
(1988) 09 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 280 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Caps and Caps

RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:

Income Tax Act, 1961 — Section 80J, 80J(3)

Citation : (1988) 73 CTR 165 : (1989) 179 ITR 235

Hon'ble Judges : G.G. Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding the order of the Commissioner of Income Tax (Appeals) for the assessment years 1978-79 and 1979-80, wherein he directed the Income Tax Officer to work out the deduction u/s 80J of the Income Tax Act for the earlier years and to carry forward and set off the deficiency so worked out against the profits relating to the assessment years 1978-79 and 1979-80 ?"

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee is a private limited company deriving income from manufacture and sale of caps for bulbs and tubelights. The assessee commenced its business during the accounting period relevant to the assessment year 1972-73. From the assessment years 1972-73 to 1977-78 and even during the course of the assessment proceedings for the assessment year 1978-79, the assessee claimed

no deduction u/s 80J of the Act. It was for the first time in the appellate proceedings arising out of assessment for the assessment year 1978-79 that the assessee raised before the Commissioner of Income Tax (Appeals) an additional ground contending that deduction u/s 80J should have been allowed to the assessee in the earlier years and that the deficiency so worked out should be allowed to be set off for the assessment years in question. It was contended by the assessee that since the assessee could not make any claim for the relief u/s 80J on account of losses, the said claim was being made during the assessment year 1978-79 as during that year, the company had earned profit. The Income Tax Officer objected to the raising of the additional ground but the Commissioner of Income Tax (Appeals) upheld the contention of the assessee that the additional ground seeking relief under any of the provisions of law, for which the assessee was entitled, could be raised at any time, even before the appellate authority. The Commissioner of Income Tax (Appeals) held that the claim made by the assessee could not be rejected on the ground that no such claim was made before the Income-tax Officer nor could the assessee be debarred from making a new claim before the appellate authority. The Commissioner of Income Tax (Appeals) found that the assessee had commenced business in the assessment year 1972-73 and since that year till the assessment year 1978-79, the assessee suffered heavy losses and, therefore, deduction u/s 80J was required to be carried forward as per provisions of law. The Commissioner of Income Tax (Appeals) also upheld the contention of the assessee that since necessary material in the form of balance-sheet and depreciation chart showing purchases and additions made to the plant and machinery was available on record, the claim u/s 80J of the Act could be entertained and allowed. The Commissioner of Income Tax (Appeals) further found that the claim of the assessee was fully covered by the provisions of Sub-section (3) of Section 80J of the Act. In this view of the matter, the Commissioner of Income Tax (Appeals) partly allowed the appeals arising out of assessments for the assessment years 1978-79 and 1979-80 and directed the Income Tax Officer to work out the claim of the assessee for the earlier years and to allow the deficiency to be carried forward and to be adjusted against profits in accordance with the provisions of Section 80J of the Act. Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred appeals before the Tribunal, but those appeals were dismissed. Hence, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid question of law has been referred to this court for its opinion.

3. It was contended on behalf of the Revenue that as the assessee had not made any claim for deduction u/s 80J of the Act, the Commissioner of Income Tax (Appeals) should not have allowed that claim. The contention cannot be upheld. It has been held by this court in Commissioner of Income Tax Vs. Ganga Engineering Works, , following the decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Gangappa Cables Ltd., , that in a case where there was material on record, deduction u/s 80J could be allowed, even though

no formal claim was made on behalf of the assessee. It was then contended on behalf of the Revenue that the Tribunal erred in holding that the assessee was entitled to deduction u/s 80J for all the assessment years in question. In this connection, we may usefully refer to the following observations of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Veljan Hydrair (P.) Ltd., :

"It is uniformly held by the Allahabad, Calcutta and Madras High Courts in Addl. Commissioner of Income Tax Vs. Sheetalaya, , INDIAN ALUMINIUM CO. LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL-II., and Commissioner of Income Tax, Tamil Nadu-V Vs. Bluemount Ceramics Ltd., , that for the years in which there was no profit, the assessee is under no obligation to claim deduction u/s 80J. It is also held that even though no such claim is made, the Income Tax Officer ought to have granted the benefit under the said section in the year in which profit is made. Sub-section (3) of Section 80J, which is the relevant sub-section herein, does not expressly require that a claim should be made by the assessee even when no profit is made. Indeed, the said sub-section provides that where there are no profits or gains made for that assessment year or where the deduction exceeds the profits and gains made, the whole or balance of the deduction should be carried forward and set off against the profits and gains made for the next following assessment year and so on. In view of the above position of law, we are of the opinion that the Tribunal was right in holding that it was not obligatory on the part of the assessee to make a claim for the said deduction in the previous assessment years when no profit was made and that the assessee is entitled to the said deduction for all the assessment years in the assessment year 1972-73. In other words, while determining the amount to be granted by way of deduction u/s 80J in the assessment year 1972-73, he was bound not only to grant for that particular assessment year, but also for the previous assessment years for which the assessee was entitled to in law."

4. We respectfully agree with the aforesaid observations.

5. Learned counsel for the Revenue relied on the decision in Anchor Pressings (P.) Ltd. Vs. Commissioner of Income Tax and Others, and Sharda Prasad Vs. Commissioner of Income Tax, . But those decisions are distinguishable on facts. In those cases, the question for consideration was whether the assessee could claim rectification u/s 154 when the assessee had failed to make any claim u/s 80J. It is not necessary for us to consider that aspect of the matter. The Commissioner of Income Tax (Appeals) had jurisdiction to entertain the claim made on behalf of the assessee and in upholding that claim, the Tribunal was justified.

6. For all these reasons, our answer to the question referred by the Tribunal to this court is in the affirmative and against the Revenue. In the circumstances of the case, the parties shall bear their own costs of this reference.