(1996) 03 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 130 of 1992

Commissioner of Income Tax APPELLANT

Vs

Oswal Data Processors RESPONDENT

Date of Decision : 13-03-1996

Acts Referred:
Income Tax Act, 1961 — Section 32A, 80J

Citation : (1997) 223 ITR 735

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; S.S. Samvatsar, for the Respondent

Judgement

N.K. Jain, J.—The Income Tax Appellate Tribunal, Indore Bench, Indore, has u/s 256(1) of the Income Tax Act, 1961 (for short, "the Act"), referred the following questions said to be of law arising out of its order dated May 10, 1991, in I. T. A. No. 440/(Ind) of 1986 :

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the business of data processing with the help of computers is an industrial undertaking entitled to deduction u/s 80J ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the computer machines do not constitute office appliance and are entitled to investment allowance ?"

2. The facts material for the purpose of this reference are these : The year of assessment involved is 1982-83, previous ending June 30, 1981. The assessee is a registered firm carrying business of data processing with the help of computers. It claimed investment allowance on computers and also the deduction u/s 80J. The assessing authority, vide its order dated July 27, 1985 (annexure "A"), disallowed the claims holding that the work of data processing is not an industrial activity. On appeal, the Commissioner of Income Tax (Appeals) allowed both the aforesaid claims of the assessee, vide its order dated February

19, 1980 (annexure "B"). The Department then came in appeal before the Tribunal which also endorsed the order of the Commissioner of Income Tax (Appeals). The order of the Tribunal is annexure "C".

3. Dissatisfied with the decision of the Tribunal, the Department moved an application u/s 256(1) whereupon the Tribunal has referred the abovenoted questions for the opinion of this court.

4. We have heard Shri D.D. Vyas, learned counsel for the applicant-Department, and Shri S.S. Samvatsar, learned counsel for the non-applicant/assessee.

5. We may usefully refer here to the decision of the Government of India communicated by them to the Director, Small Industries Service Institute, Ministry of Industry, Government of India, Indore, which reads as follows (vide letter dated September 8, 1981, annexure "B-I") :

" In view of the sophisticated and specialised type of operations involved in software servicing and data processing, it has been decided to recognise this as an industrial activity. As such small-scale units engaged in this activity are eligible for facilities and concessions available to the small-scale industries under the Small Industries Development Programme. Units engaged in software servicing and data processing can, therefore, be registered as a small-scale industry provided they fulfil the necessary conditions of investment on" machinery and equipment, etc."

6. The learned Commissioner has dealt with the questions at length and come to the conclusion that data processing is an industrial activity and the assessee-firm was, therefore, entitled to investment allowance on the computers installed by it and was also entitled to deductions u/s 80J. The concurrent view taken by the Commissioner and the Tribunal finds support from the decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat Vs. Ajay Printery Private Ltd., . Nothing substantial could be demonstrated before us so as to take a different view in the matter.

7. We thus answer both the questions in the affirmative, i.e., in favour of the assessee and against the Department.

8. This miscellaneous civil case thus stand disposed of in terms indicated above but without any order as to costs. Counsel''s fee is, however, fixed at Rs. 750, for each side, if certified.

9. A copy of this order be transmitted to the Tribunal immediately.

