

(2003) 12 AHC CK 0171

Allahabad High Court

Case No: None

Allen Bradley India Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Dec. 2, 2003

Citation: (2004) 137 TAXMAN 363

Hon'ble Judges: M.A. Khan, J; Dr. B.S. Chauhan, J; B.S. Chauhan, J

Bench: Full Bench

Advocate: R.R. Agarwal, for the Assessee Shambhu Chopra, for the Revenue, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard Shri R.R. Agarwal, learned counsel for the petitioner and Shri Shambhu Chopra, learned counsel for the revenue.

2. The writ petition has been filed against the revisional orders dated 20-7-1989/27-12-1989, wherein the revision filed against the orders of assessment for the assessment years 1986-87 and 1988-89, have been rejected holding that the petitioner/ assessee was not entitled to carry forward of the loss, as the return had not been filed within the stipulated period. In fact, the revisional orders are being challenged on the ground that the learned revisional authority while dealing with the cases did not consider the impact and effect of the Taxation Amendment Act 46 of 1986 dated 10-8-1986 which came into force with effect from 1-4-1987 and Circular No. 469 dated 23-9-1986 issued by the Central Board of Direct Taxes, for the assessment years of 1986 and 1987, and the Taxation Amendment Act No. 4 of 1987, by virtue of the provisions of section 42 thereof, the power of the assessing authority for extending the period of filing the return had been restored.

3. After hearing learned counsel for the parties, we are of the considered opinion that the learned revisional authority did not apply its mind to the said Amendment

Acts and did not discuss the effect and impact of the same. A Division Bench Judgment of Karnataka High Court in [Sirigeri Kanakappa Shetty and Sons Vs. Deputy Commissioner of Income Tax,](#) , has been cited before us dealing with the same amendment Act and the same circular of the Central Board of Direct Taxes, wherein it has been held that the aforesaid circular is binding upon the Income Tax authorities and in such a situation, it was held that the assessee was entitled for the benefit for carry forward of loss.

4. As the learned revisional authority has passed only a cryptic order without considering the impact of the amendment Acts, we set-aside the said orders and remand the case to the Commissioner, Meerut to decide afresh expeditiously preferably within a period of 4 months after giving opportunity of hearing to the assessee, from the date of filing the certified copy of the order before him.

5. Parties are at liberty to raise all the legal and factual issues before the learned Commissioner, Meerut.