(1984) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : R.C. No. 247 of 1978

Commissioner of Income Tax APPELLANT

Vs

Warner Hindustan Ltd. RESPONDENT

Date of Decision : 17-03-1984

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

Citation : (1987) 165 ITR 403

Hon'ble Judges : Y.V. Anjaneyulu, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; M.J. Swamy, for the Respondent

Judgement

Y.V. Anjaneyulu J.

1. The following two questions are referred to this court u/s 256(1) of the Income Tax Act, 1961, for its opinion by the Income Tax Appellate Tribunal :

"1. Whether, on the acts and in the circumstances of the case, the appeal against the order of the Income Tax Officer giving effect to the directions given by the Appellate Assistant Commissioner is maintainable ?

2. Whether, on the facts and in the circumstances of the case, relief u/s 80J of the Income Tax Act, 1961, could be given for the entire period of 12 months notwithstanding the fact that the unit in question worked for a part of the year only ?"

2. Learned counsel for the Revenue fairly conceded that the first question is covered by a decision in the assessee''s case in Commissioner of Income Tax Vs. Warner Hindustan Ltd., in favour of the assessee. We accordingly answer the the question in the affirmative, i.e., in favour of the assessee and against the Department.

3. Regarding the second question, it may be mentioned that the dispute is

whether an assessee is entitled to claim deduction u/s 80J of the Income Tax Act when a new industrial undertaking did not function for the entire period of twelve months. In other words, the question is whether the deduction can be proportionately granted if the new industrial undertaking functioned only for a part of the year. We find that courts have uniformly taken the view that the deduction u/s 80J of the Income Tax Act is permissible regardless of the consideration whether the new industrial undertaking functions only for a part of the year or for the entire year. Once the new industrial undertaking functioned in any part of the accounting year relevant to the assessment year under consideration, then the assessee is entitled to claim the deduction fully. We may refer to the decisions in Commissioner of Income Tax, Tamil Nadu-I Vs. Simpson and Company, ; Commissioner of Income Tax Vs. Sanghi Beverages (Pvt.) Ltd., , Addl. Commissioner of Income Tax Vs. Dr. K.P. Karanth, (sic) and Commissioner of Income Tax, Karnataka-II Vs. Mysore Petro-chemical Ltd., , supporting above view. We are also informed that the Central Board of Direct Taxes has also since issued a circular bearing No. 378, dated March 3, 1984 (see Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, , affirming the above position as correct. In the above view, we answer the second question also in the affirmative, i.e., in favour of the assessee and against the Revenue. No costs.

