

(2007) 09 JH CK 0025

In the Jharkhand High Court

Case No : Tax Case No's. 11 and 12 of 1998 (R)

Commissioner of Income Tax

APPELLANT

Vs

Eastern Tar (P) Ltd.

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 148, 256(1), 263
Income Tax Rules, 1962 — Rule 19A(2)

Citation : (2008) 56 BLJR 679 : (2008) 218 CTR 506 : (2008) 3 JCR 667

Hon'ble Judges : M.Y. Eqbal, J; D.G.R. Patnaik, J

Bench : Division Bench

Advocate : K.K. Jhunjhunwala, for the Appellant; Binod Poddar S. Gadodia, A. Poddar, P. Poddar and Vakas Pandey, for the Respondent

Judgement

M.Y. Eqbal, J.—By these reference u/s 256(1) of the Income Tax Act, the following question has been referred to this Court for opinion:

(1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the interest income on FDR with Bank and on deposit with IDBI is part of the profit and gains derived from an industrial undertaking attracts Section 80I of the Income Tax Act?

(2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the interest on FDR with Bank and on deposit with IDBI is part of the profit and gains derived from an industrial undertaking to which Section 80I of the Income Tax Act, 1961 applies and thereby qualifying for deduction u/s 80I of the Income Tax Act, 1961?

2. The facts of the case lie in a narrow compass :

The Assessee is an industrial undertaking engaged in conversion of coal tar into hard pitch anthracene oil etc. being the priority industry. The assessee filed its Income Tax Return claiming deduction u/s 80I at Rs. 4,38,161/- for the assessment year 1989-90 and Rs. 4,32,042/- for the assessment year 1990-91

being 255 of profit. The assessing officer by two separate assessment orders passed u/s 143(3) of the Income Tax Act allowed the deductions at Rs. 4,69,876 and Rs. 4,33,474/- for assessment years 1989-90 & 1990-91 respectively. The Commissioner of Income Tax, Ranchi initiated revision proceedings u/s 263 of the Act and alleged that the said assessment orders passed by the assessing officer were erroneous and prejudicial to the interest of revenue because according to him the interest earned by the assessee for Rs. 2,15,432/- (Rs. 58,766/- interest on deposit in IDBI & Rs. 1,56,666/- interest earned on Bank FDR's) for assessment year 1989-90 and Rs. 1,71,116/- (Rs. 72,600/- interest on deposit in IDBI & Rs. 98,516/- interest earned on Bank FDR's) for the assessment year 1990-91 should not have been considered for the purpose of allowance of deduction u/s 80I of the Income Tax Act, 1961 as according to him the said interest income did not form part of the profit and gains derived from the Industrial Undertaking. He accordingly directed the assessing officer to re-compute the deduction granted u/s 80I of the Act after excluding the interest income of Rs. 2,15,432/- and Rs. 1,71,116/- for the assessment year 1989-90 & 1990-91 respectively.

3. The assessee on being aggrieved by and dissatisfied with the aforesaid revision order dated 11.03.1993 passed by C.I.T. u/s 263 preferred appeal before the Income Tax Appellate Tribunal, Patna Bench, Patna. The I.T.A.T. after hearing both the sides and considering the various judgments cited by the parties vide its order dated 15.5.1997 held that the FDR in the bank and the deposit in the Investment A/c of the IDBI have a close nexus with the business of the assessee company which is an industrial undertaking and the assessing officer has rightly allowed deduction u/s 80I having taken the interest income as profit and gains of the assessee company. Accordingly, it was held that the order passed by the Commissioner of Income Tax u/s 263 of the Act was bad in law and therefore, was reversed and the appeal of the assessee was allowed.

4. Mr. Binod Poddar, learned senior counsel appearing for the assessee submitted that Assessee-Unit is a small-scale industry engaged in the business of conversion of coal tar into hard pitch anthracene oil. The interest income earned by the assessee on fixed deposit in bank was the business income in view of the fact that the said amount of deposit in the bank was made out of the accumulated cash profit and reserve. Learned Counsel submitted that similarly, the deposit made with IDBI was to avail deduction u/s 32AB of the Act which was the investment deposit account. There is condition in Section 32AB that to avail deduction under section, the assessee has to deposit an amount in an account maintained by him with the Development Bank and accordingly the assessee to claim deduction under the said section deposited the amount with the IDBI being the Industrial Development Bank of India. The interest income, which was generated from the fixed deposit in the bank and in IDBI, had direct nexus with the business of the assessee and was a business income to be included in the profit and gains of the assessee. Learned Counsel further submitted that income earned by the assessee on the deposit with bank and IDBI has a close nexus

with business of the assessee company which is an industrial undertaking and therefore, it is submitted that the interest generated from these deposits are the profits and gains from the business of the assessee and, therefore, he is entitled for allowance u/s 80I of the Act.

5. Learned Counsel relied upon the decision of the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, and the decision of the Bombay High Court in the case of Commissioner of Income Tax Vs. United Carbon India Ltd., .

6. Section 80I of the Act was inserted by the Finance Act, 1980 with effect from 1.4.1981. The scope of this section has been elaborated by departmental circular No. 281 dated 22.9.1980. This section was further amended by Finance Act, 1983 with effect from 1st April, 1984. u/s 80I of the Act, deduction is allowed to 20% and 25% in case of corporate tax payers of the profit from new industrial undertaking or a ship or business of a hotel included in the gross total income. Any industrial undertakings which fulfills all the conditions laid down u/s 80I(2) is eligible for deduction in accordance with and subject to the provisions of that section. In other words, provision of Section 80I provides that where gross total income of the assessee including any profit and gains derived from the industrial undertakings to which section applies there shall be in accordance with and subject to the provisions of section to be allowed deduction from such profit and gains of an amount equal to 25% while computing total income of the assessee.

7. In Cambay Electric Supply Industrial Co. Ltd. case (Supra) the facts of the case was that the assessee Cambay Electric Supply Ltd carrying on the business of generation and distribution of electricity at Cambay and was covered by the provisions of Section 80E(1) and was entitled to claim deduction under the said section. During the accounting period the assessee-Company earned certain income from the said business. During that period the company also sold some of its old machinery and buildings resulting in balancing charges. There was unabsorbed depreciation and unabsorbed development rebate also. The Income Tax Officer while completing the assessment, determined the deduction admissible to the assessee u/s 80E(1) of the Act. However, the Additional Commissioner, Income Tax exercising power u/s 263 of the Act took the view that the manner of computing the deduction admissible to the assessee u/s 80E(1) was erroneous and prejudicial to the interests of the revenue. According to the Commissioner, deduction was wrongly allowed. Ultimately, the matter came before the Supreme Court. The Supreme Court observed that in computing the total income of the assessee carrying on the business of an industry specified u/s 80E of the Income Tax Act, 1961, for the purpose of special deduction permissible thereunder, the balancing charge arising as a result of sale of old machinery and buildings and worked out in accordance with Section 41(2), irrespective of its real character, has to be taken into account and included as income of the business. In other words, the balancing charge will have to be taken into account before computing the deduction of 8 per cent u/s 80E.

8. In the case of Commissioner of Income Tax v. Ahmedabad Electricity Co. Ltd. 2003 ITR 521 the facts of the case was that the assessee was engaged in the business of generation and distribution of electricity. In the assessment originally framed u/s 143(3) of the Act, the Income Tax Officer had granted deduction u/s 80I of the Act in respect of the fixed deposit receipts. However, subsequently the Income Tax Officer took action u/s 147(b)/148 of the Act in view of the objection raised by the revenue audit in respect of the aforesaid receipts whereby deduction granted to the assessee u/s 80I of the Act was withdrawn and the matter was ultimately referred to the Bombay High Court for opinion on the following question:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the following receipts of the assessee -Company were profits and gains attributable to its priority industry and qualified for relief u/s 80I of the Income Tax Act, 1961, for the assessment years, 1971-72 and 1972-73 ?

9. Answering the question in favour of the assessee after following the decision of the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd (supra) the court held:

For the aforesaid reasons and particularly on the true construction of the provision itself we are of the view that both the Tribunal and the High Court were right in taking the view that the item of Rs. 7,55,807 was required to be taken into account while computing the deduction of eight per cent contemplated by Section 80E(1) of the Act.

In the case of Commissioner of Income Tax Vs. United Carbon India Ltd., , this Court applied the ratio laid down in the aforesaid case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, and held that the interest income earned on short term deposits of money not immediately required for the business was attributable to the business of the assessee which was a priority industry.

On a due consideration of the submissions made by the parties and after adverting to the facts found by the Tribunal as well as the aforesaid decision of the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. (1978) 113 ITR 83 and of this Court in the case of Commissioner of Income Tax Vs. United Carbon India Ltd., , we do not find any merit in the submissions made on behalf of the revenue. In our view, the Tribunal has correctly come to the conclusion that the aforesaid receipts would qualify for deduction u/s 80I of the Act. We would, therefore, answer the question referred to us in the affirmative and in favour of the assessee.

10. In the case of Commissioner of Income Tax Vs. United Carbon India Ltd., the question raised for consideration before the Bombay High Court was whether the amount representing technical know-how is includible in capital for Section 80J ? : The following questions were referred to the Court for opinion:

(1) Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the cost of technical know-how which was paid for by the assessee by way of shares in the assessee-company is includible in the capital for the purpose of computation of relief u/s 80J of the Income Tax Act, 1961, under Rule 19A(2), Clauses (ii) and (iii) of the Income Tax Rules, 1962, for 1970-71 and 1971-72 assessment years.

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to relief at 8% u/s 80I on the interest income of Rs. 7,07,390 for the assessment year 1971-72 ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to relief u/s 80J on the bank deposit of Rs. 1.40 crores which should be treated as capital employed in the industrial undertaking for the assessment year 1971-72 ?

11. The Bombay High Court held:

The facts relevant for the purpose of the second question are that the amounts on which interest was earned by the assessee to the extent of Rs. 7,07,390 represented the assessee's money required for its business. Since, however, the monies were not required immediately, the assessee made short-term deposits of these monies and earned interest thereon. The question that arose for the purpose of granting relief u/s 80I was whether such an income was a business income so as to earn benefit under that section. The assessee's case was that the language used in Section 80I, viz., "income attributable to the business" was wider than the express "income derived from the business". On the facts stated above, we are in agreement with the Tribunal that the interest income is attributable to the business income of the assessee which is a priority industry in this case and, therefore, relief u/s 80I was justifiably allowed. Accordingly, the second question is also answered in the affirmative and in favour of the assessee.

As regards the third question, the admitted position that the assessee is an industrial undertaking in existence and that the deposits of Rs. 1.40 crores represented the monies which the assessee had set apart for the expansion programme and for discharging various liabilities of the industrial undertaking. It is not something which has nothing to do with the industrial undertaking. This is the money collected for the purpose of the industrial undertaking, and, therefore, following our court's decision in the case of Commissioner of Income Tax, Pune Vs. Hindustan Antibiotics Ltd., , we answer the third question also in the affirmative and in favour of the assessee.

12. In the instant case, as notice above, against the order passed by the appellate authority u/s 263 of the Act, the assessee preferred appeal and the appellate authority after considering the law laid down by the Supreme Court and different High Courts, held that the FDR of the Bank and deposits in the investment account of IDBI have a close nexus with the business of the assessee-company which is a industrial undertaking and, therefore, the Assessing Officer

had rightly allowed deduction u/s 80I after having taken the interest income as profit and gain of the assessee-company. We fully affirm the view taken by the appellate authority in the light of the principle of law laid down by the Supreme Court in Cambay Electric Supply Industrial Co. Limited's case (supra) and also the decision of the Bombay High Court.

13. After having considered the entire facts and circumstances of the case, we answer the question of law in affirmative in favour of the assessee and against the Revenue.

D.G.R. Patnaik, J.

14. I agree.