

ANDHRA PRADESH HIGH COURT

Commissioner of Income Tax

Vs

Warner Hindustan Limited

(Y.V.Anjaneyulu J.)

17.03.1984

JUDGEMENT

Y.V.Anjaneyulu J.

(1.) THE following two questions are referred to this court under section 256(1) of the Income-tax Act, 1961, for its opinion by the Income-tax Appellate Tribunal : "1. Whether, on the acts and in the circumstances of the case, the appeal against the order of the Income-tax Officer giving effect to the directions given by the Appellate Assistant Commissioner is maintainable ? 2. Whether, on the facts and in the circumstances of the case, relief under section 80J of the Income-tax Act, 1961, could be given for the entire period of 12 months notwithstanding the fact that the unit in question worked for a part of the year only ?"

(2.) LEARNED counsel for the Revenue fairly conceded that the first question is covered by a decision in the assessee's case in *CIT v. Warner Hindustan Ltd.* [1979] 117 ITR 15, in favour of the assessee. We accordingly answer the question in the affirmative, i.e., in favour of the assessee and against the Department. Regarding the second question, it may be mentioned that the dispute is whether an assessee is entitled to claim deduction under section 80J of the Income-tax Act when a new industrial undertaking did not function for the entire period of twelve months. In other words, the question is whether the deduction can be proportionately granted if the new industrial undertaking functioned only for a part of the year. We find that courts have uniformly taken the view that the deduction under section 80J of the Income-tax Act is permissible regardless of the consideration whether the new industrial undertaking functioned only for a part of the year or for the entire year. Once the new industrial undertaking functioned in any part of the accounting year relevant to the assessment year under consideration, then the assessee is entitled to claim the deduction fully. We may refer to the decisions in *CIT v. Simpson and Company*¹ *CIT v. Sanghi Beverages (Pvt.) Ltd.*². *Addl. CIT v. Dr. K. P. Karanth*³ and *CIT v. Mysore Petro-Chemical Ltd.*⁴. supporting above view. We are also informed that the Central Board of Direct Taxes has also since issued a circular bearing No. 378, dated 3/03/1984 (see [1984] 149 ITR (St.) 1), affirming the above position as correct. In the above view, we answer the second question also in the affirmative, i.e., in favour of the assessee and against the Revenue. No costs.

Cases Referred.

1[1980] 122 ITR 283 (Mad)

2 [1982] 13 ITR 623 (MP)

3[1983] 139 ITR 479 (AP) (sic)

4 [1984] 14 5 ITR 416 (Kar)

