(2004) 08 AHC CK 0113

In the Allahabad High Court

Case No : Income-tax Reference No. 155 of 1984

Commissioner of Income Tax APPELLANT

Vs

Vincast Engineering RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 263, 263(1), 80J

Citation : (2006) 280 ITR 385

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Govind Krishna, for the Appellant; None, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act" for opinion to this Court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in setting aside the order of the Commissioner of Income Tax passed u/s 263 of the Income Tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that since the event of retrospective amendment made in Section 80J had occurred after the framing of the assessment on February 13, 1980, the Commissioner of Income Tax could not validly assume jurisdiction u/s 263 of the Act ?

2. Briefly stated the facts giving rise to the present reference are as follows :

The assessee is a firm and the assessment year is 1977-78, the relevant previous year ending on March 31, 1977. The original assessment was completed on February 13, 1980, on a net loss of Rs. 1,16,473. The Commissioner of Income Tax, Lucknow, was of the opinion that the Income Tax Officer had wrongly taken the borrowed capital for working out the capital employed in the business of the assessee. As such, he issued a notice u/s 263(1) of the Act and after hearing the assessee-firm set aside the assessment and directed the Income Tax Officer to recompute the allowance u/s 80J of the Act. The assessee preferred an appeal against the said order of the Commissioner of Income Tax, Lucknow. In disposing of this appeal, the Tribunal observed as follows :

... the amendments in the relevant provision of the section were made by the Finance (No. 2) Act, 1980, which came into force from August 21, 1980. It is no doubt true that by the said Finance Act the retrospective amendment was made in the relevant provisions of the Act. However, since this event had occurred after the framing of the assessment on February 13, 1980, we fail to appreciate how this could be considered by the Commissioner of Income Tax with a view to assume jurisdiction u/s 263 of the Act. The decision of the hon''ble Calcutta High Court in the case of Ganga Properties Vs. Income Tax Officer, clearly supports the stand taken by the assessee in this regard.

3. As a result the Tribunal allowed the appeal and set aside the order of the Commissioner of Income Tax made u/s 263 of the Act.

4. We have heard Sri Govind Krishna, learned Counsel for the Revenue. Nobody has put in appearance on behalf of the respondent-assessee.

5. Learned counsel for the Revenue submitted that as an amendment was made u/s 80J of the Act by the Finance (No. 2) Act, 1980, which came into force from August 21, 1980, but was retrospective in operation, the order of the assessing authority ought to have excluded the borrowed capital for working out the capital employed in the business of the respondent and the assessment order was erroneous and also prejudicial to the interests of the Revenue. He submitted that in view of the retrospective amendment it would be treated that for the assessment year in question, borrowed capital had to be excluded while working out the capital employed in a business u/s 80J of the Act and therefore the order passed by the Commissioner of Income Tax u/s 263 was perfectly justified. It is not in dispute that after the retrospective amendment the provisions of the statute exclude the borrowed capital from being taken into consideration for working out the capital employed u/s 80J of the Act. As a result of the retrospective amendment made in the aforesaid section the position under law would be that during the assessment year in question borrowed capital had to necessarily be excluded and the same has not to be taken into consideration while working out the capital employed. The order is therefore erroneous and prejudicial to the interests of the Revenue. Thus the Commissioner of Income Tax was justified in setting aside the order of the assessing authority in exercise of jurisdiction u/s 263 of the Act.

6. In view of the foregoing discussion we answer both the questions of law referred to us in the negative, i.e., in favour of the Revenue and against the assessee. There shall be no order as to costs.

