(2003) 01 KL CK 0105

High Court Of Kerala

Case No: IT Ref. No. 59 of 1999

Commissioner of Income Tax	APPELLANT
Vs	
S. Ratnam Pillai	RESPONDENT

Date of Decision: Jan. 24, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 80HHC

Citation: (2003) 183 CTR 171

Hon'ble Judges: J.M. James, J; G. Sivarajan, J

Bench: Division Bench

Advocate: P.K.R. menon and George K. George, for the Appellant; None, for the Respondent

Judgement

G. Sivara Jan, J.
The following question of law is referred to this Court u/s 256(1) of the IT Act, 1961, at the instance of the CIT, Cochin :

"Whether, on the facts and in the circumstances of the case the Tribunal was correct in holding that the assessee is entitled to the deduction u/s 80HHC on own exports as well as exports made through export houses?".

2. Today when the matter came up for hearing, the learned counsel appearing for the applicant submits that this question is covered by the decision of the Supreme Court in Sea Pearl Industries and Ors. Etc. v. CIT (2001) 247 ITR 578 in favour of the Revenue and against the assessee. Though notice was served on the respondent/assessee, there is no appearance. It is seen from the appellate order of the Tribunal that the respondent/assessee did not appear there also.

3. We have perused the judgment of the Supreme Court relied on by the Revenue. The question considered by the Supreme Court reads as follows:

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction u/s 80HHC of the IT Act, 1961, in respect of exports (not done directly by the assessee) done through the export house ?"

This question was answered by this Court in Commissioner of Income Tax Vs. Sea Pearl Industries (No. 2), in favour of the Revenue. The Supreme Court in the judgment mentioned supra has affirmed the decision of this Court. In view of the above, we find that the Tribunal had to allow the appeal filed by the Revenue relying on its own decision in the case of Sea Pearl Industries considered by the High Court and the Supreme Court. This Court had reversed the order of the Tribunal and held that the assessee is not entitled to the deduction u/s 80HHC of the IT Act, 1961, in respect of the exports done through the export house. Since the said decision has been affirmed by the Supreme Court in Sea Pearl Industries v. CIT (supra).

3. In view of the authoritative pronouncement of the Supreme Court in Sea Pearl Industries v. CIT (supra), we answer the question referred in the negative, i.e., in favour of the Revenue and against the assessee.

This IT reference is accordingly disposed of.