

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Srinivasa Hatcheries P. Ltd.

(S.P. Bharucha and Ruma Pal JJ.)

04.02.2000

ORDER

1. Delay condoned.

2. Leave granted.

3. The High Court, by the order under challenge, declined to call upon the Income-tax Appellate Tribunal to refer to it the following" question on the ground that the Tribunal had followed the High Court's judgment in the case of CIT v. Sri Venkateshwara Hatcheries (P.) Ltd.:

Whether, on the facts and in the circumstances of the case, the poultry sheds should be treated as plant thereby allowing the assessee-company a higher rate of depreciation as applicable to plant and not the rate of depreciation as applicable to building?

4. We are informed that the judgment of the High Court in the said case of CIT v. Sri Venkateshwara Hatcheries (P.) Ltd. was brought to this Court but the special leave petition was dismissed on the ground of delay.

5. It appears to us clear that a question of law is involved and that, therefore, the High Court ought to have required the Tribunal to refer to it the aforesaid question. The High Court then would be entitled to consider the question on the merits and take the earlier judgment in the case of CIT v. Sri Venkateshwara Hatcheries (P.) Ltd. into account.

6. The appeal is allowed. The order under appeal is set aside. The aforesaid question shall be referred by the Tribunal to the High Court for its decision, after drawing up a statement of case.

7. No order as to costs.