(1993) 09 BOM CK 0048

In the Bombay High Court

Case No : IT Ref. No. 156 of 1984

Commissioner of Income Tax APPELLANT

Vs

Westerwork Engineers Ltd. RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:
Income Tax Act, 1961 — Section 28, 40, 40A(5), 43(3)

Citation : (1993) 09 BOM CK 0048

Hon'ble Judges : D.R. Dhanuka, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Deokinandan, G.S. Jetly and P.S. Jetly, K.M.L. Majele, for the Appellant;

Judgement

Dr. B.P. Saraf, J.—By this reference under s. 256(1) of the IT Act, 1961, the Tribunal, has referred the following questions of law for opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the fees of Rs. 1,89,000 paid on the technical know-how in form of drawings and designs, under an agreement with M/s West''s (Manchester) Ltd. was allowable as revenue expenditure for asst. yr. 1976-77 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in considering the limits the provisions of s. 40(c) of the IT Act, 1961 would apply in the case of managing director employee instead of s. 40A(5) of the IT Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the technical know- how acquired in form of drawings and design under the agreement in 1970 constituted "plant" within the meaning of s. 43(3) of the IT Act, 1961 and that the assessee is entitled to the depreciation allowance therein in asst. yr. 1976-77 ?"

2. Learned counsel for the Revenue submits that the above questions are covered by decisions of this Court and the Supreme Court in favour of the

assessee.

Having regard to the above statement of the learned counsel for the Revenue, we answer the questions as follows :

Question No. 1 is covered by decision of the Supreme Court in Alembic Chemical Works Co. Ltd. vs . CIT : [1989]177ITR377(SC) and following the same, we answer the said question in the affirmative, i.e., in favour of the assessee and against the Revenue.

Question No. 2 is covered by decision of this Court in Commissioner of Income Tax Vs. Hico Products (P.) Ltd., and following the same, we answer the said question in the affirmative, i.e., in favour of the assessee and against the Revenue.

Question No. 3 is covered by decision of the Supreme Court in Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, and following the same, we answer the said question in the affirmative, i.e., in favour of the assessee and against the Revenue.

3. No order as to costs.