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(2008) 02 GUJ CK 0125

In the Gujarat High Court

Commissioner of Income Tax — APPELLANT

Vs

Startronics Enterprises (P) Ltd. — RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:
Income Tax Act, 1961 — Section 256, 263, 32A, 80I

Citation : (2008) 02 GUJ CK 0125

Hon'ble Judges : Z.K. Saiyed, J;D.A. Mehta, J

Bench : Division Bench

Judgement

D.A. Mehta, J.—The following questions of law have been referred for the three assessment years by Tribunal, Ahmedabad Bench ''A'' u/s 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner.

Assessment year 1987-88:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the investment allowance is allowable on computers ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that data processing and print out would certainly be a thing produced by the assessee and thereby the assessee company is entitled to deduction u/s 32A of the Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessing officer has no jurisdiction to dwell upon and consider a fresh claim u/s 80-I, when the requirements for allowing deduction under Sections 80-I and u/s 32A are almost the same ?

For Assessment year. 1988-89:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessing officer has no jurisdiction to dwell upon and consider a fresh claim u/s 80-I, when the requirements for allowing deduction under Sections 80-I and 32A are almost the same ?

For Assessment year 1989-90:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the investment allowance is allowable on computers ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that data processing and print Out would certainly be a thing produced by the assessee and thereby the assessee is entitled to deduction u/s 32A of the Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessing officer has no jurisdiction to dwell upon and consider a fresh claim u/s 80-I, when the requirements for allowing deduction under Sections 80-I and 32A are almost the same?

The assessment years are 1987-88, 1988-89 and 1989-90.

2. Heard Mr. M.R. Bhatt, learned senior Central Government standing counsel for the applicant revenue. Insofar as the respondent assessee is concerned, though the board shows that notice is unserved, considering the fact that the issue is being decided in favour of the assessee the court has taken up the reference for hearing and final disposal.

3. Though the Tribunal has referred questions for the three assessment years as noted hereinbefore insofar as assessment year 1987-88 is concerned, the facts reveal that the appeal of the revenue was allowed in entirety by the Tribunal for the reasons recorded in para No. 5 of the order dated 31-3-1987 and hence the three questions referred at the instance of the Commissioner for assessment year 1987-88 do not arise out of the impugned order of Tribunal. Hence, the said questions for assessment year 1987-88 are returned unanswered.''

4. Insofar as the only question for assessment year 1988-89 and question No. 3 for assessment year 1989-90 is concerned the issue stands concluded by a decision of this Court in the case of Commissioner of Income Tax Vs. D.N. Dosani, whereunder this Court has come to the conclusion that pursuant to an order u/s 263 of the Act the assessing officer cannot consider any other item while giving effect to the order u/s 263 of the Act. Accordingly question for assessment year 1988-89 and question No. 3 for assessment year 1989-90 are answered in the affirmative i.e. in favour of the assessee and against the revenue.

5. Insofar as question Nos. 1 and 2 for assessment year 1989-90 are concerned, the issue stands concluded in assessee''s favour by judgment rendered in assessee''s own case in the case of Commissioner of Income Tax Vs. Statronics and Enterprises (P) Ltd., wherein it is held that investment allowance is allowable on computers. Hence, both the questions are answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. The reference stands disposed of accordingly with no order as to costs.

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