(2000) 07 DEL CK 0118

In the Delhi High Court

Case No : IT Reference No. 26 of 1977

Commissioner of Income Tax — APPELLANT

Vs

Pandora (P.) Ltd. — RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 80J, 80J(1), 80J(3)

Citation : (2001) 116 TAXMAN 447

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : R.C. Pandey, Ms. Prem Lata Bansal and Ajay Jha, for the Appellant;

Judgement

Arijit Pasayat, C.J.—At the instance of the revenue, the following question has been referred by the income tax Appellate Tribunal, Delhi Bench ''B'' u/s 256(1) of the income tax Act, 1961 (''the Act'') for opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that u/s 80J(3), the assessee was authorised to claim deduction u/s 80J at any time within a period of 7 years from the initial assessment year?

Since the question depends upon the interpretation of section 80J(3), reference to the factual aspects in detail is unnecessary. Reference relates to the assessment year 1971-72. The assessee, a private limited company, filed return showing income of Rs. 8,164. In the original return no claim u/s 80J of the Act was made. Subsequently a revised return was filed on 29-7-1972 in which a claim was made. In the revised return assessee claimed carry-forward and set-off of relief u/s 80J in respect of assessment years 1965-66 to 1969-70 against the income for the assessment year 1971-72. The Assessing Officer did not pass any order on the revised income. In appeal before the AAC it was contended that the assessee-company had set up an industrial undertaking to commence production in the previous year ending on 30-6-1965 and as such it was entitled to deduction u/s 80J for the assessment year 1966-67 and four succeeding assessment years. It was assessee''s stand that claim for deduction could be made for six years of the start of the previous year relevant to the assessment year commencing on 1-4-1967. The AAC did not accept this stand. He was of the view that if a person failed to make such claim in the initial assessment year or even in respect of the aforesaid preceding assessment years, no claim of deduction u/s 80J could be made for earlier years. Matter was carried in appeal before the Tribunal. It was held by the Tribunal that provisions of section 80J should be construed liberally and, therefore, there was no bar for the assessee to make deduction within seven years from the end of the initial assessment year. At the instance of the revenue aforesaid reference was called for and has been made.

2. The learned counsel for the revenue submitted that the true import of section 80J(3) has not been construed by the Tribunal. There was no appearance on behalf of the assessee when the matter was called. The question came up for consideration of the Karnataka High Court in Commissioner of Income Tax Vs. Sree Valliappa Textiles Ltd., Following observation was made by the said High Court: We are in respectful agreement with the view taken in all these cases that the right of an assessee to carry forward and set off u/s 80J(3) of the Act arises where there is profit in the subsequent year. But to carry forward and set off, the loss is to be computed in the previous year. If loss is not computed for the previous year, there is nothing for the assessee to carry forward and set off against the income for the subsequent year. The income tax Officer, computing the loss for the previous year cannot determine whether the loss so computed can or cannot be set off against the income of the subsequent year. It necessarily follows that the income tax Officer who deals with the assessment for the subsequent year and who is competent to carry forward the loss cannot compute the loss in the previous year. It is only when the loss in the previous year is computed, the income tax Officer dealing with the assessment for the subsequent year can decide whether that loss may be carried forward and set off against the income of the subsequent year. As rightly pointed out by Sri Srinivasan, section 80J(1) and (3) have to be read together and not in isolation. We have first to ascertain the scope and ambit of section 80J(1) and it is only thereafter consider the scope and ambit of section 80J(3). It, therefore, follows that there has to be computation of loss u/s 80J(1) and it is only the deficiency that can be carried forward and set off u/s 80J(3).... (p. 556)

In our considered opinion the position in law has been correctly stated by the Karnataka High Court and we are in agreement with the view expressed. Our answer to the question referred, therefore, is in the negative, in favour of the revenue and against the assessee. The reference is, accordingly, disposed of.