

Cit Vs. Span International

Cit Vs. Span International

SooperKanoon Citation : sooperkanoon.com/492307

Court : Allahabad

Decided On : Jan-31-2003

Reported in : [2003]132TAXMAN28(All)

Appeal No. : IT Reference No. 44 of 1983 31 January 2003

Appellant : Cit

Respondent : Span International

Advocate for Pet/Ap. : B.B. Ahuja, *for the Respondent*

Judgement :

ORDER

M. Katju, J.

This is a reference under section 256(1) of the Income Tax Act, 1961 in which the following questions have been referred to us for our opinion :

'1. Whether, on the facts and in the circumstances of the case, the learned Tribunal was legally correct in holding that the order of the Income Tax Officer had got merged in the order of the Commissioner (Appeals) and, therefore, the Commissioner of Income Tax had no jurisdiction to revise that order ?

2. Whether, on the facts and in the circumstances of the case, the learned Tribunal was right in law in holding that even on merits, the assessee was entitled to

deduction under section 80HH of the Act ?'

2. The assessee is a firm and the relevant assessment year is 1976-77. For this year the Income Tax Officer allowed deduction under section 80HH of the Act and held that all the requirements of the said section had been satisfied. The Commissioner of Income Tax was of the opinion that the order of the Income Tax Officer was erroneous and prejudicial to the interest of revenue and as such he issued notice under section 263 of the Act. He set aside the order of the Income Tax Officer and remanded the matter for a fresh assessment insofar as deduction under section 80HH was concerned. The assessee went up in appeal to the Tribunal and the Tribunal allowed the appeal following the decision of the Allahabad High Court in the case of J.K Synthetics v. CIT : [1976]104ITR255(Guj) . The Tribunal held that since an appeal had been filed against the assessment order, therefore, the Commissioner of Income Tax had no power to revise the order under section 263. At the instance of the department, the above two questions have been referred to us for our opinion.

3. In our opinion the first question has to be answered in favour of the department in view of amendment of section 263(1) Explanation (c) of the Income Tax Act as amended by Finance Act of 1989 and as interpreted by the Supreme Court in the case of CIT v. Shri Arbuda Mills Ltd. : [1998]231ITR50(SC) .

4. As regards the second question referred to us, it has to be decided in favour of the assessee since the finding of the Tribunal is that the assessee has complied with all the conditions in section 80HH and this is a finding of fact.

5. In view of the above, we answer the first question referred to us in favour of the department and against the assessee and the second question in favour of the assessee and against the department.