

(1992) 11 BOM CK 0101
Bombay High Court
Case No: IT Ref. No. 116 of 1978

Commissioner of
Income Tax

APPELLANT

Vs

Atul Drug House
Limited

RESPONDENT

Date of Decision: Nov. 18, 1992

Acts Referred:

- Income Tax Act, 1961 - Section 28

Hon'ble Judges: U.T. Shah, J; B.P. Saraf, J

Bench: Division Bench

Advocate: Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

U.T. Shah, J.

The learned counsel for the respondent is fair enough to state that he would waive the service of the paper-book on the assessee.

2. In this reference we are concerned with the asst. yrs. 1968-69, 1969-70 and 1970-71.

3. The common question raised for all the three assessment years reads as under :

A. "Whether, on the facts and in circumstances of the case, the Tribunal was right in holding that a direct cash payment towards rent to the Director does not come within the purview of s. 40(c)(iii) ?"

4. At the time of hearing, the learned counsel for the Revenue was fair enough to state that in view of the decision of this Court in the case of [Commissioner of Income Tax, Bombay City-II Vs. Indokem Private Ltd.,](#) , the answer should be given in the affirmative and in favour of the assessee. We, accordingly, answer the said question.

5. The second common questions raised for the three assessment years regarding expenses of Rs. 72,096 reads as under :

(1) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenses of Rs. 72,096 had been correctly capitalised by the assessee-company as part of the cost of depreciable assets and in allowing depreciation thereon ?"

(2) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 72,096 is includible in the capital computation for the purpose of relief under s. 80J of the Act ?"

(3) "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that development rebate was admissible on the sum of Rs. 70,600 in respect of the expenditure incurred in connection with construction of Formaldehyde plant at Vapi as part of cost of plant and machinery ?"

6. Here also the learned counsel for the Revenue was very fair enough to state that in view of the decision of the Supreme in the case of [Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad](#) , the answer should be given in affirmative and in favour of the assessee. We, accordingly, do so.

7. The only other question pertaining to the asst. yr. 1968-69 reads as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that relief under s. 80J at 6% of the capital employed was admissible for the whole year in spite of the fact that the new chemical plant commenced manufacturing operation only on 15th September, 1967 ?"

Here also the learned counsel for the Revenue stated that in view of the decision of this Court in the case of [Commissioner of Income Tax Vs. Godrej Soaps Private Ltd.](#) , the answer should be given in affirmative and in favour of the assessee. We, accordingly, do so.

8. No order as to costs.