

SUPREME COURT OF INDIA

Commissioner of Income Tax, Gujarat-I

Vs.

Atul Products Ltd.

(S Bharucha and V Khare JJ.)

07.11.1997

ORDER

1. Delay condoned.

2. Special leave granted.

3. The notice on the SLP stated that it was limited to Question 4 and that the matter might be disposed of at the SLP stage by remanding to the High Court the consideration of that question. The respondent has been served but has not chosen to put in an appearance.

4. Question 4 reads thus:

"Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow depreciation on guest house building and other assets?"

5. The appellant wanted the High Court to direct the Tribunal to refer four questions to it for consideration. The High Court answered the first two questions, although the application was only to ask it to require the Tribunal to refer those questions to it. Insofar as Questions 3 and 4 were concerned, the High Court said that they were not required to be referred in the facts and circumstances of the case. What those facts and circumstances were is not clear from the impugned order.

6. Question 4 does raise an issue of law and the High Court ought to have called upon the Tribunal to refer this question to it for decision.

7. Accordingly, the appeal is allowed. The order under appeal is set aside insofar as it relates to Question 4. The Tribunal shall now draw a statement of case and refer to the High Court the said question for decision.

8. No order as to costs.