

(2002) 09 DEL CK 0201

Delhi High Court

Case No: IT Ref. No"s. 529 and 530 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Amber Tours (P) Ltd.

RESPONDENT

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**Date of Decision:** Sept. 5, 2002**Acts Referred:**

- Income Tax Act, 1961 - Section 35B

**Citation:** (2004) 186 CTR 388**Hon'ble Judges:** Sharda Aggarwal, J; D.K. Jain, J**Bench:** Division Bench**Advocate:** R.D. Jolly and Ajay Jha, for the Appellant; None, for the Respondent

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### Judgement

D.K. Jain, J.

These matters have been placed before the Court for appropriate orders as the Revenue, at whose instance the references have been made, has failed to file the paper books. Since, in our view, answer to the question referred stands concluded by the decisions of the apex Court in [Commissioner of Income Tax \(CNTL\), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana](#), and [Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc.](#), as also of this Court in [Commissioner of Income Tax Vs. International Exporters](#), we dispense with the filing of paper books and proceed to dispose of the matters.

2. The question, common to both the references, referred by the Income Tax Appellate Tribunal, Delhi Bench (for short "the Tribunal") u/s 256(1) of the IT Act, 1961, arising out of ITA Nos. 4899 & 4900/Del/1981, is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessed-company, who is rendering services to the foreign tourists only in India, was entitled to weighted deduction u/s 35B of the IT Act, 1961 ?"

3. As noted above, since answer to the aforementioned question stands concluded by various decisions, it is not necessary to state the facts. Even otherwise, the statement of the case forwarded by the Tribunal does not contain any details of the expenditure incurred by the assessed on which weighted deduction under the said section had been claimed. The only information which can be gathered from the question itself is that the expenditure have been incurred by the assessed in India on the foreign tourists visiting India.

4. In Stepwell Industries case (supra) the apex Court has held that in order to attract the applicability of Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 35B, the expenditure must have been incurred outside India. It is evident from the format of the question that it is not so in the instant case. Admittedly, the expenditure, on which weighted deduction has been claimed, has been incurred in India.

In view of the settled legal position, the question referred is answered in the negative i.e., in favor of the Revenue and against the assessed.

The references stand disposed of with no order as to costs.