CALCUTTA HIGH COURT

Jeewanlal 1929 Ltd

Vs

Commissioner of Income Tax

(Sabyasachi Mukharji, J.)

20.01.1982

JUDGEMENT

Sabyasachi Mukharji, J.

(1.) IN this reference under Section 256(1) of the I.T. Act, 1961, we are concerned with two years, viz., assessment years 1967-68 and 1968-69. For the assessment year 1967-68 the following two questions, apart from one question for both these years to which we shall refer, have been referred to us : "1. Whether, on the proper interpretation of entry (2) of the Fifth Schedule to the INcome-tax Act, 1961, the Tribunal was right in holding that the expression 'aluminium' occurring therein denoted merely the 'aluminium metal and not aluminium articles ? 2. Whether, on the facts and in the circumstances of the case, and on a proper interpretation of Section 80E read with entry (2) of the Fifth Schedule to the INcome-tax Act, 1961, the Tribunal was justified in holding that the business of manufacture and sale of aluminium articles could not be considered as priority industry within the meaning of the said provision of the said Act and that the assessee-company was not entitled to relief under Section 80E of the said Act ?"

(2.) FOR the assessment year 1968-69 also, the following two questions have been referred to us : "1. Whether, on the proper interpretation of entry (2) of the Fifth Schedule to the Income-tax Act, 1961, the Tribunal was right in holding that the expression 'Aluminium' occurring therein denoted merely the aluminium metal and not aluminium articles ? 2. Whether, on the facts and in the circumstances of the case, and on a proper interpretation of Section 80B(7) read with entry (2) of the Fifth Schedule to the Income-tax Act, 1961, the Tribunal was justified in holding that the business of manufacture and sale of aluminium articles could not be considered as priority industry within the meaning of the said provision of the said Act and that the assessee-company was not entitled to relief under Section 80-I of the said Act ?" So far as the first two questions for the assessment year 1967-68 as mentioned in para. 11 of the statement of the cases are concerned, these must be answered in the affirmative and in favour of the Revenue in view of the decision of this court in the case of the same assessee, being Income-tax Reference No. 78 of

1976 (Jeewanlal (1929) Ltd. v. CIT) judgment delivered on 9th March, 1978 (see Appendix at p. 460 infra)). So far as the first two questions for the assessment year 1968-69 are concerned these two questions must also be answered by the aforesaid judgment referred to hereinbefore in the affirmative and in favor of the Revenue.

(3.) IT appears in respect of both these questions for both the years, on an oral application made before this court, in respect of the judgment in I.T.R. No. 78 of 1976 (see Appendix at p. 460 infra) just referred to hereinbefore, this court has granted a certificate for lea-ve to appeal to the Supreme Court. Accordingly, on the oral application made on behalf of the assessee, in this case also we certify that the present case involves important questions which require to be decided by the Supreme Court. We, accordingly, grant a certificate under Section 261 of the I.T. Act, 1961. Let a separate certificate be issued and the records be transferred to the Supreme Court as expeditiously as possible. Let this order be drawn up expeditiously. The next question that falls for consideration, which is common to both these years, is as follows : "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the cash assistance of Rs. 1,50,044 and Rs. 2,38,944 received from the Government for the assessment years 1967-68 and 1968-69, respectively, constituted revenue receipt and not capital receipt ?" ;