
(1984) 02 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 67 to 71 of 1977

Beco Engineering Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-02-1984

Acts Referred:

Income Tax Act, 1961 — Section 139(5), 32(1), 34(1), 80A(2), 80J
Income Tax Rules, 1962 — Rule 19A, 19A(3)

Citation : (1984) 41 CTR 249 : (1984) 148 ITR 478

Hon'ble Judges : Rajendra Nath Mittal, J; M.M. Punchhi, J

Bench : Division Bench

Advocate : Bhagirath Dass and Ramesh Kumar, for the Appellant; S.S. Nizaar, for the Respondent

Judgement

Rajendra Nath Mittal, J.—This judgment will dispose of Income Tax Reference Cases Nos. 67 to 71 of 1977. The references have been made u/s 256(1) of the I.T. Act, 1961, by the Income Tax Appellate Tribunal, Chandigarh for opinion of this court.

2. The facts are that the five references are in respect of four assessment years, that is, from 1968-69 to 1971-72. These arise out of the consolidated order passed by the Income Tax Appellate Tribunal, Chandigarh Bench (hereinafter referred to as "the Tribunal"), in eight cross-appeals, four by the Revenue (namely, I.T.A. Nos. 323 to 326) and four by the assessee (namely, I.T.A. Nos. 336 to 339) of 1974-75. The Revenue withdrew three of its appeals, namely, I.T.A. Nos. 323 to 325 relating to the assessment years 1968-69 to 1970-71, respectively. The fourth appeal of the Revenue (namely, I.T.A. No. 326) for the assessment year 1971-72 was accepted. All the four appeals filed by the assessee were dismissed. The assessee filed five reference applications, four from the appeals filed by it, namely (R.A. No. 143 to 145 and 142 of 1976-77), and the fifth (namely, R.A. No. 146 of 1976-77) from the appeal filed by the Revenue. The Tribunal consolidated all the five reference applications and drew a

consolidated statement of the case.

3. The assessee-company in its original returns claimed depreciation of Rs. 6,20,463, Rs. 4,26,198, Rs. 5,48,837 and Rs. 12,94,820 and extra shift allowance of Rs. 1,47,945, Rs. 24,449, Rs. 1,35,252 and Rs. 35,601, for the assessment years 1968-69, 1969-70, 1970-71 and 1971-72, respectively. Later, it filed revised returns for all the above years in which it withdrew the claim for depreciation and the extra shift allowance claimed in the original returns. It was urged before the ITO that it was the sweet will of a taxpayer either to claim or disclaim depreciation allowance and there was no statutory sanction behind such claim being enforced on the assessee. The ITO was, however, of the opinion that it was statutorily binding on him to compute the total income which must take into consideration deductions of depreciation allowance. Similar was the case with regard to the assessee's claim of extra shift allowance. He made the assessments giving deductions on account of the depreciation allowance and the extra shift allowance.

4. On appeal by the assessee, the Appellate Assistant Commissioner upheld the view of the ITO. On further appeal by the assessee, the Tribunal, relying on ALLAHABAD GLASS WORKS Vs. COMMISSIONER OF Income Tax, U.P. and V.P., , and Ascharajlal Ram Parkash Vs. Commissioner of Income Tax, , held that the assessee's contention that it was the sweet will of the taxpayer to claim or not to claim depreciation depending upon his convenience must be rejected. Similarly, it also rejected the assessee's contention regarding extra shift allowance. Consequently, the following question has been referred in R.A. Nos. 143 to 145 and 142 of 1966-67 by the Tribunal.

" Whether the Tribunal has been right in law in holding that, on the facts of the case, the Income Tax Officer had no option but to compute and allow depreciation and extra shift allowance to the assessee for the four assessment years ? "

5. In order to determine the question, it will be relevant to refer to Sections 32(1) (ii) and 34(1) of the I.T. Act. Section 32(1)(ii), inter alia, provides that in respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purpose of business or profession, deduction of such percentage on the written down value thereof as may in any case or class of cases be prescribed, shall be allowed. Section 34(1) provides that the deductions referred to in Sub-section (1) of Section 32 shall be allowed only if the prescribed particulars have been furnished. In the present case, admittedly, the petitioner had claimed deductions on account of depreciation in its returns in the first instance. However, later, it filed revised returns in which it did not claim such deductions. It is well settled that in case an assessee files revised returns, they are to be taken into consideration for the purpose of making an assessment. The original returns cannot be adverted to for that purpose. In this view, we are fortified by the observations of the Allahabad High Court in Niranjana Lal Ram Chandra Vs. Commissioner of Income Tax, , wherein it was observed that once a

revised return has been filed u/s 139(5), the original return is substituted by the revised return as a result of the amendments made in the original return by the revised return. Consequently, the I.T. authorities could not take into consideration the original returns for the assessment of the assessee.

6. In the revised return, as already stated above, the assessee did not claim any depreciation allowance. The Central Board of Revenue, in its Circular No. 29-D (XIX-14) of 1965, F.No. 45/239/65-ITJ, dated August 31, 1965, has provided that where the required particulars have not been furnished by the assessee and no claim for depreciation has been made in the return, the ITO should estimate the income without allowing depreciation allowance. From the circular, it is evident that in case the assessee has not claimed depreciation allowance, he cannot be granted the "same" by the ITO. It has been settled by the Supreme Court in *Navnitlal C. Javeri Vs. K.K. Sen*, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, that the circulars issued by the Department would be binding on it. From the language of the section, read with the circular, it is clear that in case an assessee has not claimed depreciation, the ITO cannot give the allowance of depreciation to him.

7. The learned counsel for the Revenue placed reliance on *ALLAHABAD GLASS WORKS Vs. COMMISSIONER OF Income Tax, U.P. and V.P.*, and *Ascharajlal Ram Parkash Vs. Commissioner of Income Tax*. In both the cases, the assessee insisted that it should be granted depreciation allowance as the data was available with the ITO for granting the same. Therefore, it was observed that the ITO was bound to grant deductions, as in the proceedings the material particulars were available to him from the record. In the present case, as mentioned above, the assessee did not claim any depreciation in the revised return and thus the particulars of depreciation, etc., were not available to the ITO. The above observations are not applicable to the case.

8. In view of the above position, we decide the question in the negative, that is, in favour of the assessee.

9. Now, I advert to R.A. No. 142. The additional facts of the case are that the ITO disallowed the additional relief u/s 80J to the assessee on the ground that relief was not available to the assessee under that section as there was a loss. The assessee's contention in appeal before the AAC was that if depreciation was excluded, which was a notional expense, there was a book profit of Rs. 3,57,232. Therefore, it was entitled to the benefit of Section 80J. The AAC accepted the contention and directed the ITO to consider the claim of the assessee u/s 80J. In appeal before the Tribunal, it was held that the AAC could not give directions to the ITO to compute allowance u/s 80J in view of the prohibition contained in Section 80A(2). It was further held that even assuming that the assessee was entitled to Section 80J relief on the given set of facts, it could not escape the adjustment of liability of Rs. 82,107 from the total employed capital of Rs. 85,14,635. One of the assessee's contentions was that Rule 19A was in conflict with Section 80J and, therefore, it should be ignored. The Tribunal rejected the

contention that the provisions of Rule 19A came in conflict with Section 80J. It also rejected the assessee's contention that for the purposes of computation of relief u/s 80J, the liabilities of Rs. 82,107 should not have been adjusted. On an application of the assessee, the following question of law was referred :

" Whether, the Tribunal has been right in law in holding that in view of the absolute bar as contemplated u/s 80A(2) of the Income Tax Act, 1961, there was no question of the Appellate Assistant Commissioner giving any directions to the Income Tax Officer to compute the allowance u/s 80J read with Rule 19A? "

10. Firstly, it is to be seen whether for giving the benefit of Section 80J, Rule 19A(3) is to be taken into consideration. The said sub-rule provides that from the aggregate of the amounts ascertained under Sub-section (2) shall be deducted the aggregate of the amounts as on the first day of the computation period of borrowed moneys and debts owed by the assessee. The sub-rule could not be read with Section 80J as it has been held to be ultra vires. In the above view, we are fortified by the observations of the Calcutta High Court in Century Enka Ltd. Vs. Income Tax Officer and Others, and of the Madras High Court in Madras Industrial Linings Ltd. Vs. Income Tax Officer and Others, . Same view was taken by me sitting singly in Ganesh Steel Industries Vs. Income Tax Officer and Others, .

11. In the earlier part of the judgment, it has been held that the Department was not competent to allow the depreciation and extra shift allowance to the assessee as the same had not been claimed by it. In case the said allowances were not deducted, then there was a book profit to the assessee. In that situation, it was entitled to the deductions provided in Section 80J. However, the maximum amount that could be claimed under the said section could not exceed the gross total income of the assessee. In case the deduction claimed was more than the gross total income of the assessee, the excess amount could be carried forward and claimed as a deduction in the next financial year.

12. For the aforesaid reasons, we answer the question in the negative, that is, in favour of the assessee. No order as to costs.

M.M. Punchhi, J.

13. I agree.