
(1985) 01 CAL CK 0033

In the Calcutta High Court

Case No : Income-tax Reference No. 369 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Oyster Packagers (P.) Ltd.

RESPONDENT

Date of Decision : 14-01-1985

Acts Referred:

Income Tax Act, 1961 — Section 80J

Citation : (1986) 53 CTR 427 : (1985) 152 ITR 471

Hon'ble Judges : Dipak Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : S. Chakraborty, for the Appellant;None, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following question of law has been referred to this court at the instance of the Commissioner :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to full relief u/s 80J of the Income Tax Act, 1961, without restricting the period during which the industrial unit had worked ?"

2. The facts leading to the said reference are as stated hereinafter.

3. The assessee is a company. The claim of the assessee for the assessment year 1974-75 for relief u/s 80J of the I.T. Act, 1961, was rejected by the ITO on the ground that the benefit could not be allowed as the capital computed came to nil for the relevant period. On appeal, the AAC directed the ITO to allow the relief u/s 80J. While giving effect to the order of the AAC, the ITO restricted the relief u/s 80J to the extent of 1/12th only on the ground that the new industrial unit worked only for one month during the relevant accounting year, which is the calendar year in this case. According to the ITO, the new industrial unit started production only on December 1, 1977, and was operated only for a period of one month. The AAC held that the relief contemplated u/s 80J of the Act extended over a

period of five years and it would not be proper or correct to reduce capital so arrived at by a further reduction with reference to the period for which the industrial undertaking had worked. He, therefore, held that the ITO was not correct in restricting the rule of Section 80J of the Act proportionately to 1/12th of the total relief for the period during which the new industrial unit had worked. He, therefore, directed to allow full relief u/s 80J without restricting the same to the period during which the industrial unit had worked.

4. The Department preferred an appeal to the Appellate Tribunal. The Tribunal took the view that the term "'per annum" occurring in the expression "6% per annum on the capital employed" used in Section 80J(1) of the Act meant "yearly" having regard to the scheme whereby the benefit was extended over a period of five years and that it would not be proper or correct to reduce the capital so arrived at by a further deduction by reference to the period for which the undertaking had worked. The Tribunal further observed in that case that it was apparent that by the use of the words "per annum", the intention could only be to show that the amount at 6% was the ceiling up to which the relief would be available for each of the four succeeding assessment years. The Tribunal, therefore, held that the deduction u/s 80J should be allowed on a full year basis at the rate of 6% on the capital employed in the industrial undertaking.

5. The profits of new industrial undertakings, ships and hotels which fulfil the conditions prescribed by Section 80J are entitled to exemption from Income Tax to the extent of 6% per annum on the capital employed. The question is, if the undertaking has functioned for only a part of an accounting year, the deduction should be allowed to the full extent of 6% or the percentage is to be reduced in proportion to the part of the year during which the undertaking was in production and operation. This question has to be decided in the light of the relevant provision of the Act and the objects thereof.

6. The relevant provisions of Section 80J as it stood at the material time are as follows :

"80J. Deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases.--(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 aggregate of the deductions, if any, admissible to the assessee u/s 80H and Section 80HH 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 prescribed manner 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).

(2) The deduction specified in Sub-section (1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or to operate, its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning (such assessment year being hereafter, in this section, referred to as the initial assessment year) and each of the four assessment years immediately succeeding the initial assessment year : "

7. The tax holiday concession would be available for five successive assessment years commencing from the assessment year relevant to the previous year in which the undertaking goes into production. The provisions have been enacted with a view to encouragement of establishment of new industrial undertakings. This object has been sought to be achieved by granting exemption or concession from tax at a certain portion of profits earned for the first five years of such undertaking. The legislature has intended to provide an incentive for expansion of trade by setting up new industries. The relief by way of exemption and concession of tax on a certain portion of profits earned by the industrial undertaking is only available for the first five years of such undertaking and that is the reason why the words "per annum" have been used. "Per annum" means for each year or annually. In other words, such exemption or concession will be available for each year to the extent of 6% of the capital employed. There is no warrant for the proposition that the expression "per annum" postulates the relief being granted only for the periods during which the assets were actually in use.

8. The Madras High Court in the case of Commissioner of Income Tax, Tamil Nadu-I Vs. Simpson and Company, , held that the words "per annum" appear to have been added only to ensure that the assessee would get, for each of the five years during which the relief u/s 84 is available, the said six per cent. on the capital employed. The words "per annum" cannot be understood as contrasted with a broken period.

9. The Madhya Pradesh High Court in the case of Commissioner of Income Tax Vs. Sanghi Beverages (Pvt.) Ltd., has observed that Section 80J of the Act nowhere provides for reduction of the amount of deduction on time basis, with reference to the working of the industrial undertaking.

10. The Karnataka High Court in the case of Commissioner of Income Tax, Karnataka-II Vs. Mysore Petro-chemical Ltd., has also held that the expression "per annum" is indicative of the period for which the rate is prescribed and does not imply that there shall be pro-rating. Pro-rating depends upon the context in which such term is used.

11. However, the Delhi High Court in the case of The Additional Commissioner of Income Tax Vs. Gedore Tools (India) Pvt. Ltd., , in construing the proviso to Rule 19(1) of the I.T. Rules, 1962, regarding the averaging of the value of an asset in the process of computation of capital employed in an undertaking observed that Section 84 contemplates the percentage of relief being toned down or reduced

proportionately to the period of working of the undertaking. There, the court was concerned with the computation of the capital employed under Rule 19 of the I.T. Rules, 1962, and not with the question of proportionate reduction of the relief. The said observation of the Delhi High Court was purely obiter.

12. Having regard to this scheme of the provisions of Section 80J, we are of the View that deduction u/s 80J cannot be reduced proportionately with reference to the period for which the business of the undertaking was not carried on during the relevant previous year. The exemption u/s 80J @ 6% per annum of the capital employed is confined to the profits derived from the industrial undertaking which fulfils the prescribed conditions. The industrial undertaking will not be entitled to the benefit of exemption unless it begins manufacturing or producing articles. Thus, if at any time during the relevant assessment "year, the industrial undertaking starts manufacturing or producing articles, it will be entitled to deduction @ 6% of the capital employed from the profits derived from the new industrial undertaking for the initial year, i.e., the assessment year relevant to the previous year in which the undertaking begins to manufacture or to produce articles. Once the quantum of capital employed is determined in respect of an industrial undertaking which fulfils the conditions prescribed u/s 80J, the benefit of exemption has to be extended to it irrespective of the fact whether the industrial undertaking has worked only for a while during the relevant previous year.

13. We may add that Mr. S. Chakraborty, the learned advocate for the Revenue, has drawn our attention to the fact that the Central Board of Direct Taxes issued a circular being Circular No. 378 dated March 3, 1984, accepting the meaning given to the phrase "per annum" by the Madras High Court in the case of Commissioner of Income Tax, Tamil Nadu-I Vs. Simpson and Company, and the Karnataka High Court in the case of Commissioner of Income Tax, Karnataka-II Vs. Mysore Petro-chemical Ltd., .

14. In the premises, the question in this reference is answered in the affirmative and in favour of the assessee.

15. There will be no order as to costs.

Dipak Kumar Sen, J.

16. I agree.