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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.107 OF 1999

Zuari Agro Chemicals Ltd. ..Applicant
Versus
The Commissioner of Income Tax
Central -I, Mumbai. ..Respondent

....
Mr. H. Toor i/b. M/s. Chitnis & Co. for the applicant.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 19th AUGUST, 2016

P.C.:

Mr. Toor, the learned counsel appearing for the applicant-assessee states that the Respondent-Revenue has been served on 27th December, 1999 and undertakes to file an affidavit of service by 22nd August, 2016.

2. By this Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) the Income Tax Appellate Tribunal (Tribunal) seeks our opinion on the following two substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal ought to have held that the expenses on travelling and retainer fees paid in connection with the Nagarjuna Project were revenue in character and were consequently allowable as a deduction in computing the assessee's income?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of Rs.2,12,655/- was not eligible for relief under Section 35D on the ground that the expenditure was incurred by promoters before 1.4.1970?"

3. This Reference relates to A.Y. 1982-83.

4. **Regarding Question no.(i):-**

(a) Mr. Toor, the learned counsel for the applicant-assessee very fairly states that the issue arising herein stands concluded against the applicant-assessee and in favour of the Respondent-Revenue by the decision of this Court in ***Commissioner of Income Tax v/s. J. K. Chemicals Ltd. 207 ITR 985*** and ***Larsen & Toubro Ltd. v/s. Commissioner of Income Tax (2012) 75 DTR 30.***

(b) In the above view, the question as framed for our opinion is answered in the negative i.e. in favour of the Respondent-Revenue and against the applicant-assessee.

5. **Regarding Question no.(ii):-**

(a) In respect of the subject assessment year the applicant-assessee had claimed deduction of Rs.2.12 lakhs under Section 35D of the Act being the payment made after 31st March, 1970 to its promoters. This payment to promoters was for the expenditure incurred by them for project development. This amount was paid by the assessee after its formation post 31st March, 1970. The Assessing Officer, Commissioner of Income Tax (Appeals) and the Tribunal disallowed the claim on the ground that the expenditure was incurred prior to 31st March, 1970 though reimbursed later. Thus not allowable in the subject Assessment Year. The Tribunal while upholding the order of the Assessing Officer and Commissioner of Income Tax (Appeals) relied upon its order for A.Y. 1975-76 on the same issue. The Tribunal while referring the above question for our consideration has referred to the Reference made by it to this Court for earlier A.Y. 1975-76 and 1980-81 wherein an identical question arising on similar fact situation was referred for our opinion.

(b) Mr. Toor, the learned counsel for the applicant-assessee points out that the identical question as referred to herein above has been considered and decided in the Reference made for A.Y. 1975-76 being Income Tax Reference No.59 of 1991. A copy of the decision of this Court in the Reference for A.Y. 1975-76 tendered across the bar and it is reported in (2012) 251 CTR 233. We find that an identical question as raised herein has been answered by the above decision in favour of the applicant-assessee and against the respondent-revenue.

(c) Therefore, the question as framed for our opinion is answered in the negative i.e. in favour of the applicant-assessee and against the Respondent-Revenue.

6. Reference is disposed of in above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa