

**(2002) 12 MAD CK 0189**

**Madras High Court**

**Case No:** Tax Case (Reference) No"s. 427 and 428 of 1999 19 December 2002

Commissioner of Income Tax

APPELLANT

Vs

T.M. Abdul Rahman and Sons

RESPONDENT

**Date of Decision:** Dec. 19, 2002

**Citation:** (2003) 129 TAXMAN 747

**Hon'ble Judges:** N.V. Balasubramanian, J; K. Raviraja Pandian, J

**Bench:** Full Bench

**Advocate:** Mrs. Pushya Sitharaman, for the Revenue P.P.S. Janarthana Raja, for the Assessee, for the Appellant;

**Judgement**

N.V. Balasubramanian, J.

In compliance with the directions of this court, the Income Tax Appellate Tribunal has stated a case and referred the following common questions of law for our consideration :

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that subsidy received by the assessee should be included in the cost of machinery for allowance of depreciation/investment allowance ?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that for claiming deduction u/s 80HH Form No. 10C can be filed at any time before completion of assessment?"

2. The assessment years involved are 1983-84 and 1984-85.

3. As far as the first question of law referred to us in concerned, the issue raised in the said question is covered against the revenue by the decision of the Supreme Court in Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd. . Following the said decision of the Supreme Court, we answer the first question of law referred to us in the affirmative, in favour of the assessee and against the revenue.

4. As far as the second question of law is concerned, we find that the issue raised in this question is also covered against the revenue by the decision of this court in Commissioner of Income Tax Vs. A.N. Arunachalam, where this court has held that the audit report can be filed even after the submission of the return, but before framing of assessment. We, therefore, hold that the view of the Appellate Tribunal holding that the audit report filed was within time is justified in law. Accordingly, the second question of law is also answered in favour of the assessee and against the revenue.

5. Thus, both the questions of law are answered against the revenue and in favour of the assessee.