

(1995) 04 RAJ CK 0029

In the Rajasthan High Court

Case No : Income Tax Reference No. 45 of 1988

Agarwal Industries

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Income Tax Act, 1961 — Section 43, 80J

Citation : (1995) 125 CTR 9 : (1997) 225 ITR 901

Hon'ble Judges : V.K. Singhal, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : D.S. Shishodia and Govind Karan, for the Respondent

Judgement

V.K. Singhal, J.—The Tribunal has referred the following two questions of law arising out of its order dated November 27, 1986, in respect of the assessment year 1982-83 u/s 256(1) of the Income Tax Act, 1961 ;

" 1. Whether the Tribunal was right in holding that till the period of five years from the date of grant of the subsidy is not completed its nature is that of a loan from the Government ?

2. Whether the Tribunal was right in coming to the conclusion that deduction u/s 80J on the subsidy amount would not be available as the said amount was not assessee's own capital contribution ?"

2. The brief facts of the case are that the assessee claimed deduction u/s 80J by treating the opening balance of subsidy amounting to Rs. 4,31,340 as part of the capital employed by the firm. The claim of the assessee was rejected by the assessing authority on the ground that the subsidy which is granted to the assessee as a percentage of the investment made in the industry is in the nature of the cost contributed towards the capital asset and, therefore, to that extent the cost of capital assets needs to be reduced. It was considered that it cannot be considered to be capital employed by the assessee.

3. In appeal before the Appellate Assistant Commissioner the claim was allowed and the Income Tax Officer was directed to recompute the deduction u/s 80J without reducing the value of the subsidy. In second appeal before the Tribunal filed by the Revenue, it was found that the subsidy is given for establishment of the industry and is not a contribution towards any particular asset.

4. Reliance has been placed on the Delhi Flour Mills Co. Ltd. Vs. Commissioner of Income Tax, dated August 1, 1974, wherein it was clarified that the Central subsidy would constitute a capital receipt in the hands of the recipient. The Tribunal, however, came to the conclusion that the subsidy which is given as grant subject to the condition that the undertaking should continue the production for at least five years and till then it can be treated as a loan,

5. We have considered over the matter. The provisions of Section 80J provide for deduction to new industrial undertakings, etc., at the rate of six per cent. per annum of the capital employed. Borrowed capital has been excluded. The amount received by way of subsidy is not borrowed capital nor can it be considered to be a loan. It is a grant and has been considered to be a capital receipt even in the circular issued by the Central Board of Direct Taxes. If the view taken by the Tribunal is accepted, the result would be that the industrial undertaking would not be entitled to avail of the benefit u/s 80J for a period of five years in respect of the subsidy received by the industrial undertaking. Clause (iii) provides for the exclusion of borrowed money and debts owed by the assessee. The amount of subsidy is neither borrowed money nor a debt owed and has merged with the capital which has been employed by the industrial undertaking. The amount of capital employed has to be computed in the manner laid down under Clause (ii) and Explanation 1 to Clause (ii) taking into consideration the assets mentioned therein, the actual cost of which has to be taken in accordance with the provisions of Section 43(1) of the Act. The amount of subsidy is not to be excluded from the actual cost u/s 43(1) and under Clause (iii) while computing the capital employed the aggregate of amounts as ascertained under Clause (ii) have to be taken into consideration from which only borrowed money and debts owed by the assessee (including the amount due towards liability in respect of tax) have been excluded. The meaning which has been given in common and commercial parlance has to be given to borrowed money and accordingly only those amounts which are received with the stipulation of returning would be considered as borrowed money. The subsidy is neither borrowed money nor a debt.

6. While deciding the question of depreciation, etc., the apex court in the case of Commissioner of Income Tax, Hyderabad Vs. M/s. P.J. Chemicals Ltd., observed that the expression "actual cost" needs to be interpreted liberally. The subsidy does not partake of the incidents which attract the conditions for their deductibility from "actual cost". Government subsidy is an incentive not for the specific purpose of meeting a portion of the cost of the assets, though quantified or geared to a percentage of such cost. In these circumstances it was considered

that the subsidy does not partake of the character of a payment intended either directly or indirectly to meet the "actual cost".

7. Explanation 1 to Section 80J provides that "actual cost" has the same meaning as in Clause (1) of Section 43 and the interpretation of "actual cost" u/s 43(1) has been given by the apex court as stated above. The observation of the Tribunal that the subsidy is a loan was considered by this court in the case of Agarwal Industries Vs. Commissioner of Income Tax, (D.B. I.T. Ref. No. 51 of 1988), decided on July 21, 1994 and it was held that it cannot be considered as a loan.

8. In these circumstances, we are of the view that the Tribunal was not justified in holding that till the period of five years from the date of grant of subsidy is not completed its nature is that of a loan from the Government.

9. We are also of the view that the Tribunal was not justified in coming to the conclusion that the deduction u/s 80J on the subsidy amount would not be available as the said amount was not the assessee's own capital contribution,

10. The reference is accordingly answered in favour of the assessee and against the Revenue. No order as to costs.