(1995) 05 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Case No. 146 of 1994

Commissioner of Income Tax APPELLANT

Vs

Punjab Concast Steels Ltd. RESPONDENT

Date of Decision : 12-05-1995

Acts Referred:

Companies Act, 1956 — Section 205
Income Tax Act, 1961 — Section 115J, 256, 80I, 80I(8)

Citation : (1996) 217 ITR 206

Hon'ble Judges : S.S. Sudhalkar, J;R.P. Sethi, J

Bench : Division Bench

Advocate : R.P. Sawhney and Aaradhana Sawhney, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

Judgement

1. In Income Tax Appeal No. 1845 of 1992, the Revenue wanted the following additional question of law to be referred to this court in terms of Sub-section (2) of Section 256 of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that for the computation of income u/s 115J, depreciation is to be allowed in accordance with the Income Tax Rules and not as per the provisions of schedule XIV of the Companies Act ?"

and in I.T.A. No. 1893 of 1992, a prayer was made to refer the following question also to this court for opinion in terms of the provisions of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in law in holding that the provisions of Section 80-I(8) are not applicable in this case ?"

2. After hearing learned counsel for the parties and perusing the record, we agree with the finding of the Income Tax Tribunal that the applicability of Section 115J of the Income Tax Act in the instant case was of only academic importance

and not likely to affect the merits of the case. The assessee was found to have debited in its books of account depreciation as per Section 205 of the Companies Act and claimed depreciation as per the Income Tax Rules. The Tribunal was, therefore, justified in rejecting the application for reference so far as this question of law was concerned and had rightly relied upon the judgment of the Supreme Court in Mathura Prasad Vs. Commissioner of Income Tax, Uttar Pradesh, .

3. So far as the question regarding the applicability of Section 80-I(8) of the Income Tax Act is concerned, we do not find ourselves in agreement with the Tribunal and are of the opinion that in view of the rival claims of the parties and in the absence of any judgment of the jurisdictional court or the Supreme Court on the point, the prayer of the Revenue for the question of law sought to be referred by the Revenue could not be declined. Whether or not the provisions of Section 80-I(8) of the Income Tax Act were applicable is a question of law required to be determined on the merits of the case. The order of the Appellate Tribunal in so far as it has declined to make a reference of the aforesaid question to this court is liable to be set aside.

4. Under the circumstances, this petition is disposed of with a direction to the Tribunal to refer the following question of law to this court in terms of Sub-section (2) of Section 256 of the Income Tax Act :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified in law in holding that the provisions of Section 80-I(8) are not applicable in this case ?"