(1984) 07 MAD CK 0005

In the Madras High Court

Case No : Tax Case No''s. 189 of 1978 and 1266 of 1979

Commissioner of Income Tax APPELLANT

Vs

Ennore Foundries Ltd. RESPONDENT

Date of Decision : 03-07-1984

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2), 80J, 80J(3), 84

Citation : (1985) 21 TAXMAN 349

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

G. Ramanujam, J.—These two tax cases relate to the same assessment year 1970-71. In Tax Case No. 189 of 1978, the following two

questions have been referred by the Tribunal u/s 256(1) of the income tax Act, 1961 (''the Act'') to this Court for its opinion:

1. Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction of Rs. 5,61,349 u/s 80J(3) of the income tax

Act, 1961, for the assessment year 1970-71, the same representing the amount on which tax was not payable u/s 84 for the assessment year

1967-68?

2. Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction of 8 per cent of Rs. 69,37,362 being the profit

and gains from the business computed for the assessment year 1970-71, before setting off the unabsorbed development rebate relating to the

assessment year 1967-68?

In Tax Case No. 1266 of 1979, the following two questions have been referred by the Tribunal on a direction given by this Court u/s 256(2) :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal''s finding that the production in the assessee''s case was

commenced in November 1961 and not in July 1960, is based on valid and relevant materials and is sustainable in law?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was entitled to carry

forward the alleged deficiency u/s 84 relating to the assessment year 1967-68 and set it off against the profit for the year 1970-71 especially when

the income tax Officer has not determined the relief u/s 84 since the assessee had not made any claim at all in the assessment year 1967-68?

2. So far as question No. 2 referred in Tax Case No. 189 of 1978 is concerned, we find that it is covered by the decisions of this Court in

Commissioner of Income Tax Vs. English Electric Company Ltd., and Commissioner of Income Tax, Tamil Nadu-I Vs. Standard Motor Products

of India Ltd., , wherein this Court has answered a similar question in favour of the revenue. Since the said decisions cover the second question, we

have to answer the second question in Tax Case No. 189 of 1978 in the negative and in favour of the revenue.

3. It is also seen that question No. 2 in Tax Case No. 1266 of 1979 is also covered by the decision in Commissioner of Income Tax, Tamil Nadu-

V Vs. Bluemount Ceramics Ltd., Though the learned counsel for the revenue seeks to avoid the application of the said decisions to the facts of this

case by saying that the Tribunal has not given any specific finding that the assessee has not earned any profit in the earlier years, we are of the view

that the Tribunal has in fact proceeded on the basis that the assessee was entitled to carry forward the deficiency u/s 84 of the Act, against the

profits of the year 1970-71. We have to, therefore, answer question No. 2 referred in Tax Case No. 1266 of 1979 in the affirmative and against

the revenue. As regards question No. 1 in Tax Case No. 189 of 1978 and question No. 1 in Tax case No. 1266 of 1979, we find that both the

questions cover the two aspects of the same question. The two questions relate to the question as to when the commercial production was started

by the assessee and whether the assessee is entitled to carry forward relief u/s 80J of the Act and get a set off for the assessment year 1970-71. In this case, the Tribunal has given a categorical finding that the assessee started commercial production only in November 1961 and, therefore, the

assessee is entitled to claim section 80J relief in a sum of Rs. 5,61,349 in the assessment year 1967-68 as that being the fifth year from the year of

commercial production. The fact that if really commercial production started in November 1961, the assessee is entitled to claim section 80J relief

in the year 1970-71 is, not and cannot be disputed. But, according to the revenue, commercial production started in July 1960 and, therefore, the

assessee is not entitled to claim section 80J relief in a sum of Rs. 5,61,349. Thus, the substantial point in controversy is as to when the assessee

commenced commercial production in his undertaking. According to the revenue, commercial production started in July 1960, while, according to

the assessee, its commercial production started in November 1961. As already stated, the Tribunal has given a finding after referring to the various

facts and circumstances that the trial production alone started in July 1960 and the commercial production started in November 1961. This finding

has been challenged on three grounds: (1) The assessee''s auditors, Fraser and Ross, have informed by their letters dated 20-6-1963 and 3-4-

1964 that the production had commenced from July 1960 and there is no reason as to why these letters should be ignored. (2) The assessee itself

has claimed depreciation for the assessment years 1961-62 and 1962-63 which means that the assessee should have started commercial

production in the year 1960. (3) The assessee has, in fact, sold goods worth about Rs. 3,26,610 during the year ending 30-9-1961, and this

would show that commercial production had in fact started in 1960. The Tribunal has considered all these three factors referred to above and has

held that what the auditors refer in the letters dated 20-6-1963 and 3-4-1964 is only the trial production and the production referred to by them is

not commercial production. So far as the claim for depreciation in the year 1961-62 is concerned, the Tribunal has held that since the assessee has

used machinery for trial production, they are entitled to claim depreciation and the claim for depreciation for the year 1961-62 will not establish

that the assessee started commercial production even in the year 1960. Referring to the sale of castings of the value of Rs. 3,26,610 during the

year ending 30-9-1961, the Tribunal has stated that even during the trial stage when certain trainees were trained in the factory, certain goods had been manufactured and when those goods were found to be of good quality, Ashok Leyland offered to purchase the same and the assessee,

therefore, sold them even before the commercial production started. Thus, all the three grounds urged by the learned counsel for the revenue have

been considered and dealt with by the Tribunal. It is not as if the Tribunal has omitted to consider any relevant material. After going through the

judgment of the Tribunal, we are inclined to agree with the view taken by the Tribunal in this case. On the facts and in the circumstances of the

case, the Tribunal appears to be right in holding that commercial production started only in November 1961 and if this finding is accepted, it cannot

be disputed that the assessee can claim carry forward section 80J relief in the assessment year in question as that being the fifth year from the year

of production. In this view, we are not in a position to disagree with the Tribunal on the facts and in the circumstances of this case on the first

question in each of these references. Therefore, the first questions in Tax Case Nos. 189 of 1978 and 1266 of 1979 are answered in the

affirmative and against the revenue. There will, however, be no order as to costs.