(2002) 09 KL CK 0004

In the High Court Of Kerala

Case No : IT Reference No. 166 of 1998 24 September 2002

Commissioner of Income Tax	APPELLANT
Vs	
Rajini Ice and Cold Storage	RESPONDENT

Date of Decision : 24-09-2002

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

Citation : (2003) 127 TAXMAN 166

Hon'ble Judges : G. Sivarajan, J;C.N. Ramachandran Nair, J

Bench : Full Bench

Advocate : P.K.R. MenonGeorge K. George, for the Assessee V.S. Jayakumar, for the Assessee, for the Appellant;

Judgement

G. Sivarajan, J.

The following two questions of law are referred for decision at the instance of the department :

"1. Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction u/s 80HHC of the Income Tax Act, 1961, in respect of exports (not done directly by the assessee) done through export house?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and on facts in holding :

(i) the assessee was not an agent of the export house?

(ii) in substance the export house has not purchased the goods?

(iii) export process has been actually done by the assessee and not the export house?

(iv) both are entitled to the benefits ?

2. The Tribunal has decided the issue in favour of the assessee following its earlier decision in the case of Sea Pearl Industries (IT Appeal No. 37 (Coch) of

1987). The learned standing counsel appearing for the revenue submits that the decision in Sea Pearl Industries case (supra) went upto the Supreme Court and the Supreme Court has in Sea Pearl Industries and Others etc Vs. Commissioner of Income Tax, Cochin, , decided the question against the assessee. Though notice in the IT reference was served on the respondent-assessee, there is no appearance for the respondent. We have perused the decision of the Supreme Court. The question before the Supreme Court was as to whether the appellant was entitled to the benefit of deduction u/s 80HHC of the Income Tax Act in respect of export made through the export house. The Supreme Court noted that the Appellate Tribunal has held that the real exporter was the appellant and the appellant could claim the benefit of section 80HHC even though such benefit was received by the export house and that the High Court has reversed the said finding. The Supreme Court has now upheld the decision of the High Court. In view of the decision of the Supreme Court the respondent assessee is not entitled to the benefit of section 80HHC of the Act in respect of the export made through the export house.

Respectfully following the decision of the Supreme Court, we answer the questions of law referred by the Tribunal and specified in paragraph 1 above in favour of the revenue and against the assessee.

The Income Tax Referred Case is disposed of as above.

