
(1998) 04 MAD CK 0130

In the Madras High Court

Case No : Tax Case No. 919 of 1988 (Reference No. 706 of 1988)

Commissioner of Income Tax

APPELLANT

Vs

India Forge and Drop Stampings Ltd.

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Income Tax Act, 1961 — Section 80J, 80J(2), 80J(3)

Citation : (1999) 240 ITR 208

Hon'ble Judges : R. Jayasimha Babu, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; N. Uttama Reddi, for the Respondent

Judgement

N.V. Balasubramanian, J.—The tax case raises an interesting question of the interpretation of Section 80J(3) of the Income Tax Act, 1961. We are concerned with the assessment year 1980-81.

2. The assessee is a public limited company engaged in the business of iron and steel forging industry. The assessee during the course of the previous year relevant to the assessment year 1971-72 installed a new "press shop" unit and the assessee also claimed the necessary deduction u/s 80J of the Act in the assessment year 1971-72. The Income Tax Officer granted deduction for a sum of Rs. 1,38,034 u/s 80J of the Act for that year. In the next assessment year 1972-73 the relief u/s 80J(3) of the Act (was not granted) due to the absence of particulars furnished by the assessee. The assessee appealed to the Appellate Assistant Commissioner on the issue of its "entitlement" to relief u/s 80J of the Act in respect of the "press shop" unit. The Appellate Assistant Commissioner allowed the appeal preferred by the assessee and directed the Income Tax Officer to grant the relief u/s 80J of the Act. The deficiency for the assessment year 1970-71 was carried forward under the provisions of Section 80J(3) of the Act from the assessment year 1971-72 and the deficiency was carried forward up to the assessment year 1978-79. The assessee however had no positive profit for the assessment year 1978-79.

3. The assessee during the course of assessment proceedings for the assessment year 1980-81 claimed that it is entitled to carry forward the deficiency of relief u/s 80J of the Act stating that the "initial year" for the purpose of granting the relief was 1973-74 in which year commercial production was commenced in the new unit. The Income Tax Officer rejected the claim on the ground that the claim made by the assessee is for a period beyond the period prescribed by Section 80J(3) of the Act. The Appellate Assistant Commissioner upheld the view of the Income Tax Officer. The Income Tax Appellate Tribunal on an appeal preferred by the assessee held that the assessee was not estopped from claiming the relief u/s 80J of the Act in the assessment for the year 1980-81 on the score that there can be no estoppel against the provisions of the statute and the deduction was wrongly granted in the earlier year and that could not prevent the assessee from pointing out that the commercial production started in a subsequent assessment year and profit also arose during that subsequent assessment year. The Tribunal therefore held that there can be no estoppel against the statute and the assessee can claim the relief u/s 80J of the Act in the assessment year 1980-81 if the assessee is otherwise entitled to the same in accordance with law. In this view of the matter, the Appellate Tribunal remitted the matter to the Income Tax Officer to ascertain the facts relating to the claim made by the assessee and dispose of the same in accordance with law. The Income Tax Appellate Tribunal on the basis of the directions of this court has referred to us the following, questions of law for our consideration u/s 256 of the Income Tax Act :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in directing the Income Tax Officer to re-examine an issue which has become final in the earlier assessment year ?

2. Whether the Appellate Tribunal acted judiciously in remanding the matter to the Income Tax Officer for finding out the initial year in which the unit was set up when the assessee itself had admitted the actual position in the assessment year 1971-72 and obtained relief on that basis ?

3. Whether the Appellate Tribunal has jurisdiction to render a finding to disturb the finality of assessment year 1971-72 while hearing the appeal for the assessment year 1980-81 and remanding the matter for fresh consideration involving recomputation of income for several assessment years ?"

4. We are of the opinion that the Appellate Tribunal was not justified in holding that since there is no estoppel against the provisions of the statute it would be open to the assessee to change its stand and point out that the commercial production for the grant of relief under the section had commenced in the subsequent year than the initial year in which the deduction u/s 80J of the Act (had been granted) in the assessment year 1971-72. The deduction was also granted by the Income Tax Officer and that order of the Income Tax Officer has become final. u/s 80J(2) of the Act the deduction u/s 80J can be allowed in the previous year in which the concerned industrial unit begins to manufacture or produce articles and the mandate of Section 80J(2) is clear that only if the

assessee begins to manufacture or produce the article in any previous year the assessee can be granted the deduction u/s 80J of the Act from the assessment of its income for the particular assessment year. If the assessee is allowed to change its stand that the commercial production had begun in some subsequent year then it would unsettle the finality of the assessment proceedings of the initial year. No doubt it is true that there is no res judicata in Income Tax proceedings. But once the initial year for the grant of Section 80J deduction is fixed and in our opinion, it is fixed unalterably, the carry forward of the deficiency has to be determined beginning from the base year in which the deduction was granted and the subsequent assessment years have to roll from the initial assessment year. Under the scheme of Section 80J of the Act if the assessee is allowed to carry forward the deficiency up to the period of eight years including the initial year and there are more than one years in which there is deficiency, the deficiency of the earlier year would be set off before setting off the deficiency of the subsequent year. Therefore, after the initial assessment year for the grant of relief u/s 80J is fixed it is impermissible for the assessee to change the initial assessment year in a subsequent assessment year proceeding.

5. Learned counsel for the assessee referred to his arguments advanced before the Appellate Tribunal regarding the import of certain machineries and installation of those machineries and the submission of learned counsel was the commercial production started next year during the relevant assessment year 1973-74. In our opinion, once we hold that it is not open to the assessee to change the initial year it is riot necessary to look into the assessment records of some subsequent assessment year and find out that the commercial production had commenced subsequently. In our opinion, it is not open to the assessee to change the initial year and to claim that the benefit of carry forward of deficiency should be elongated and claim that the initial assessment year should be refixed during the course of a subsequent year assessment proceedings. We are of the view that the intention behind Section 80J is that there must be some finality in the matter of fixation of the initial year and the issue for the fixation of the previous year cannot be reactivated or reagitated beyond the year in which the initial assessment year was fixed.

6. In *M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax*, , the Supreme Court approved a Full Bench decision of this court in *Sankaralinga Nagar (T.M.M.) and Bros. v. CIT* [1929] 4 ITC 226 and the following observation of this court quoted with the approval of the Supreme Court is relevant (page 328).:

"The principle to be deduced from these two cases is that where the question relating to assessment does not vary with the income every year but depends on the nature of the property or any other question on which the rights of the parties to be taxed are based, e.g., whether a certain property is trust property or not, it has nothing to do with the fluctuations in the income ; such questions, if decided by a court on a reference made to it would be res judicata in that the

same question cannot be subsequently agitated."

7. Similarly, the Supreme Court in the above case noticed a decision of the Judicial Committee in *Hoystead v. Commissioner of Taxation* [1926] AC 155, wherein Lord Shaw stated as under (page 328) :

"Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If these were permitted litigation would have no end, except, when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle--namely, that of a setting to rest of rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed, In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

8. The Supreme Court in the above cases held that the principles of *res judicata* may not apply to the Income Tax proceedings, but where the fundamental aspects relating to different assessment years have been found as facts one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all proper to allow the position to be changed in the subsequent year. On the above reasoning of the Supreme Court, we hold that it is not permissible for the assessee to take a different and contrary stand during the progress of its industrial unit than what was its stand earlier in the assessment year 1980-81. We, therefore, hold that once the initial assessment year had been fixed, it is neither permissible, nor open to the Revenue or to the assessee to change its stand to suit its own convenience and the Tribunal in our view was not correct in holding that the assessee can claim relief in the assessment year 1980-81 if the assessee establishes that its commercial production has commenced only in the year 1973-74. The initial assessment year has already been fixed and it has reached finality and the Appellate Tribunal in our view exceeded its jurisdiction in directing the Income Tax Officer to consider the question *de novo* and determine whether the assessee had commenced commercial production during the year 1973-74 and, therefore, the direction given by the Appellate Tribunal to the Income Tax Officer is not sustainable in law. Accordingly, we are of the view that the direction given by the Tribunal to the Income Tax Officer to re-examine the issue is untenable in law and accordingly we answer all the three questions referred to us in the negative and in favour of the Revenue. The assessee shall pay a cost of a sum of Rs. 1,500 to the Revenue.