
(2004) 11 AHC CK 0274

In the Allahabad High Court

Case No : IT Reference No. 8 of 1988 , 23 November 2004

Chief Commissioner (Administration), U.P.

APPELLANT

Vs

Krishi Disc (P) Ltd.

RESPONDENT

Date of Decision : 23-11-2004

Acts Referred:

Income Tax Act, 1961 — Section 256, 80J

Citation : (2006) 154 TAXMAN 297

Hon'ble Judges : R.K. Agrawal, J;P. Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, for the Appellant;

Judgement

P. Krishna, J.

The Income Tax Appellate Tribunal, Delhi has referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this court :-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that a new industrial undertaking for manufacture of knives had come into existence and was entitled to deduction u/s 80J of the Income Tax Act, 1961 ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in upholding the directions of Commissioner (Appeals) to carry forward of development rebate for assessment years 1971-72 and 1975-76 and to be set off in the year in which there were profits."

2. Briefly stated the facts giving rise to the present reference are as follows:

The respondent-assessee was manufacturing and selling discs and knives. The present reference relates for the assessment year 1980-81. The respondent claimed deduction u/s 80J of the Act in respect of the Industrial undertaking for manufacture of knives. It may be mentioned here that the respondent had set up

a unit for manufacture of discs (used in agricultural implements) in the accounting year relevant to assessment year 1971-72 and had closed the same unit in the year 1980. It had installed machinery worth Rs. 1,02,519 for manufacture of knives which was an item separate and distinct from the discs already being manufactured by it for which the value of machinery installed was Rs. 4,95,060. According to the respondent after the discs unit was closed machinery worth Rs. 16,336 was sold and the balance machinery including general machines worth Rs. 1,40,224 relating to electric installation and maintenance were actually utilized for manufacture of knives. The Income Tax Officer disallowed the claim u/s 80J of the Act on the ground that no separate trading and profit and loss account for the said unit has been prepared or furnished and that the manufacture of discs and knives were connected process carried on by the same industrial undertaking and further it had never claimed deduction u/s 80J of the Act in the past. The respondent-assessee challenged the assessment order by way of appeal before the Commissioner (Appeals). The appeal on this point was allowed as in the meantime the Tribunal for the assessment years 1978-79 and 1979-80 found that the relief u/s 80J of the Act is admissible.

3. Heard Shri A.N. Mahajan, learned standing counsel for the revenue. Nobody has appeared for the assessee.

4. Learned counsel for the revenue has submitted that the assessee was not entitled for deduction u/s 80J of the Act, inasmuch as it had maintained separate trading account of the two undertakings and further the machinery of the discs undertaking has been utilized after its closure in the knives undertaking. It may be mentioned that the Tribunal has found that two units were separate and distinct and during the period the discs unit was in operation the respondent had established the knives unit by installing machinery worth Rs. 1,02,519 which has not been formed by splitting up or reconstruction of business already in existence nor by transfer to a new business of machinery or plant previously used for any purpose. The Tribunal has further found that there is no dispute that the other conditions laid down in section 80J(4) of the Act are satisfied and merely because the respondent has not made any claim u/s 80J of the Act in respect of this unit for the earlier two years will not debar the assessee from claiming it in the year under consideration if he is otherwise entitled to it. On the findings given by the Tribunal we do not find any legal infirmity that the two units are separate and independent and have not been formed by reconstruction or splitting up of the existing unit and the respondent was rightly allowed deduction u/s 80J of the Act for the assessment years in question.

5. This court in CIT v. Krishi Disc (P) Ltd. (IT Reference No. 61 of 1986) in the case of assessee itself for the assessment years 1978-79 and 1979-80 has held that the assessee fulfils the condition in section 80J(4) of the Act. Respectfully following the aforesaid pronouncement we answer the question No. 1 in affirmative, i.e., in favour of the assessee and against the department.

6. Now we take up the question No. 2. The assessee claimed unabsorbed development rebate of Rs. 1,38,819. This claim was rejected by the Income Tax Officer. The Company had not made any profit in the assessment year 1971-72. The Assistant Commissioner in the assessment year 1971-72 directed that the development rebate be allowed on the creation of the reserve in the year in which the Company made profit. The assessee in the assessment year 1975-76 created the necessary reserve, but there was no taxable income after set-off of carry forward losses and depreciation, the Commissioner (Appeals) directed the development rebate to the extent of Rs. 21,523 had to be computed and carried forward to be allowed in the year in which there were profits. The Tribunal has found that there is no direction by the Commissioner (Appeals) to carry forward development rebate from the assessment years 1971-72 to 1975-76. The Commissioner (Appeals) has directed carry forward of development rebate only for two years, namely assessment years 1971-72 and 1975-76. As in the relevant assessment year 1980-81 there is no direction by the Commissioner (Appeals) for carry forward of the unabsorbed development rebate, we find no illegality in the order of the Tribunal.

7. Both the questions are decided in affirmative I.e., in favour of the assessee and against the department.