
(1977) 06 MAD CK 0015

In the Madras High Court

Case No : Tax Case No. 196 of 1973 (Reference No. 22 of 1973)

Additional Commissioner of Income Tax

APPELLANT

Vs

Bimetal Bearings Ltd.

RESPONDENT

Date of Decision : 16-06-1977

Acts Referred:

Companies (Profits) Surtax Act, 1964 — Rule 4
Income Tax Act, 1961 — Section 10

Citation : (1977) 110 ITR 131

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; K.R. Ramamani, for the Respondent

Judgement

Sethuraman, J.—This reference is made by the Appellate Tribunal under the provisions of the Companies (Profits) Surtax Act, 1964, read

with the provisions of the Income Tax Act, 1961, at the instance of the Additional Commissioner of Income Tax, Madras.

2. The assessments under the Companies (Profits) Surtax Act, 1964 (hereinafter called "the Act"), related to the assessment years 1966-67,

1967-68 and 1968-69. The provisions of the Act levied what is called "surtax" on the chargeable profits after giving what is called a statutory

deduction. The chargeable profit is the total income of the assessee computed under the Income Tax Act, 1961, and adjusted in accordance with

the provisions of the First Schedule to the Act. The statutory deduction is given at the rate of 10% of the capital of the company as computed in

accordance with the provisions of the Second Schedule or an amount of Rs. 2,00,000 whichever is greater. We are concerned in the present

reference with Rule 4 of the Second Schedule which runs as follows :

Where a part of the income, profits and gains of a company is not includible in its total income as computed under the Income Tax Act, its capital

shall be the sum ascertained in accordance with Rules 1, 2 and 3, diminished by an amount which bears to that sum the same proportion as the

amount of the aforesaid income, profits and gains bears to the total amount of its income, profits and gains.

With reference to the assessment years 1966-67 and 1967-68, the assessee was eligible for deduction of 8% of its profits in accordance with the

provisions of Section 80E as then in force. For the assessment year 1967-68, the assessee was eligible for deduction of the relevant amount

computed in accordance with the provisions of Section 80I and Section 80J. Section 80I refers to income from priority industries which is given

relief under the provisions of the Income Tax Act. Section 80J gives deduction or relief in respect of profits and gains from newly established

industrial undertakings and others. There is no dispute that the assessee was eligible for the deductions available under Sections 80E, 80I and 80J

as in force in the relevant years.

3. Taking 1966-67 for instance the assessee was eligible for a deduction of Rs. 4,41,361 at the rate of 8% of the manufacturing profits under the

provisions of Section 80E. Similar deductions were available under Sections 80E, 80I and 80J, as the case may be, for the other two years. . In

making the assessment under the Act, the concerned Income Tax Officer computed the capital without making any adjustment in accordance with

the provisions of Rule 4 of the Second Schedule to the Act for the assessment years 1966-67 and 1967-68. For the assessment year 1968-69,

the Income Tax Officer considered the application of Rule 4 of the Second Schedule even in the course of the original assessment. In the

assessment reopened for 1966-67, the Income Tax Officer recomputed the capital by deducting from the capital as originally computed a

proportionate part of the capital referable to the profits deducted u/s 80E. Similarly, for the assessment year 1967-68, from the original capital

computed, the Income Tax Officer made a deduction for the proportionate part of the capital referable to the profits given as deduction under

Sections 80I and 80J, For the assessment year 1968-69, the Income Tax Officer

while making the computation in the original assessment made a deduction with reference to the capital attributable to the profits deducted under Sections 80I and 80J.

4. The assessee disputed this adjustment made to capital in each year by applying Rule 4 of the Second Schedule before the Appellate Assistant

Commissioner who dismissed the appeals. The assessee appealed to the Appellate Tribunal for each of these years and the Tribunal held that the

Income Tax Officer did not act properly in adjusting the capital proportionate to the profits deducted under the provisions of Sections 80E, 80-I

and 80J, as the case may be; and it is this order of the Tribunal that has given rise to the present reference and the question referred to us runs as

follows :

Whether) on the facts and in the circumstances of the case, the amounts of deductions u/s 80E for the assessment years 1966-67 and 1967-68

and under Sections 80I and 80J for the assessment year 1968-69 could not be considered as sums not includible in the total income for Income

Tax assessment and, therefore, would not fall for deduction under Rule 4 for computing the capital under the Second Schedule to the Companies

(Profits) Surtax Act, 1964 ?

5. The problem is one of finding out whether the provisions of Rule 4 of the Act authorises the deduction in the computation of capital as made by

the Income Tax Officer. The short point is whether the part of the income, profits and gains of the company which was the subject of deduction

under Sections 80E, 80I and 80J, as the case may be, was not includible in the total income as computed under the Income Tax Act so as to

justify the application of Rule 4. The Surtax Act came to be passed in 1964 at a time when the corresponding reliefs were available to the assessee

in a different manner. Before the amendment of the provisions of the Income Tax Act by the Finance Act, 1965, no tax was payable by the

assessee with reference to the profits which came within the scope of Chapter VII. Subsequently, as a result of the amendments made in 1965, the

manner of giving relief to the assessee was changed by allowing a straight deduction of the relevant amount from the gross total income as

computed under the Act. There can be no dispute that with reference to the law as in force before the amendment made in 1965, the position was

that the assessee was eligible only for a relief computed in the manner provided in Chapter VII. The Chapter heading ran as follows : "" Incomes

forming part of total income on which no Income Tax is payable."" Rule 4 would not have applied in respect of the proportionate part of the capital

referable to such profits on which Income Tax was not payable.

6. After the amendments were made by the Finance Act, 1965, there was no amendment to the Surtax Act to keep pace with the changes in the

Income Tax Act. The point to be determined is whether this allowance of straight deduction can be considered to fall within the scope of the words

a part of the profits and gains of a company is not includible in its total income "".

7. The learned standing counsel, Mr. Jayaraman, contended that in a case where a straight deduction is given as contemplated by the law as

amended in 1965, the case would fall within the scope of Rule 4 so as to justify adjustment of the capital as contemplated therein. The learned

counsel for the assessee submitted that the relevant words in Rule 4 of the Second Schedule to the Act would take in only cases falling within the

scope of Section 10 of the Income Tax Act, 1961. Section 10 opens with the following words : "" In computing the total income of a previous year

of any person, any income falling within any of the following clauses shall not be included "".

It is clear that what is not includible under the provisions of Section 10 will be the profits that are contemplated by the provisions of Rule 4 of the Second Schedule to the Act. As far as the

profits which are the subject of relief under Chapter VIA of the Income Tax Act are concerned, the position is that there is a deduction available

from the gross total income as computed by those provisions. Therefore, up to the stage when we reach the computation for the purpose of

Chapter VIA, the amount which is eligible to be considered under Chapter VIA forms part of, or is included in, the total income. The deduction is

given only because of the inclusion. In our opinion, in such a case, the provisions of Rule 4 do not have any scope for operation, because it cannot

be stated that the said profits were not at all includible in the total income of the company computed under the Income Tax Act. In other words, in

making computation for the purpose of applying Chapter VIA the amount which is the subject of relief is included in the total income and,

therefore, it cannot be treated to be a case of profits and gains of a company not

being includible in the total income. We may point out that the position is not free from doubt as the heading of Chapter VIA states that it is a ""deduction from total income"". However, any ambiguity has to be resolved in favour of the subject. We consider that the legislature might conceivably have left the position which governed the assessments prior to 1965 to continue subsequently also, because the reliefs that are given under Chapter VIA are with reference to certain specified kinds of industries or profits, for instance the priority industries or profits of new industrial undertakings, etc., which are in need of encouragement. It is possible that Parliament considered that with reference to such companies they may enjoy the benefit of the computation of capital as under Rules 1, 2 and 3 of the Second Schedule to the Act without any adjustment contemplated by Rule 4. We find that the view we are taking has also been taken by the Karnataka High Court in *Second Income Tax Officer, Company Circle, Bangalore and Another Vs. Stumpp, Schuele and Somappa Private Ltd.* First Income Tax Officer, Company Circle, Bangalore and Another, . We may, however, state that we do not accept, with respect, the entire reasoning of the Karnataka High Court in coming to the conclusion drawn in that case.

8. For these reasons we answer the question against the revenue. The assessee will be entitled to its costs. Counsel's fee Rs. 500.