(1996) 01 KL CK 0051

In the High Court Of Kerala

Case No : Income-tax Reference No. 98 of 1989

Travancore Rayons Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-01-1996

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

Citation : (1997) 139 CTR 190 : (1996) 220 ITR 201

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair and Antony Dominic, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair, for the Respondent

Judgement

V.V. Kamat, J.—The following two questions are referred :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is not entitled to any relief u/s 80J of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in failing to consider the assessee''s claim that the Income Tax Officer should have allowed the full relief and was right in limiting the relief u/s 80J proportionately for a part of the year ?"

2. The assessee is a public limited company carrying on the business of manufacture and sale of yarn, cellulose film, etc. The year of assessment is 1971-72 and the original assessment order was passed on June 28, 1973. In that connection, the Income Tax Officer did not accept the claim of the assessee for deduction u/s 80J in respect of cellulose film plant No. 4, on the footing that the erection of the said plant was completed on June 28, 1970, and, therefore, consequently, it was not a new industrial unit, but was only in the nature of an expansion of an existing business. It is also recorded that the said plant functioned only for 184 days during the relevant previous year. This conclusion

stood set aside by the appellate authority--the Appellate Assistant Commissioner when he held that the assessee would be entitled to the deduction u/s 80J and directed reopening of the assessment u/s 147(b) of the Act. There was an appeal against the revised assessment wherein the appellate authority noticed the order of the Tribunal, dated January 18, 1977, arising out of the original assessment, to come across a finding that the cellulose film plant No. 4 was not a new undertaking, but was only in the nature of an expansion of an existing business. Naturally, the claim for deduction u/s 80J in respect thereof was rejected.

3. The Tribunal had already held by its earlier order dated January 18, 1977, as stated above to the effect that this is not a new industrial undertaking.

4. It is in this background in his characteristic fairness, learned counsel brought to our notice the earlier decision of this court in Commissioner of Income Tax Vs. Travancore Rayons Ltd. and Another, . Income Tax References Nos. 174 and 175 of 1980, dated November 6, 1985, in the matter of the same assessee. Going through the said judgment, we find that this also relates to cellulose film plant No. 4, in connection with which it is held that the claim for relief u/s 80J has been rightly rejected by the Department. This makes the contention a closed chapter for the assessee.

5. For the above reasons, question No. 1 gets answered in the affirmative--in favour of the Revenue and against the assessee. As a consequence, question No. 2 also gets answered in the affirmative -- in favour of the Revenue and against the assessee.

6. A copy of this judgment shall be caused to be sent under the seal of the court and the signature of the Registrar to the Income Tax Appellate Tribunal, Cochin Bench. Order accordingly.