(1995) 11 RAJ CK 0058

In the Rajasthan High Court

Case No : .I.T.R. No. 22 of 1992

Commissioner of Income Tax — APPELLANT

Vs

Rajendra Textiles — RESPONDENT

Date of Decision : 20-11-1995

Acts Referred:
Income Tax Act, 1961 — Section 80HH

Citation : (1997) 225 ITR 516

Hon'ble Judges : B.R. Arora, J;B.J. Shethna, J

Bench : Division Bench

Advocate : S. Bhandawat, for the Appellant;

Judgement

B.R. Arora, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, for the assessment years 1985-86, 1986-87, at the instance of the Revenue, has referred the following question of law for the opinion of the High Court u/s 256(1) of the Act :

" Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that while calculating the amount of deduction u/s 80HH of the Income Tax Act, 1961, depreciation and investment allowance is required to the ignored ?"

2. The identical question came up for consideration before the Division Bench of this court in D.B. Income Tax Reference No. 1 of 1991, Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, and the Division Bench of this court answered the question as follows (at page 74) :

" If we read Section 80HH with Section 80AB of the Act then it is very much clear that for the purpose of determination of the relief u/s 80HH of the Act, the gross total income of the assessee has to be worked out after deducting unabsorbed losses and unabsorbed depreciation and the income eligible for deduction u/s 80HH will be the net income as computed in accordance with the provisions of the Act and not the gross income. "

3. For the reasons given in our judgment in Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, we arc of the opinion that while calculating the amount of deduction u/s 80HH of the Income Tax Act the depreciation and investment allowance are required to be deducted and it is only the net income ascertained under the Act that shall be deemed to be the amount entitled for relief u/s 80HH of the Act. Consequently, the reference is answered in favour of the Revenue and against the assessee.