(2004) 07 AHC CK 0144

In the Allahabad High Court

Case No : IT Ref. No. 10 of 1984

Ram Prakash Agarwal (HUF) APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:
Income Tax Act, 1961 — Section 32A(2), 80HH, 80J

Citation : (2004) 191 CTR 272 : (2004) 141 TAXMAN 562

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

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant; A.N. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

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

1. "Whether, on the facts and the circumstances of the case, the Tribunal was right in law in holding that the assessee is not entitled for investment allowance u/s 32A(2)(b)(iii) of the IT Act, 1961 ?"

2. "Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the assessee is not entitled for the claim u/s 80J and u/s 80HH of the IT Act, 1961 ?"

3. "Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the cold storage is only engaged in processing of goods and not engaged in manufacturing or producing any goods ?"

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

"The assessment year involved is 1978-79, the accounting period ended on 31st March, 1978. The status of the assessee is HUF (smaller). The method of accounting employed as shown is mercantile and the assessment has been framed u/s 143(3) of the IT Act, 1961. The assessment order dt. 14th May, 1980, gives the following narration with reference to claim of the assessee made at Rs. 14,825 in lieu of investment allowance :

The assessee has further claimed investment allowance at Rs. 14,825 on the purchase of compressor. For the reasons discussed in my assessment order for the asst. yr. 1977-78, I disallow the same."

It is clarified here that in the assessment order, there is no discussion about the claim made by the assessee u/s 80HH of the Act.

The assessee being aggrieved, preferred an appeal before the AAC, Bareilly, who did not accept the plea.

In further appeal by the assessee, the Tribunal, upheld the findings of the lower authorities vis-a-vis claim of the assessee u/s 80HH of the Act and as also claim in lieu of investment allowance.

3. We have heard Shri Vikram Gulati, learned counsel for the applicant, and Shri A.N. Mahajan, learned counsel for the Revenue. It has been clearly stated by Shri Vikram Gulati that the question referred to is covered by the decision of the Hon''ble Supreme Court in the case of Delhi Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax, New Delhi, .

In the aforesaid case, the Hon''ble Supreme Court has held that in a cold storage, vegetable fruits and several other articles which require preservation by refrigeration are stored. While, as a result of long storage, scientific examination might indicate loss of moisture content that is not sufficient for holding that the stored articles are undergoing a process within the meaning of Section 2(7)(c) of the Finance Act, 1973, and, accordingly, cold storage was not industrial company. Thus, it is not entitled for investment allowance u/s 32A(2)(b)(iii) and Section 80J or 80HH of the Act.

Accordingly, we answer all the three questions of law in the affirmative, that is, in favour of the Revenue and against the assessee. However, the parties shall bear their own costs.