
(1997) 03 MAD CK 0140

In the Madras High Court

Case No : Tax Case No. 35 of 1984 (Reference No. 3 of 1984)

Commissioner of Income Tax

APPELLANT

Vs

Essar Bulk Carriers Ltd.

RESPONDENT

Date of Decision : 05-03-1997

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 28, 80J

Citation : (1999) 235 ITR 600

Hon'ble Judges : N.V. Balasubramanian, J; Abdul Hadi, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—Pursuant to the direction of this court, the Appellate Tribunal has stated a case and referred the following question of law for the opinion of this court u/s 256(2) of the Income Tax Act, 1961, hereinafter referred to as ("the Act") :

"Whether, on the facts and in the circumstances of the case and having regard to the provisions of rule 19A(2) of the Income Tax Rules, 1962, the Appellate Tribunal's view that the assessee is entitled to deduction u/s 80J for the assessment year 1974-75 in respect of the new industrial undertaking notwithstanding the fact there was no opening capital on the first day of the computation period is sustainable in law ?"

2. The assessee is a company. The assessee, in the course of assessment proceedings for the assessment year 1974-75, relevant to the previous year ended on March 31, 1974, claimed deduction u/s 80J of the Act in respect of the profits derived from its new industrial undertaking. The Income Tax Officer, however, rejected the claim of the assessee on the ground that the assessee's business was only the execution of civil construction work. The Appellate Assistant Commissioner accepted the contention of the assessee that the activities of the assessee amounted to manufacture of goods. The point whether

the assessee is a manufacturer or not is not a subject-matter of the tax case since the finding that the assessee is a manufacturer has become final. However, the Income Tax Officer while determining the capital for deduction u/s 80J of the Act, held that there was no opening capital as on the first day of the previous year and hence the deduction u/s 80J of the Act cannot be granted to the assessee.

3. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) against the order of the Income Tax Officer refusing to grant the deduction u/s 80J of the Act. The Commissioner of Income Tax (Appeals) held that it was an admitted position that there was no opening capital as on the first day of the computation period. Since the machinery, fixtures, etc., had been acquired during the course of the relevant computation year, he held that the assessee was not entitled to claim deduction u/s 80J of the Act. The assessee preferred an appeal before the Appellate Tribunal. The Appellate Tribunal held that the assessee was entitled to the relief u/s 80J of the Act on the score that though there was no opening capital on the first day of the previous year, the capital introduced and augmented during the course of the previous year should also be taken into account for the purpose of granting deduction u/s 80J of the Act. The Revenue having failed to secure a reference before the Appellate Tribunal this court has called for a statement of the case and hence the reference is before us.

4. Mr. C. V. Rajan, learned counsel for the Department, submitted that the view of the Appellate Tribunal that the assessee would be entitled to deduction u/s 80J of the Act though there was no opening capital on the first day of the computation period is erroneous in law as the Supreme Court in *Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others*, , has held that the computation of the capital should be calculated as on the first day of the computation period. According to learned counsel for the Revenue, when the Supreme Court has upheld the validity of rule 19A of the Income Tax Rules, 1962, it also held that the computation of capital should be done, as on the first day of the computation period and, therefore, the concept of average capital of the assessee during the computation period, as held by the Appellate Tribunal cannot be taken as the basis for the grant of relief u/s 80J of the Act.

5. Mr. Janarthana Raja, learned counsel for the assessee, did not seriously dispute the position that the view of the Appellate Tribunal is not sustainable in law. However, he submitted that this court should give a direction to the Appellate Tribunal to determine the amount of capital on the first day of the computation period and if it is found that the assessee had capital on the first day of the computation period, the relief due to the assessee should be granted.

6. We have carefully considered the submissions of the rival parties. The Supreme Court in the case of *Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others*, , has upheld the validity of rule 19A of the Rules. The Supreme Court traced the legislative history leading to the introduction of section

80J of the Act as well as rule 19A of the Rules. The Supreme Court found that under old rule 19 of the Rules, the average cost of the machinery acquired by the purchase on or after the date of commencement of the computation period was required to be taken into account while computing the capital of the industry, but under rule 19A of the Rules, the assets acquired on or after the commencement of the computation period were required to be left out and only the amounts representing the value of the assets as on the first day of the computation period were to enter into the computation of capital employed in any industrial undertaking or the business of a hotel. The Supreme Court upheld the validity of rule 19A of the Rules and held that the computation of capital has to be in respect of the first day of the computation period as the point of time at which the capital employed must be computed. The Supreme Court also held that the words, "in respect of the previous year" found in section 80J of the Act are facilitative for the computation of the "capital employed" which is prescribed under rule 19A of the rules as on the first day of the computation period. The Supreme Court, therefore, held that rule 19A in so far as it provides for the computation of the capital employed on the first day of the computation period is concerned is within the rule-making authority of the Central Board of Direct Taxes u/s 80J of the Act. The Supreme Court also noticed that there is a significant distinction between the expression "during the previous year" from the expression "capital employed in respect of the previous year" used in section 80J of the Act. In view of the authoritative decision of the Supreme Court holding the "capital employed" should be computed as on the first day of the computation period, the view of the Appellate Tribunal that rule 19A provides for computation of relief, even if the capital is introduced and augmented during the course of previous year is not legally sustainable. In other words, the said view of the Appellate Tribunal is blatantly erroneous. This court also in the case of Madras Fertilizers Ltd. Vs. Commissioner of Income Tax, has held that the addition made during the previous year cannot be taken into account for determining the deduction u/s 80J of the Act.

7. It is now necessary to consider the request of Mr. Janarthana Raja, learned counsel for the assessee, that this court should direct the Appellate Tribunal to determine the amount of capital employed on the first day of the computation period. It is seen from the order of the Appellate Tribunal that there is a complete mixing up of the concept of the computation period with the concept of the previous year. No doubt, the Income Tax Officer was not quite accurate in stating that there was no capital employed as on the first day of the previous year. But, however, the Commissioner of Income Tax (Appeals) found that it was admitted that there was no opening capital as on the first day of the computation period. The Appellate Tribunal, when it noticed the order of the Commissioner of Income Tax (Appeals,) was not correct in stating that the Commissioner of Income Tax (Appeals) found there was no opening capital as on the first day of the previous year. The direction as prayed for by the assessee to the Appellate Tribunal to determine the amount of capital as on the first day of the

computation period is well beyond the scope of the present reference. The assessee, it is seen, has admitted that there was no capital as on the first day of the computation period and the finding of the Commissioner of Income Tax (Appeals) was not challenged before the Appellate Tribunal. Further, the assessee was not able to establish even before the Commissioner of Income Tax (Appeals) what was the amount of capital employed as on the first day of the computation period. Hence, we are not able to accede to the request of learned counsel for the assessee that the Tribunal should be directed to determine the amount of capital as on the first day of the computation period. The Tribunal at the time of hearing of the appeal proceeded on the basis that the assessee had no opening capital as on the first day of the computation period and the question referred to us also proceeded on the basis that there was no opening capital on the first day of the computation period. Therefore, we are of the opinion that it is not possible for this court to entertain the request of learned counsel for the assessee that the Appellate Tribunal should be directed to determine the amount of capital employed as on the first day of the computation period. Since we have already held that the view of the Appellate Tribunal that the assessee is entitled to the deduction u/s 80J of the Act notwithstanding the fact that there was no opening capital as on the first day of the computation period is plainly not sustainable in law, we have to answer the question referred to us in the negative.

8. Accordingly, we answer the question of law referred to us in the negative and in favour of the Revenue. No costs.