

(2000) 07 DEL CK 0131

In the Delhi High Court

Case No : Income-tax Reference No"s. 140 to 142 of 1978

Commissioner of Surtax

APPELLANT

Vs

Goetze (India) Ltd.

RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

Companies (Profits) Surtax Act, 1964 — Section 2(5), 2(8)
Companies (Profits) Surtax Rules, 1964 — Rule 4
Income Tax Act, 1961 — Section 80I, 80J

Citation : (2000) 246 ITR 602 : (2002) 120 TAXMAN 420

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : R.C. Pandey and Ajay Jha, for the Appellant; Gitanjali Mohan, for the Respondent

Judgement

Arijit Pasayat, C.J.—Since these three references involve identical questions, our order will govern each one of them.

2. On the basis of the applications filed by the Revenue u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), the Income Tax Appellate Tribunal, Delhi Bench-B ("the Tribunal" in short), has referred the following question, pertaining to the assessment years 1970-71, 1971-72 and 1972-73, for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the deduction of Rs. 3,34,711 in the assessment year 1970-71, Rs. 4,32,620 in the assessment year 1971-72 and of Rs. 3,62,910 in the assessment year 1972-73 u/s 80-I of the Income Tax Act, 1961, is deductible in the computation of the capital of the company under Rule 4 of the Second Schedule to the Companies (Profits) Surtax Act, 1964, for the said three assessment years ?"

3. Referring to a decision of the Karnataka High Court in *Second ITO v. Stumpp, Schuele and Somappa Pvt. Ltd*, [1977] 10 ITR 399 it was held by the Tribunal that the provisions contained in Rule 4 of the Second Schedule cannot be

interpreted and invoked relating to deductions in respect of the reliefs granted under Sections 80-I and 80J of the Act. It has not been disputed that the aforesaid decision of the Karnataka High Court has been affirmed by the apex court in *Second Income Tax Officer and Another Vs. Stumpp Schuele and Somappa (P) Ltd.*, . In view of the decision of the apex court, the answer to the question referred is in the affirmative, i.e., in favor of the assessed and against the Revenue.

4. The references are, accordingly, disposed of.