



IN THE HIGH COURT OF DELHI

ITR No.278/82

Date of Decision: 9th April, 2001

Commissioner of Income-tax, Delhi-IPetitioner

through: Mr.R.D.Jolly with
Ms.Prem Lata Bansal, Advocates

Versus

M/s.East West Linkers (P) LtdRespondent

through: None

CORAM:

THE HON'BLE MR.JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE

THE HON'BLE MR.JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?

ARIJIT PASAYAT, C.J. (Oral)

At the instance of Revenue, following question has been referred for opinion of this Court under Section 256(1) of the Income-tax Act, 1961 (in short 'the Act.') by the Income-tax Appellate Tribunal Delhi Bench-C ('Tribunal' in short):

"Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the assessee was an industrial undertaking in terms of Section 80-J of the Income-tax Act, 1961 and thus entitled to the deduction under that Section ?"



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Dispute relates to assessment year 1976-77.

In nut-shell, factual position is as follows:

Assessee is a private limited company carrying on business in manufacturing and export of garments etc. Assessee claimed that it was a newly established industrial undertaking; its manufacturing unit had started functioning during the assessment year in question and, therefore, it was entitled to relief under Section 80-J of the Act. Income-tax Officer, however, was of the view that business carried on by the assessee could not be held to be an industrial undertaking and, therefore, assessee was not entitled to deduction under Section 80-J. Commissioner of Income-tax (Appeals) [CIT(A) in short] however held that assessee was producing garments manufactured from cloth and the unit for producing garments was an industrial undertaking within the meaning of Section 80-J of the Act. Matter was carried in appeal before the Tribunal by the Revenue. Tribunal referred to some earlier judgments rendered by it and held that assessee was an industrial undertaking and was entitled to the benefit of Section 80-J of the Act. Accordingly, the appeal was dismissed. On being moved for reference, the question as set out above has been referred for opinion of this Court.

We have heard learned counsel for Revenue. There is no appearance on behalf of assessee in spite of notice.

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Learned counsel for Revenue submitted that the business carried on by the assessee was not one which could be called an industrial undertaking and, therefore, it was not entitled to relief under Section 80-J of the Act.

A similar question had come up for consideration by this Court in Nu-Look Private Limited v. CIT, Delhi (1986) 157 ITR 253 wherein it was held that the activity undertaken by the assessee came within the definition of 'industrial company' in Section 2(6)(d) of the Finance Act, 1968. That being the position, we answer the question referred in the affirmative, in favour of assessee and against Revenue.

The reference stands disposed of.


CHIEF JUSTICE

9th April, 2001

"v"


D.K. JAIN, J.