(1987) 07 RAJ CK 0008

In the Rajasthan High Court

Case No : IT Reference No. 11 of 1982

Commissioner of Income Tax APPELLANT

Vs

Santosh Industries RESPONDENT

Date of Decision : 07-07-1987

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

Citation : (1987) 33 TAXMAN 558

Hon'ble Judges : S.S. Byas, J;N.C. Sharma, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Rajesh Balia, for the Respondent

Judgement

S.S. Byas, J.—The Tribunal, Jaipur Bench, Jaipur has referred the following question of law to this Court for its opinion:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that relief u/s 80J of the income tax Act, 1961 is allowable to the assessee, ignoring the provisions of rule 19A of the income tax Rules, 1962, and thus confirming the direction of the AAC to the ITO keeping in view the decisions of the Calcutta High Court in the case of Century Enka Ltd. Vs. Income Tax Officer, "D" Ward and Others, and the Madras High Court in the case of Madras Industrial Linings Ltd. Vs. Income Tax Officer and Others,

The assessee is a partnership concern operating a factory for cotton ginning and pressing. The assessment year is 1975-76. In the return filed by the assessee for the aforesaid year, it claimed relief u/s 80J of the income tax Act, 1961 (''the Act'') for a sum of Rs. 38,581 on the ''capital employed'' in the undertaking amounting to Rs. 6,43,025, which included sundry liabilities of the firm. The ITO granted relief at the rate of 6 per cent only on the self-owned capital. He did not allow the relief on the borrowed capital. The assessee went in appeal. The AAC by his order dated 5-2-1979, allowed the appeal. Following the view taken in Century Enka Ltd. Vs. Income Tax Officer, "D" Ward and Others, he allowed the appeal and directed the ITO to recompute the deduction of the borrowed capital u/s 80J. The revenue went in appeal, which was dismissed by the Tribunal. Thereafter, the Com missioner moved an application before the Tribunal to make a reference to this Court. The Tribunal has accordingly made this reference.

2. We have heard Mr. B.R. Arora for the revenue and Mr. Rajesh Balia for the assessee.

3. It was argued by Mr. Arora, the Learned Counsel for the revenue, that the view taken by the Calcutta and the Madras High Courts in the decisions referred to above, has been overruled by their Lordships of the Supreme Court in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, As such, the orders of the Commissioner (Appeals) as well as of the Tribunal deserve to be set aside. Mr. Balia, the Learned Counsel for the assessee, with all fairness, conceded that in view of the law laid down in the case of Lohia Machines Ltd. (supra), he has nothing to say.

4. Suffice it to say that the view taken in the cases of Century Enka Ltd. (supra), Madras Industrial Linings Ltd. (supra) and like others, by the Calcutta, Madras, Allahabad, Punjab and Haryana and Andhra Pradesh High Courts has been overruled and the view expressed by the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Anand Bahri Steel and Wire Products, and CIT v. K.N. Oil Industries [1982] 134 ITR 651 was approved by their Lordships of the Supreme Court in the case of Lohia Machines Ltd. (supra). It would be useful to reproduce the following passage of the judgment rendered in the case of Lohia Machines Ltd. (supra):

(i) ... in so far as it provided for the exclusion of borrowed monies and debts and particularly long-term borrowings in the computation of the ''capital employed'' by a new industrial undertaking for the purposes of the tax exemption could not be said to be outside the rule-making authority conferred on the Central Board u/s 80J(1) of the income tax Act, 1961, and was a perfectly valid piece of subordinate legislation;

(ii) that rule 19A, in so far as it provided for computation of the ''capital employed'' as on the first day of the computation period, was within the rule-making authority of the Central Board u/s 80J(I);

(iii) that, since rule 19A did not suffer from any infirmity and was valid in its entirety, the Finance (No. 2) Act, 1980, in so far as it amended section 80J by incorporating the provisions of rule 19A, as sub-section (1-A) in section 80J, with retrospective effect from April 1, 1972 was merely clarificatory in nature and was, accordingly, valid." (p. 309)

5. The Tribunal was, thus, not justified and correct in holding that deduction u/s 80J is allowable to the assessee on the entire amount claimed to be the ''capital invested'' by the assessee in its industrial undertaking borrowed capital, ignoring the provisions of rule 19A of the income tax Rules, 1962. The reference is

answered in the negative, that is, against the assessee and in favour of the revenue. Parties will bear their own costs of this Court.

