thus the finding of the Tribunal on this issue is clearly contrary to the law laid down by the apex Court in N.C. Budhiraja's case (supra). Thus, we are satisfied that the question of law proposed by the Revenue does arise out of the order of the Tribunal.

4. Normally we would have directed the Tribunal to draw up a statement of the case and refer the question of law for the opinion of this Court. However, since we are of the view that the facts contained in the order of the Tribunal are enough for answering the question, we do not deem it necessary to call for a statement of the case which, in our view, would be an exercise in futility. For this purpose, we derive support from the decision of the Delhi High Court in COMMISSIONER OF Income Tax Vs. MAHARISHI VED VIGYAN VISHWA VIDYA PEETHAM., . While dissenting from the decision of the Kerala High Court in COMMISSIONER OF Income Tax Vs. WANDOOR JUPITER CHITS (P.) LTD. (IN LIQUIDATION)., , their Lordships observed as under :

"We do not agree with the learned Judges of the Kerala High Court holding themselves to be so much bound by the procedural aspect of Section 256(2). In our opinion, the administration of justice has to keep pace with the march of times. The nature of procedure prescribed by a statute--whether it is mandatory or directory merely--has to be judged by reference to the purpose sought to be achieved. We are very clear in our mind that when the facts of the case are either not disputed or cannot be disputed and as contained in the order of the Tribunal would be enough to enable the High Court to answer the question of law posed before it, it is not necessary for the High Court to call for a statement of case as, in our opinion, that would be an exercise in futility. The High Court can straightway proceed to answer the question."

5. We, therefore, straightway proceed to answer the question. In view of the law laid down by the apex Court in N. C. Budhiraja and Builders Association of India's cases (supra), we hold that the assessee, which is engaged in the business of construction, is not entitled to deduction u/s 80-I of the Act. Accordingly, the question is answered in the negative, i.e., in favour of the Revenue and against the assessee. Since no one has put in appearance for the assessee despite service, there shall be no order as to costs.