

(1996) 08 MP CK 0049

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 650 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Hindustan Electrographites Ltd.

RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Income Tax Act, 1961 — Section 32, 32(2), 43(6), 80J

Citation : (1997) 140 CTR 342 : (1998) 229 ITR 585

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : Abhay Sapre, for the Appellant; H.S. Shrivastava, for the Respondent

Judgement

S.K. Kulshrestha, J.—The Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, arising out of the order of the Tribunal, at the instance of the Revenue for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the unabsorbed depreciation is not to be deducted for working out the written down value for the purpose of allowing deduction u/s 80J of the Income Tax Act ?"

2. The assessee is a limited company engaged in the manufacture and sale of graphite electrodes and graphite anodes, in collaboration with a French company. The claim of the assessee for deduction u/s 80J of the Act on the amount of unabsorbed depreciation was disallowed by the Assessing Officer who did not accept the assessee's contention that only the depreciation actually allowed should be deducted from the cost of the assets to arrive at the written down value (for short "WDV"), for the purposes of working out the deduction u/s 80J. The order of the Assessing Officer was upheld in appeal by the Commissioner of Income Tax (Appeals) and on further appeal to the Tribunal, the Tribunal took the view that the unabsorbed depreciation was an asset in the form of debt due to

the assessee in accordance with Clause (iv) of Sub-rule (2) of Rule 19A of the Income Tax Rules. The Tribunal also held that Explanation 3 to Section 43(6) of the Income Tax Act, was not applicable in the context of Section 80J and accordingly, held that the unabsorbed depreciation was not to be deducted for the purposes of working out the written down value u/s 80J of the Income Tax Act, 1961. The Revenue then made an application u/s 256(1) for reference of the question arising out of the order of the Tribunal and, hence, the said question has been referred for the opinion of this court.

3. We have heard learned counsel for the parties and perused the record.

4. Section 80J of the Income Tax Act, 1961, provides for deduction in respect of profits and gains from newly established undertakings or a ship or a hotel business, in certain cases. Sub-Section (1) of Section 80J reads as under :

"80J. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which this Section applies, there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains (reduced by the deduction, if any, admissible to the assessee u/s 80HH or Section 80HHA) of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent, per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, computed in the manner specified in Sub-section (1A) in respect of the previous year relevant to the assessment year (the amount calculated as aforesaid being hereafter, in this Section, referred to as the relevant amount of capital employed during the previous year) . . .

(1A)(I) For the purposes of this Section, the capital employed in an industrial undertaking or the business of a hotel shall, except as otherwise expressly provided in this Section, be computed in accordance with Clauses (II) to (IV) and the capital employed in a ship shall be computed in accordance with Clause (V).

(II) The aggregate of the amounts representing the values of the assets as on the first day of the computation period of the undertaking or of the business of the hotel to which this Section applies shall first be ascertained in the following manner :--

(i) in the case of assets entitled to depreciation, their written down value ;

(ii) in the case of assets acquired by purchase and not entitled to depreciation, their actual cost to the assessee ;

(iii) in the case of assets acquired otherwise than by purchase and not entitled to depreciation, the value of the assets when they became assets of the business ;

(iv) in the case of assets, being debts due to the person carrying on the business, the nominal amount of those debts ;

(v) in the case of assets, being cash in hand or bank, the amount thereof.

Explanation 1. -- In this Clause, "actual cost" has the same meaning as in Clause (1) of Section 43.

Explanation 2. -- In this Clause and in Clause (III), "computation period" means the period for which profits and gains of the industrial undertaking -or business of the hotel are computed under Sections 28 to 43A.

Explanation 3.--In this Clause and in Clause (V), "written down value" has the same meaning as in Clause (6) of Section 43.

Explanation 4.--Where the cost of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the actual cost of the asset."

5. From the perusal of Section 80J, it is manifest that in computing the total income of the assessee derived from an industrial undertaking or a ship or the business of a hotel to which the said Section applies, the deduction from such profits and gains is to be allowed of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent, per annum of the capital employed in the industrial undertaking or ship or business of the hotel, subject to the other provisions of the said Section, in respect of the previous year relevant to the assessment year. Sub-section (1A)(I) provides that the capital employed in such industrial undertaking or the business of a hotel shall be computed in accordance with Clauses (II) to (IV) except as otherwise provided. Clause (II) provides that the aggregate of the amounts representing the values of the assets as on the first day of the computation period of the undertaking or of the business of the hotel shall be ascertained in the manner provided in Sub-clauses (i) to (v). Sub-clause (i) provides that in the case of assets entitled to depreciation, the value will be the written down value. It is with this Sub-clause that we are concerned in the present case. For the purposes of ascertaining the written down value of an asset entitled to depreciation, Explanation 3 to Sub-section (1A)(II) provides that written down value shall have the same meaning as in Clause (6) of Section 43. Thus, for the purposes of arriving at the value of the assets entitled to depreciation, the same will have to be determined in accordance with the provisions of Section 43(6) of the Act. Section 43(6) lays down that "written down value" means in the case of assets acquired in the previous year, the actual cost of the assets to the assessee and in the case of assets acquired before the previous year, the actual cost less all depreciation actually allowed to the assessee under the Act. Explanation 3 to Section 43(6) lays down that any allowance in respect of any depreciation carried forward under Sub-section (2) of Section 32 shall be deemed to be depreciation "actually allowed". It is, thus, clear that if full effect cannot be given to any allowance relevant to the depreciation u/s 32 of the Act, in any previous year, owing to there being no profits or gains chargeable for that previous year or profits or gains chargeable being less than the allowance, the same though carried forward as unabsorbed depreciation, shall count under Explanation 3 to Section 43(6) of the Act for calculating the written down value as deemed to be depreciation

actually allowed.

6. The Tribunal, in its order dated December 9, 1991, held that the judgment of the Calcutta High Court was not per incuriam and came to the conclusion that in the context of Section 80J, Explanation 3 to Section 43(6) was not applicable and the unabsorbed depreciation was not to be deducted for the purposes of working out the written down value u/s 80J. The judgment of the Calcutta High Court in *Indian Aluminium Co. Ltd. Vs. Commissioner of Income Tax*, , thus held the view that the unabsorbed depreciation is not to be taken into account for arriving at the written down value, but the said view has been expressed by their Lordships on the basis of Rule 19A of the Rules and without reference to Explanation 3 to Section 43(6). Section 80J itself makes a reference for the purposes of arriving at the written down value to Section 43(6) as per Explanation 3 to the said Section and it is, therefore, not permissible to ignore the meaning assigned in Clause (6) of Section 43 and Explanation 3 to the said Section. With great respect, we find ourselves unable to agree with the said decision of the Calcutta High Court in relation to the determination of the written down value as, to us, on a plain reading of the provisions of Sections 80J and 43(6) of the Act in conjunction with Explanation 3 to Section 43(6), the unabsorbed depreciation is also to be taken into account in arriving at the written down value. We, therefore, find that the Tribunal was not right in the facts and circumstances of the case, in holding that the unabsorbed depreciation was not to be deducted for working out the written down value for the purposes of allowing deduction u/s 80J of the Income Tax Act. The question is, thus, answered in favour of the Revenue and against the assessee. We make it clear that we have not expressed any opinion on the applicability or otherwise of Sub-clause (iv) to Sub-section (1A)(II) to Section 80J in relation to unabsorbed depreciation as the same does not arise out of the question referred for our opinion.