

(1976) 09 MAD CK 0026

In the Madras High Court

Case No : Tax Case No. 366 of 1971 (Reference No. 121 of 1971)

Commissioner of Income Tax

APPELLANT

Vs

L.M. Van Moppes Diamond Tools (India) Ltd.

RESPONDENT

Date of Decision : 16-09-1976

Acts Referred:

Income Tax Act, 1961 — Section 71, 72, 80E

Citation : (1977) 107 ITR 386

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; K.R. Ramamani and S.V. Subramaniam, for the Respondent

Judgement

Ismail, J.—The Income Tax Appellate Tribunal, Madras Bench, u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the

Act", has referred the following question of law for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee-company was entitled to the

deduction of 8 per cent. from its income from priority industries u/s 80E of the Income Tax Act, 1961, for the assessment year 1967-68 ?

2. The assessee is a company engaged in the business of manufacture of dressers, cutting tools and lapping wheels, which is a priority industry

mentioned in Schedule V to the Act, Item 8. For the assessment year 1967-68 the assessee-company returned an income of Rs. 2,45,431 from

such priority industry and claimed a deduction of 8% thereon u/s 80E of the Act. The company had also received interest on securities amounting

to Rs. 350 for the accounting year relevant to the assessment year in question, namely, 1967-68. The company had incurred losses in the earlier

years and there was also unabsorbed depreciation of the earlier years. The Income Tax Officer set off the business losses of the earlier years and

the unabsorbed depreciation of the earlier years and arrived at the assessable income as "nil". In view of this action of the Income Tax Officer, the

assessee's claim for a deduction from the total sum of Rs. 2,45,431, rebate of 8% as provided for u/s 80E of the Act was negated. In the view

of the Income Tax Officer, as there was no positive income available for assessment to tax, a deduction u/s 80E of the Act was not contemplated.

3. The assessee-company preferred an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that it was

not the residuary or the total income, but the entire income from the priority industries which had gone into the computation of the total income that

would be the criterion for determining the rebate admissible. Accordingly, he held that the assessee would be entitled to the rebate claimed u/s 80E

of the Act. Against that order of the Appellate Assistant Commissioner, the department preferred an appeal to the Appellate Tribunal. Before the

Tribunal the department contended that the income of the assessee from the priority industries though amounted to Rs. 2,45,781, yet after setting

off the carried forward losses for the earlier years, the total income of the assessee for the assessment year was nil and, therefore, the Income Tax

Officer was justified in not allowing the assessee the relief u/s 80E of the Act as claimed by it. The department also contended that even if there

was income from the priority industries and the assessee was entitled to the deduction as claimed by it, yet there would be no income liable to tax

for the assessment year under appeal and that, therefore, it would not be possible to work out the relief as claimed by the assessee. On the other

hand, the contention of the assessee was that there was a total income and whether the total income was a positive figure or a negative figure was

not material, but what was material was, whether the income from priority industries was included in the total income or not and that if there was

such inclusion, the assessee would be entitled to the relief claimed by it. The Tribunal has, by its order dated November 16, 1970, held that the

two requirements u/s 80E of the Act are: (1) there must be a total income, and (2) in that total income, the profits and gains from the priority

industries must be included, and that since both requirements are satisfied, the assessee is entitled to the relief u/s 80E of the Act. It is the

correctness of this conclusion of the Tribunal that is being challenged in the form of the question referred to this court, extracted already.

4. It is necessary for the purpose of understanding the controversy to extract Section 80E of the Act:

80E. Deduction-in respect of profits and gains from specified industries in the case of certain companies.--(1) In the case of a company to which

this Section applies, where the total income (as computed in accordance with the other provisions of this Act) includes any profits and gains

attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of

any one or more of the articles or things specified in the list in the Fifth Schedule, there shall be allowed a deduction from such profits and gains of

an amount equal to eight per cent. thereof, in computing the total income of the company.

(2) This Section applies to--

(a) an Indian company ; or

(b) any other company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on

preference shares) within India,

but does not apply to any Indian company referred to in Clause (a), or to any other company referred to in Clause (b), if such Indian or other

company is a company referred to in Section 108 and its total income as computed before applying the provisions of Sub-section (1) does not

exceed twenty-five thousand rupees.

5. The language of this Section makes it clear that so long as the total income, as computed in accordance with the other provisions of the Act

includes any profits and gains attributable to the priority industries, the assessee would be entitled to a rebate of 8 per cent. on the said profits and

gains attributable to the priority industries. Simply as a matter of construction, we are of the opinion that, as rightly pointed out by the Appellate

Assistant Commissioner, neither the residuary income nor the total income has any bearing on the question and that so long as the total income as

computed under the provisions of the Act, includes profits and gains attributable to the priority industries, the assessee will be entitled to the rebate

of 8 per cent, on the said profits and gains of the priority industries. As a matter

of fact, the language of the Section will itself show that there is no scope for setting off of the earlier years' losses or losses arising out of other business activities of the assessee against the profits and gains attributable to the priority industries. In this particular case, as we have pointed out already, the Income Tax Officer set off against the profits and gains of the priority industries amounting to Rs. 2,45,431 the losses of the earlier years as well as a portion of the unabsorbed depreciation of the earlier years. For the reasons which we have indicated, the Income Tax Officer was not entitled to do the same. As a matter of fact, the decision of the Kerala High Court in *Indian Transformers Ltd. Vs. Commissioner of Income Tax*, directly covers the present case. In that case also the Kerala High Court took the view that the rebate had to be computed before setting off any loss of the earlier years. Having regard to the language of Section 80E of the Act, we are of the opinion that that is the correct view to take.

6. There is also another decision of the Mysore High Court in *Commissioner of Income Tax, Mysore Vs. Balanoor Tea and Rubber Co. Ltd.*, . In that case, the company had tea income liable to charge, which was a priority industry, amounting to Rs. 1,18,214 and it had also incurred loss in plastic business amounting to Rs. 48,105. The assessee claimed that the rebate of 8 per cent. u/s 80E of the Act would have to be worked out on Rs. 1,18,214 before setting off the loss in plastic business, while the Income Tax Officer took the view that the loss in plastic business must first be deducted from the tea income liable to charge and that only on the balance the rebate of 8 per cent. should be calculated. The Mysore High Court held that the view of the Income Tax Officer was erroneous and that the assessee's claim that 8 per cent. would have to be calculated on the tea income liable to charge, namely, Rs. 1,18,214, before setting off the loss in plastic business was correct. Before the Mysore High Court reliance was placed on a circular issued by the Central Board of Direct Taxes and the relevant portion (para. 27) of the circular is as follows: See *Commissioner of Income Tax, Mysore Vs. Balanoor Tea and Rubber Co. Ltd.*, :

27. It will be observed that the deduction u/s 80E referred to above is allowable in computing the profits and gains from the specified priority industries INCLUDED IN THE TOTAL INCOME "AS COMPUTED IN ACCORDANCE WITH THE other PROVISIONS" of the Income

Tax Act. The effect of this provision is that the deduction u/s 80E will be allowed from the profits from the specified priority industries, as computed AFTER allowing all the deductions admissible in computing the business income under Sections 30 to 43 of the Income Tax Act, and also after giving effect to the relevant provisions for set-off or carry-forward of loss, contained in Chapter VI of that Act. The business income of a company may consist of profits from the specified priority industries, as well as profits from other business activities, and the company may also have a loss in the same previous year under a head of income other than "profits and gains of business or profession" or a business loss carried forward from earlier years and eligible for set-off against the business profits of that previous year. In such a case, a question may arise as to whether the loss of the relevant previous year under a head other than " profits and gains of business or profession", or the business loss carried forward from earlier years should be set-off on a proportionate basis, both against the profits from the specified priority industries and the profits from other business activities. If the loss is set off on a proportionate basis, the quantum of the deduction available in respect of the former profits u/s 80E of the Income Tax Act may be reduced to the disadvantage of the company. The Income Tax Act does not, however, provide for the set-off of losses on a proportionate basis against income from different types or categories of business activities. It will, therefore, be permissible for the company to claim that the loss should be set off, in the first instance, against its business profits other than profits from the specified priority industries and as to the balance, if any, against its profits from the specified priority industries." The Mysore High Court held that the court was unable to agree with the views of the Central Board of Direct Taxes that the effect of the provision was that the deduction u/s 80E would be allowed from the profits from the specified priority industries, as computed after allowing all the deductions admissible in computing the business income under Sections 30 to 43 of the Act. It is unnecessary for the purpose of the present case, to discuss whether the Mysore High Court was right in this view or not, because so far as this case is concerned, the profits and gains of the priority industry have been actually computed in accordance with the provisions contained in Sections 30 to 43 of the Act and such computation is not in controversy before this court.

Consequently, the only other question with reference to the circular of the Central Board of Direct Taxes will be, whether the losses of the earlier

years could be set off against the profits and gains of the priority industries. We are of the opinion that the view of the Central Board of Direct

Taxes that such losses should be set off before rebate could be calculated is erroneous and is not borne out by the language of Section 80E of the

Act. As a matter of fact, the setting off of the loss is only in Section 72 of the Act and a reading of Section 72 will clearly show that the

computation of the profits and gains of the business had preceded, in other words, had already taken place, before one went to the stage of setting

off the loss u/s 72. Section 72(1) of the Act, so far as is relevant, states:

72. (1) Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to

the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any head of

income in accordance with the provisions of Section 71, so much of the loss as has not been so set off or, where the assessee has income only

under the head "Capital gains", relating to capital assets other than short-term capital assets, and has exercised the option under Sub-section (2) of

that Section or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried

forward to the following assessment year,

7. The preceding Section 71 deals with set off of loss from one head against income from another and Sub-section (1) of that Section states:

71. (1) Where in respect of any assessment year the net result of the computation under any head of income other than "Capital gains" is a loss

and the assessee has no income under the head "Capital gains", he shall, subject to the provisions of this Chapter, be entitled to have the amount of

such loss set off against his income, if any, assessable for that assessment year under any other head.

8. It is worthwhile pointing out that Sections 71 and 72 occur in Chapter VI under the heading, ""Aggregation of income and sot off or carry

forward of loss"", while the computation of total income arising from different sources occurs in Chapter IV under the heading, ""Computation of

total income"", containing Sections 14 to 59. Thus, both from the setting of

Sections 71 and 72 as well as from their language, it is clear that the set-off or carryforward of loss under Sections 71 and 72 succeeds the computation of profits and gains of the business and does not enter into the computation of profits and gains of the business itself. Consequently, we are of the opinion that the Tribunal was right in holding that the assessee was entitled to the rebate of 8 per cent. on the sum of Rs. 2,45,431.

9. As we have pointed out already, the Income Tax Officer set off a part of the unabsorbed depreciation also against the aforesaid amount. When the Appellate Assistant Commissioner allowed the appeal preferred by the assessee, no further controversy arose in that behalf before the Appellate Tribunal and, therefore, we are not expressing any opinion on this aspect.

10. Under these circumstances, we answer the question referred to this court in the affirmative and in favour of the assessee. The assessee will be entitled to its costs. Counsel's fee is fixed at Rs. 500 (Rupees Five hundred only).