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**(1979) 01 MAD CK 0020**

**In the Madras High Court**

**Case No :** Tax Case No. 44 of 1975 (Reference No. 44 of 1975)

Additional Commissioner of Income Tax

APPELLANT

Vs

Crompton Engineering Company (Madras) Ltd.

RESPONDENT

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**Date of Decision :** 16-01-1979

**Acts Referred:**

Income Tax Act, 1961 — Section 80O, 85C

**Citation :** (1979) 119 ITR 921

**Hon'ble Judges :** V. Sethuraman, J;V. Balasubrahmanyam, J

**Bench :** Division Bench

**Advocate :** J. Jayaraman and Nalini Chidambaram, for the Appellant; S. Swaminathan, for the Respondent

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## **Judgement**

Sethuraman, J.—This is a reference u/s 256(1) of the I.T. Act. The Tribunal has referred the following question :

Whether the assessee should be granted relief u/s 85C of the Income Tax Act of 1961 on the gross amount received by it from the Libyan

company without deducting the expenses incurred for earning the same ?

2. The assessee, a public limited company, entered into an agreement with a Libyan company for the supply of technical services. It received from

the Libyan company a sum of Rs. 4,63,663 as remuneration for services rendered during 1966, the previous year for 1967-68. The assessee's

employees at Libya had been paid remuneration at the work-spot by the Libyan company. The balance of the service fees was remitted to India,

the actual amount remitted being Rs. 2,46,315. It is stated that the assessee had incurred a sum of Rs. 3,03,113 as and by way of salaries and

sundry expenses, which related to the amount received from the Libyan company. It is possible that only part of the sum of Rs. 3,03,113 was

incurred abroad, as, if the whole of Rs. 3,03,113 was incurred abroad, it would not have been possible to remit Rs. 2,46,315 out of Rs. 4,63,663.

If the employees of the assessee were paid abroad by the Libyan company, it is not clear as to why the assessee had to incur any further

expenditure by way of salaries, etc , in Libya. Thus, the facts themselves are not clear.

3. The assessee claimed relief u/s 85C of the Act in respect of the said sum of Rs. 4,63,663. The ITO, after deducting the expenses of Rs.

3,03,113 from the sum of Rs. 4,63,663 received by the assessee, granted relief u/s 85C only in respect of the balance of Rs. 1,60,550. The

assessee's appeal to the AAC of Income Tax on this point was unsuccessful.

4. The Tribunal, on further appeal, agreed with the assessee's contention and followed certain decisions which were rendered in relation to

Sections 85A and 99(1)(iv) of the Act. The revenue has sought and obtained a reference of the above question. Section 85C stands deleted from

1st April, 1968.

5. Section 85C, in so far as it is material, runs as follows :

Where the total income of an assessee, being an Indian company, includes any income by way of royalty, commission, fees or any similar

payment received by it from a company which is neither an Indian company nor a company which has made the prescribed arrangements for the

declaration and payment of dividends within India (hereinafter, in this section, referred to as the foreign company)..... in consideration of technical

services rendered or agreed to be rendered to the foreign company by the assessee, under an agreement approved by the Central Government in

this behalf before the 1st day of October of the relevant assessment year, the assessee shall be entitled to a deduction from the Income Tax with

which it is chargeable on its total income for the assessment year of so much of the amount of Income Tax calculated at the average rate of Income

Tax on the income so included as exceeds the amount of twenty-five per cent, thereof.

6. We have first to see, as required by this provision, whether the assessee has any total income and whether the said total income includes any

income by way of royalty, commission, fees or payment for technical services. If these conditions are satisfied, then the assessee Will be eligible to

a deduction, from the Income Tax with which the assessee is chargeable on its total income, of so much amount of Income Tax calculated at the average rate of Income Tax on the income so included. The closing words of the section would show that the assessee will not be eligible for the relief to the extent of one-fourth of the income so included. The plain language of the provision shows that what is to be considered for purposes of relief is the income by way of royalty, etc., included in the total income. The income by way of royalty, etc., which is included in the total income in the present case would be Rs. 4,63,663. The computation of income after giving deductions is one thing and the examination of what is included in the income is another. If the question is asked as to what was the amount of income accruing or received in consideration of technical services, the answer would only be Rs. 4,63,663 and not any smaller amount which remained in the assessee's hands after deducting certain expenses.

Wherever the statute wants the total income as computed under the Act to be taken into account, special provision is made therefore as in Section 80B(5). We are, therefore, of the opinion that the Tribunal acted rightly in granting the relief on the said sum of Rs. 4,63,663.

7. The learned standing counsel for the revenue brought to our notice a decision of the Supreme Court in *Cambay Electric Supply Industrial Co.*

*Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, . In that case, the assessee was assessed for the assessment year 1967-68.

During the relevant period it earned an income of Rs. 46,319 from its business. It had sold machinery and buildings, etc., resulting in balancing

charges contemplated by Section 41(2) amounting to Rs. 7,55,807. There was also unabsorbed depreciation and unabsorbed development rebate

aggregating to Rs. 2,54,613. The ITO applied the provision of Section 80E which gives relief in respect of profits of electricity and other priority

undertakings. He treated the sum of Rs. 7,55,807 as profit attributable to the business of generation and distribution of electricity and calculated the

relief due u/s 80E accordingly after setting off the unabsorbed depreciation and development rebate carried forward from the earlier year. When

the assessment order came to the notice of the Addl. CIT, he, in exercise of the powers u/s 263, took the view that the manner of computing the

deduction u/s 80E(1) was erroneous and prejudicial to the interests of the revenue and held that the profit of Rs. 7,55,807 arising u/s 41(2) had

been wrongly included in the amount calculated for the purpose of calculating the deduction of 8%. He, therefore, set aside the order of the ITO

and directed fresh assessment to be made. The assessee thereafter appealed to the Tribunal and the Tribunal held that the profit of Rs. 7,55,807 as

contemplated by Section 41(2) could not be treated in isolation or divorced from the profits of generation and distribution of electricity and the

said sum would form part of the amount on which 8% was to be calculated. For our present purpose, we are not concerned with the sum of Rs.

7,55,807. On the question of unabsorbed depreciation and development rebate, the Tribunal held that the amount would not be deductible in

arriving at the profits for relief u/s 80E. At the instance of the revenue, the question raised was whether the unabsorbed depreciation and

development rebate was deductible in computing the qualifying profits for purposes of applying the 8% specified in Section 80E of the Act. The

High Court answered the reference in favour of the revenue and, therefore, the assessee appealed to the Supreme Court. The Supreme Court held

that the items of unabsorbed depreciation and development rebate carried forward from the earlier years would have to be deducted before

arriving at the figure from which the 8 percent, contemplated by Section 80E was to be deducted. In coming to this conclusion, the Supreme Court

referred to the provisions of Section 80E(1) and the language employed in that particular provision. That section in its own language provides that

the total income to be computed in accordance with the other provisions of the Act will have to be taken. It further provides for the profits and gains

attributable to the business of generation or distribution of electricity being taken into account. The word "profit" by itself would ordinarily indicate,

not the gross profit but the net amount. Having regard to the above, the relief u/s 80E(1) was to be calculated only with reference to the income as

computed in accordance with the Act and not with reference to any gross amount. In the absence of any similar provision or indication in Section

85C itself that the amount that is liable to be included is only the net amount remaining after deducting the amount of expenses, we consider that

what the assessee received, namely, Rs. 4,63,663 would, on the facts here, be the income included by way of royalty or technical fee which is per

sonal income.

8. It is not necessary for our present purpose to consider a case where the amount of receipt does not by itself represent income. Having regard to the nature of the amount received from the foreign company in the present case, we consider that the sum of Rs. 4,63,663 would be the income that is included in the total income and would qualify for the relief u/s 85C. The principle of the decision of the Supreme Court cited above, in view of the facts here and the language of Section 80E, which is materially different, would not be applicable.

9. The result is that the question is answered in the affirmative and against the revenue. We may, however, make it clear that the computation of the actual amount for which the assessee will be eligible for relief will have to be made in accordance with the provisions of Section 85C by giving effect to the 25%. The assessee will be entitled to its costs. Counsel's fee Rs. 500.