(1988) 12 BOM CK 0023

In the Bombay High Court

Case No : Income-tax Reference No. 152 of 1976

Bmco Transformers Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-12-1988

Acts Referred:

Income Tax Act, 1922 — Section 15C
Income Tax Act, 1961 — Section 80J, 80J(1), 84

Citation : (1991) 187 ITR 444

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Judgement

S.P. Bharucha, J.—Three questions are posed at the instance of the assessee and they read thus :

"1. Whether, on the facts and in the circumstances of the case, the sum of Rs. 14,79,000 being loan from Industrial Finance Corporation of India was includible in the capital computation base of the assessee for the accounting period relevant to the assessment year 1972-73 in view of section 80J(1) of the Income Tax Act, 1961/rule 19A of the Income Tax Rules, 1962 ?

2. Whether, on the facts and in the circumstances of the case. The assessee in the appeal before the Tribunal was competent in law to raise an additional ground of appeal that the Appellate Assistant Commissioner of Income Tax had erred in holding that the capital employed in the new industrial undertaking had been correctly computed by the Income Tax Officer under rule 19A of the Income Tax Rules, 1962, by excluding the moneys borrowed from the bank amounting to Rs. 17,31,707 and other unsecured loan of Rs. 14,40,723 ?

3. If the answer to question No. 2 above is in the affirmative, whether, on the facts and in the circumstances of the case, the said amounts of Rs. 17,31,707 of the loan taken from the bank and Rs. 14,40,723 of the other unsecured loans were includible in the capital computation base of the assessee u/s 80J of the Income Tax Act, 1962/rule 19A of the Income Tax Rules, 1962 ?"

2. It is agreed that the first and third questions must be answered in the negative and in favour of the Revenue in view of the Supreme Court''s judgement in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, . The questions are so answered. In view of the answer to the third question, it is unnecessary to consider the second question, and it is not, accordingly, answered.

3. No order as to cost.

