(2002) 02 RAJ CK 0156

In the Rajasthan High Court

Case No : Income Tax Reference Application No. 11 of 1991

Commissioner of Income Tax APPELLANT

Vs

Sunil Synchem Ltd. RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:
Income Tax Act, 1961 — Section 256, 32

Citation : (2004) 268 ITR 382

Hon'ble Judges : S.K. Garg, J;N.N. Mathur, J

Bench : Division Bench

Advocate : R.B. Mathur, for the Appellant; J.K. Ranka, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard learned counsel for the parties.

2. This reference application u/s 256(2) of the Income Tax Act, 1961, (for short, "the Act"), at the instance of the Revenue is with respect to the assessment year 1977-78, seeking reference on a question of law from the order of the Income Tax Appellate Tribunal dated July 28, 1988. It appears that the respondent-assessee sought capitalisation of pre-operative expense of Rs. 10,99,538. The Income Tax Officer allowed the claim for a sum of Rs. 4,31,417 and disallowed it for a sum of Rs. 6,68,120. In the opinion of the Commissioner of Income Tax (Appeals), the assessee was entitled to depreciation of pre-operative expense, i.e., before the commencement of production. Accordingly, he allowed the claim. The order of the Commissioner of Income Tax (Appeals) was upheld by the Income Tax Appellate Tribunal.

3. It is contended by Mr. R. B. Mathur, learned counsel for the Department, that under the provisions of Section 32 of the Act depreciation is available only in respect of building, machinery, plant or furniture owned by the asses-see. It is also submitted that if the amount has been spent which is not liable to the cost of building, machinery, plant or furniture then no depreciation is allowable and it

raises a question of law. Learned counsel invited our attention to the provision of Section 32 wherein the word "tangible" has been used. On the other hand, Mr. J. K. Ranka learned counsel for the respondent-assessee, submits that no referable question of law arises, as the controversy is concluded by decision of the apex court in the case of Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, The word "tangible" as referred to by Mr. Mathur did not exist in the statute u/s 32 at the relevant time of the assessment year 1977-78. We have read the said judgment. The apex court in the case of Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, has proceeded on the basis of definition of "actual cost". In view of this it cannot be said that the controversy involved is concluded by the Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, . In our view a referable question of law arises in the instant reference application. The Income Tax Appellate Tribunal erroneously rejected the application to make a reference to this court.

4. Consequently, we allow this application and direct the Income Tax Appellate Tribunal, Jaipur, to state the statement of case and refer the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that except the staff selection expenses of Rs. 13,124 all the other pre-operative expenses were to be capitalised for the purposes of depreciation allowance ?"