
(1990) 12 CAL CK 0036

In the Calcutta High Court

Case No : Income-tax Reference No. 82 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Indian Explosives Ltd.

RESPONDENT

Date of Decision : 14-12-1990

Acts Referred:

Finance (No. 2) Act, 1980 — Section 35(2)
Income Tax Act, 1961 — Section 32, 33, 35, 35(1), 40
Income Tax Rules, 1962 — Rule 19A

Citation : (1991) 192 ITR 144 : (1992) 64 TAXMAN 589

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference at the instance of both the assessee and the Commissioner, as many as seven questions have been referred to this court u/s 256(1) of the Income Tax Act, 1961, for the assessment years 1971-72 and 1972-73 :

" 1. Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 80J of the Income Tax Act, 1961, and Rule 19A of the Income Tax Rules, 1962, the Tribunal was right in holding that the exclusion of borrowed capital from the computation of capital employed in two new industrial undertakings for the purpose of Section 80J was not at all justified ?

2. Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 80J of the Income Tax Act, 1961, and Rule 19A of the Income Tax Rules, 1962, the Tribunal was correct in holding that, in computing the capital employed in the two new industrial undertakings for the purpose of Section 80J, current liabilities were to be excluded ?

3. Whether, on the facts and in the circumstances of the case and on a correct interpretation of Section 80J of the Income Tax Act, 1961, the Tribunal was correct in holding that the deduction under the said section should be allowed at the full rate of 6 per cent, of the capital employed in the fertiliser project ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that medical expenses reimbursed to the employees fell to be excluded from the computation of disallowance u/s 40(a)(v)/40(c) of the Income Tax Act, 1961 ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was right in restoring the disallowance of Rs. 1,63,514 out of interest paid to the bank in the assessment ?"

2. The first two questions are concluded by the decision of the Supreme Court in the case of Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, . Following the said decision, we answer the first question in the negative and the second question in the affirmative.

3. The third question is concluded by the decision of this court in the case of Commissioner of Income Tax Vs. Oyster Packagers (P.) Ltd., . Following the said decision, we answer the third question in the affirmative and in favour of the assessee.

4. The fourth question is concluded by the decision of this court in the case of Indian Leaf Tobacco Development Co. Ltd. Vs. Commissioner of Income Tax, . Following the said decision, we answer the fourth question in this reference in the affirmative and in favour of the assessee.

5. So far as the fifth question is concerned, it is concluded by the decision in the case of Woolcombers of India Ltd. Vs. Commissioner of Income Tax (Central), . Following the said decision, we answer the fifth question in this reference in the negative and in favour of the assessee.

6. The sixth question in this reference is as follows :

"6. Whether, on the facts and in the circumstances of this case, the Tribunal was right in upholding the disallowance of the assessee's claim of Rs. 43,990 for depreciation in the assessment for the assessment year 1971-72 ?"

7. The facts relating to this controversy are as follows :

The assessee claimed depreciation allowance of Rs. 43,990 relating to scientific research assets purchased in earlier years. The Income Tax Officer disallowed the claim on the ground that the whole of the capital expenditure on the assets was already allowed u/s 35 of the Act in the respective years of acquisition and, therefore, as provided in that section, no further depreciation was, according to him, admissible on such assets.

8. The matter was taken in appeal before the Appellate Assistant Commissioner. He found that the assessee incurred Rs. 47,511, Rs. 25,445 and Rs. 84,373 during the accounting years ending September 30, 1967, September 30, 1968 and September 30, 1969, respectively, as capital expenditure on scientific research related to its business. These expenses were admittedly allowed in full in the respective assessment years in terms of the provisions of Clause (iv) of

Sub-section (1) read with Clause (ia) of Sub-section (2) of Section 35. No depreciation was claimed in respect of these assets up to the assessment year 1970-71. It was pointed out to him that though, u/s 35(2)(iv), depreciation was not allowed in respect of the same year in which deduction for expenditure on scientific research under Clause (iv) of Sub-section (1) of the said section was admitted, that would not preclude the assessee from claiming, depreciation allowance in the subsequent assessment years on the assets used for scientific research related to the business carried on by the assessee. The Appellate Assistant Commissioner discussed the issue at length with reference to the relevant sections of the Act and held that no depreciation was admissible on the assets as long as those were used for scientific research. He further observed that only after the said assets were transferred for the purpose of business itself, could a claim for depreciation on the said assets be made.

9. Being aggrieved, the assessee preferred an appeal to the Appellate Tribunal. It was the assessee's case that there was prohibition against the allowance of depreciation in the same previous year and, therefore, the depreciation claimed for the instant assessment year should have been allowed. On the other hand, the Departmental representative contended before the Tribunal that when the capital cost was entirely allowed, the question of allowing any depreciation on such cost did not arise. After considering the rival submissions, the Appellate Tribunal upheld the Appellate Assistant Commissioner's decision.

10. Section 35(1)(iv) provides for deduction in respect of capital expenditure incurred on scientific research related to the assessee's business. Where such capital expenditure was incurred before April 1, 1967, one-fifth of the capital expenditure was deductible in computing the business profits in the year in which the expenditure was incurred and the balance of the expenditure was allowed as deduction in equal instalments in each of the four immediately succeeding previous years. Where such capital expenditure has been incurred after 31st March, 1967, the whole of such expenditure qualifies for deduction in the previous year in which it is incurred. In view of this position, no deduction by way of depreciation is admissible in respect of any asset, the cost whereof has been allowed as deduction u/s 35 and a provision to that effect has been made in Section 35(2)(iv).

11. It has been contended by learned counsel for the assessee that the aforesaid provisions would apply only in relation to the year in which the expenditure is allowed as deduction u/s 35 and, in a case where the asset continues to be used for the purposes of scientific research in subsequent years, the assessee will be entitled to a further deduction by way of depreciation on the capital asset in such subsequent years. This contention is contrary to the underlying intention ; the Finance (No. 2) Act, 1980, has amended Section 35(2)(iv) of the Income Tax Act with a view to clarifying that no depreciation will be admissible on any capital asset represented by expenditure which has been allowed as deduction u/s 35 whether in the year in which deduction u/s 35 was allowed or in any other

previous year. This amendment has come into force with effect from April 1, 1962, i.e., from the commencement of the Income Tax Act, 1961, and is, accordingly, applicable in relation to the assessment year 1962-63 and subsequent years.

12. The Tribunal has found that the entire cost of the assets was allowed as expenditure u/s 35 in the respective years of acquisition of such assets. Accordingly, the question of granting further depreciation on those assets does not arise at all. We, therefore, answer the question in the affirmative and in favour of the Revenue.

13. The only other question that remains to be considered is as follows :

"7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the process warehouses, inter-plant connecting road and roads leading from the main road to the factory were part of the plant and machinery of the assessee and development rebate and depreciation should be allowed in respect of these assets accordingly ?"

14. The facts relating to this question are that, in respect of its fertiliser project, the assessee claimed that process warehouses, such as asbestos structure, etc., costing Rs. 44,07,478, inter-plant connecting roads costing Rs. 33,26,612 and roads leading from the main road to the factory costing Rs. 15,35,513 constituted a part of plant and machinery and were, therefore, entitled to development rebate and depreciation. In the course of the assessment proceedings, the Income Tax Officer noticed that, by filing revised returns from time to time, the assessee-company reduced the cost of buildings and the amount so reduced was transferred under plant and machinery (corrosive) and claimed depreciation as well as development rebate thereon as an item under plant and machinery (corrosive). The Income Tax Officer refused the claim by observing that the transfers from building to plant and machinery would be ignored in calculating depreciation and development rebate and that the position as per the audited accounts would be taken into account. Similar treatment was meted out to the other items claimed by the assessee.

15. Being aggrieved, the matter was taken in appeal by the assessee to the Appellate Assistant Commissioner. He refused to treat the aforesaid assets as a part of the plant and machinery of the assessee and thus refused to allow development rebate on the said assets.

16. Being aggrieved with the Appellate Assistant Commissioner's decision, the assessee preferred an appeal to the Appellate Tribunal. After hearing the assessee's learned counsel and the Revenue and also examining the evidence tendered before it on behalf of the assessee, the Appellate Tribunal decided the issue in favour of the assessee by holding that all the three items referred to above should have been treated as constituting part of plant and machinery wholly used for the purpose of the business carried on by the assessee during the relevant previous year. Accordingly, the assessee is entitled to development

rebate in respect of process warehouses, inter-plant connecting roads and roads leading from the main road to the factory which are a part of the plant and machinery,

17. Having held that the aforesaid assets form a part of the plant and machinery of the assessee, the Appellate Tribunal directed the Income Tax Officer to allow depreciation also on those items in accordance with law.

18. Our attention has been drawn by Dr. Pal to the decision of this court in the case of Oil India Ltd. Vs. Commissioner of Income Tax, , where this court held that roads, drains and culverts within a factory compound form part of the building which are used for the purpose of the business and as such are entitled to depreciation.

19. The first item is process warehouses such as asbestos structure, etc. This structure comprises outer walls and roof made of asbestos sheets. Inside the structure, there are steel super-structures. The inter-plant connecting roads are used to carry raw materials and intermediate and finished products from one unit to another in the course of the manufacturing and selling operations. The roads leading from the main road to the factory are similar to driveways which cannot form part of the plant. All these items are essentially building structures.

20. Having regard to the facts and circumstances of this case and the principles laid down in the aforesaid decision, it must be held that process warehouses, inter-plant connecting roads and the roads leading from the main road to the factory do not and cannot form part of the plant and machinery of the assessee but form part of the factory building, and as such are entitled to depreciation as admissible to such buildings.

21. For the reasons aforesaid, we answer this question by saying that depreciation should be allowed in respect of the assets in question as factory building but no development rebate is allowable in respect of such assets.

22. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

23. I agree.