

**SUPREME COURT OF INDIA**

Commissioner of Income-Tax

Vs.

Venkateswara Hatcheries (P.) Ltd.

(S.P. Bharucha, S.S. Quadri and N. S. Hegde JJ.)

02.08.2000

**ORDER**

1. The High Court declined to call for a reference of the following questions:

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the assessee is entitled for the investment allowance under Section 32A in respect of the additions to hatchery building treating it as 'plant' ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the assessee is entitled to deduction under Section 80JJ of the Income-tax Act, 1961 ?"

2. It did so because, according to it, no question of law arose, the same being covered by its judgments.

3. Learned counsel for the Revenue submits that both questions must now be answered in favour of the Revenue by reason of the judgment of this court in CIT v. Venkateswara Hatcheries (P.) Ltd. [1999] 237 ITR 174. Learned counsel for the assessee does not accept this position. It is, therefore, necessary that these two questions, which undoubtedly raise questions of law, must be decided by the High Court.

4. The appeal is allowed. The order under appeal is set aside. The Tribunal shall now refer the two questions to the High Court for decision, having drawn up the statement of case.

5. No order as to costs.