

SUPREME COURT OF INDIA

Whirlpool Of India Ltd.

Vs.

Commissioner Of Income-Tax

(B.N. Kirpal, M.B. Shah and R.C. Lahoti JJ.)

01.02.2000

ORDER

1. The question involved in this reference relates to the allowability of the deduction of Rs. 1,40,86,821/- claimed by the appellant for the assessment year 1986-87 under Section 43B of the Income Tax Act.
2. The Income Tax Officer had disallowed this deduction for the year 1986-87 but had, allowed it for the subsequent assessment year 1987-88. Similarly in respect of assessment year 1987-88, the Income Tax Officer had disallowed an other amount of Rs. 1,25,30,853/- claimed under Section 43B but in appeal the Income Tax Appellate Tribunal has allowed this deduction. The effect of the order of the Income Tax Appellate Tribunal is that in respect of the assessment year 1987-88 the appellant has got a deduction of Rs. 1,40,86,821, which was allowed by the Income Tax Officer, plus further deduction of Rs. 1,25,30,853/- as a result of the order of the Income Tax Appellate Tribunal.
3. In view of the decision of this Court in Allied Motors Private Limited v. Commissioner of Income Tax in respect of the amount of Rs. 1,40,86,821/- the deduction was allowable for the assessment year 1986-87, as claimed by the appellant before the Income Tax Officer. In this view of the matter the question of law which was referred by the Tribunal has to be answered in favour of the appellant which would mean that for the assessment year 1986-87 deduction under Section 43B would be allowed for the sum of Rs. 1,40,86,821.
4. An affidavit has been filed by Shri Dinesh Mittal on behalf of the appellant in which it is stated that inasmuch as in respect of the assessment year 1986-87, the Income Tax officer has to be pass afresh assessment order to give effect to the order of the Income Tax Appellate Tribunal allowing the deduction of Rs. 1,25,30,853/-. For that year, the appellant itself will suo motu request the assessing officers to withdraw the deduction of Rs. 1,40,86,821/- which had been allowed in the year 1987-88 and to allow the deduction of the said amount in the year 1986-87. In order that there may not be any technical difficulty subsequently, and keeping in view the said affidavit filed on behalf of the appellant in this Court, we direct under Article 142 of the Constitution that in respect of the assessment year 1987-88 when the Income Tax Officer is giving effect to the order of the Tribunal he shall, while allowing the deduction of Rs. 1,25,30,853/- for that year, disallow the deduction of Rs. 1,40,86,821. The ultimate result will be that the deduction of this latter amount will be allowed in the assessment year 1986-87 and not in the assessment year 1987-88.
5. The question of law referred in this tax reference is answered in favour of the appellant. No costs.

