(1988) 01 PAT CK 0017

In the Patna High Court

Case No : Taxation Case No. 124 of 1980

Commissioner of Income Tax — APPELLANT

Vs

Ashok Refractories — RESPONDENT

Date of Decision : 06-01-1988

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 80J

Citation : (1988) 39 TAXMAN 296

Hon'ble Judges : S.K. Jha, Acting C.J.;B.N. Agrawal, J

Bench : Division Bench

Advocate : K.K. Vidyarthi and S.K. Sharan, for the Appellant; K.N. Jain, for the Respondent

Final Decision : Allowed

Judgement

1. A statement of the case u/s 256(1) of the income tax Act, 1961 (''the Act'') has been submitted by the Tribunal, Patna Bench ''B'' with regard to the assessment year 1975-76 and the following question of law has been referred for the opinion of this Court: Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the deduction u/s 80J of the income tax Act, 1961, should be allowed on the entire capital employed by the assessee including the loan capital?

Since the point is already covered by the decision of the Supreme Court in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, , it is not necessary for us to dwell upon the facts elaborately. At the outset we must acknowledge our gratitude to Mr. K.N. Jain who was good and gracious enough to assist this Court as amicus curiae since no one appeared on behalf of the assessee. Short facts are thus. The assessee is a firm. In the assessment year 1975-76 it has claimed deduction of Rs. 45,000 u/s 80J of the Act. The ITO, however, computed the capital employed by the assessee as on the first day of the accounting period after including the loan capital and worked out the deduction u/s 80J on the said capital at Rs. 17,400. Dissatisfied with the ITO''s order the assessee went up in appeal before the AAC and claimed that the deduction u/s 80J should be allowed on the entire capital employed including the loan capital. The AAC agreeing with the assessee''s contention allowed a further deduction of Rs. 27,490 and held that deduction u/s 80J is allowable on the entire capital including loan capital employed by the assessee. Being aggrieved by the AAC''s order the revenue went up in appeal before the Tribunal. Following the decision of the Calcutta High Court in Century Enka Ltd. Vs. Income Tax Officer, "D" Ward and Others, and the Madras High Court in Madras Industrial Linings Ltd. Vs. Income Tax Officer and Others, , the Tribunal has upheld the decision of the AAC. These are the relevant facts. 2. As we have already indicated earlier, this point is squarely covered by the decision of the Supreme Court in the case of Lohia Machines Ltd. (supra). While attacking the vires of rule 19A of the income tax Rules, 1962 an identical question was raised in that case. While repelling the argument that rule 19A was ultra vires the rule-making authority of the CBR the highest Court of the land was seized with the other logical conclusion and settled the law thus:

That takes us to the second point urged by Mr. Palkhivala relating to the dimension of time in regard to the expression ''capital employed''. The argument of Mr. Palkhivala was that the concept of ''capital employed'' in respect of the previous year is a concept which compels attention to the reality of the capital used during the whole year and not merely on the first day of the computation period and, therefore, rule 19A in so far as it provided for the computation of the ''capital employed'' as on the first day of the computation period was ultra vires the rule-making authority of the Central Board under sub-section (1) of section 80J. This argument of Mr. Palkhivala is also unsustainable and must be rejected. It may be noted that when sub-section (1) of section 80J speaks of ''capital employed'' in an industrial undertaking or business of a hotel, it does not refer to ''capital employed'' during the previous year but it uses the expression ''capital employed'' in respect of the previous year. There is a vital difference between the expression ''during the previous year'' and the expression ''in connection with the previous year''. The argument of Mr. Palkhivala would have had great force if the reference in sub-section (1) of section 80J would have been to ''capital employed'' during the previous year. Then it could have been contended with considerable plausibility that the ''capital employed'' cannot be computed as on the first day of the previous year, but it should be taken to be the average amount of ''capital employed'' during the previous year. But the expression used by the Legislature in subsection (1) of section 80J being ''capital employed...computed in the prescribed manner in respect of the previous year'', the computation has to be in respect of the previous year and it need not take into account the average amount of ''capital employed'' during the previous year, but it can legitimately take the first day of the previous year as the point of time at which the ''capital employed'' must be computed. The ''capital employed'' so computed would clearly fall within the expression ''capital employed... computed in the prescribed manner in respect of the previous year''. Mr. Palkhivala relied on the description given in the parenthetical portion at the end of sub-section (1) of section 80J which describes the amount calculated by applying the statutory rate of 6 per cent to the ''capital employed'' computed In the prescribed manner in respect of the previous year as ''the relevant amount of capital employed during the previous year'', but that is merely a description given to the amount calculated as provided in the main part of sub-section (1) of section 80J and in the main part, we find the words ''in respect of the previous year'' and not ''during the previous year''...." (p. 356)

That clinches the issue. Further on, the Supreme Court goes on to say that--

We are, therefore, of the view that rule 19A in so far as it excluded borrowed monies and debts in the computation of the ''capital employed'' and provided for the computation of the ''capital employed'' as on the first day of the computation period was not ultra vires section 80J and was a perfectly valid rule within the rule-making authority conferred upon the Central Board. So also, for the same reasons rule 19A in so far as it provided that the ''capital employed'' in a ship shall be taken to be the written down value of the ship as reduced by the aggregate of the amounts owed by the assessee as on the computation date on account of monies borrowed or debts incurred in acquiring that ship must be held to be valid as being within the rule-making authority of the Central Board. Since, on the view taken by us, rule 19A did not suffer from any infirmity and was valid in its entirety, the Finance (No. 2) Act of 1980 in so far as it amended section 80J by incorporating rule 19A in the section with retrospective effect from 1st April, 1972, was merely clarificatory in nature and must, accordingly, be held to be valid." (p. 358)

The principle of law so enunciated by the highest Court of the land applies to the instant case also. We are, therefore, constrained to hold that the Tribunal was not justified in holding that the deduction u/s 80J should be allowed on the entire capital employed by the assessee including the loan capital. The answer to the question referred to this Court for its opinion must be in the affirmative, against the assessee and in favour of the revenue. The parties will bear their own costs.