

(2001) 06 GUJ CK 0046

In the Gujarat High Court

Case No : Income-tax Reference No. 282 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Sidhpur Isabgul Processing Co. Ltd.

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 80HH, 80HH(9), 80HHA

Citation : (2001) 171 CTR 106 : (2001) 252 ITR 777

Hon'ble Judges : D.A. Mehta, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Mihir Joshi, for Manish R. Bhatt, for the Appellant; Bhargav Karia, for R.K. Patel, for the Respondent

Judgement

A.R. Dvave, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench, "A", has referred to this court for its opinion the following questions of law arising out of an order passed by the Tribunal in ITA No. 997/Ahd. of 1984 under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

"(1) Whether, the deductions claimed under Sections 80HH and 80J of the Income Tax Act, 1961, by the assessee were allowable in full as claimed? (2) Whether, the Appellate Tribunal has been right in law in confirming the view taken by the Commissioner of Income Tax (Appeals), in directing the Income Tax Officer to allow both the deductions under Sections 80) and 80HH of the Income Tax Act, 1961, in full without reducing from the deduction u/s 80J of the Act the amount of deduction u/s 80HH of the Act ?"

2. The circumstances in which the questions have been referred to this court, in a nutshell, are as under :

The assessee established a new industrial undertaking in a backward area and therefore it was getting benefit of deduction under the provisions of Sections 80HH and 80J of the Act. For the assessment year 1981-82, the assessee was

entitled to deduction of Rs. 55,518 under the provisions of Section 80HH whereas it was entitled to deduction of Rs. 62,515 under the provisions of Section 80J of the Act. The Assessing Officer, while assessing the income of the assessee, took the following course for the purpose of determining the taxable income of the assessee. First of all, he allowed the deduction under the provisions of Section 80HH of the Act to the assessee. The Assessing Officer did not allow deduction of Rs. 62,315 under the provisions of Section 80J in toto. He deducted Rs. 55,518, the amount which the assessee was entitled to for deduction u/s 80HH, from Rs. 62,515 and thereby allowed deduction of only Rs. 6,997 (Rs. 62,515 less Rs. 55,518 = Rs. 6,997) under the provisions of Section 80J of the Act. Thus, the assessee did not get complete benefit under the provisions of Section 80J. According to the assessee, it was entitled to the entire benefit under the provisions of Section 80J, which would amount to 6 per cent, of the capital employed by the assessee in the new industry.

3. Being aggrieved by the order of assessment, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) allowed the appeal and directed the Assessing Officer to allow both the deductions, viz., under the provisions of Sections 80J and 80HH of the Act in toto, without reducing any amount from the amount deductible u/s 80J of the Act.

4. Being aggrieved by the order passed in appeal by the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Tribunal. The appeal filed by the Revenue was dismissed by the Tribunal for the reason that the Commissioner of Income Tax (Appeals), while allowing the appeal, had followed an order passed by the Tribunal in the case of the assessee for the assessment year 1978-79.

5. Before advertng to the legal position, it is important to note certain undisputed facts. At present we are concerned with the assessment year 1981-82. So far as the assessment year 1978-79 is concerned, the Tribunal, in an appeal filed before it had come to a conclusion that the assessee was entitled to deduction under Sections 80J and 80HH of the Act and the initial assessment framed by the Assessing Officer was set aside. For the assessment years 1979-80 and 1982-83, the Tribunal had taken a similar view in the case of the assessee and had directed the Revenue to give deduction under both the provisions. Being aggrieved by the orders passed by the Tribunal for both the years, the Revenue had approached this court by filing Income Tax Applications Nos. 35 and 36 of 1988 u/s 256(2) of the Act but the said applications were rejected by this court on April 4, 1988. Being aggrieved by the orders of rejection, the Revenue had approached the Supreme Court but the Supreme Court had dismissed the special leave petitions filed by the Revenue.

6. So far as the assessment year 1980-81 is concerned, the Assessing Officer had allowed deductions to the assessee under both the Sections and the said assessment framed by the Assessing Officer was accepted by the Revenue.

7. The relevant provisions with which we are concerned are reproduced hereinbelow :

"80HH. Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.--(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, 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 of an amount equal to twenty per cent, thereof."

"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 deduction, if any, admissible to the assessee u/s 80HH or Section 80HHA) 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 manner specified in Sub-section (1A) 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) . . ."

8. Upon a perusal of the Sections referred to hereinabove, it is clear that the assessee whose total income included profits and gains derived from an industrial undertaking or the business of a hotel to which the provisions of Section 80HH applied, became eligible for deduction from such profits and gains of an amount equal to twenty per cent, thereof. So far as the provisions of Section 80J are concerned, the said provisions enabled the assessee to get deduction to the extent of 6 per cent, of its capital employed.

9. Thus, upon a perusal of the provisions of the Sections referred to hereinabove, it is clear that the benefits which the Act gives under the above referred two Sections are different. Moreover, under the provisions of Section 80HH of the Act, 20 per cent, of the profits and gains are to be deducted from the profits and gains which the assessee earns from certain industries. Whereas, so far as the provisions of Section 80J are concerned, deduction is given to the assessee on the basis of certain percentage of the capital employed by the assessee in certain industries.

10. Mr. Mihir Joshi, learned advocate appearing for the Revenue, has submitted that the Tribunal was in error when it directed the Assessing Officer to allow deduction under the provisions of Sections 80HH and 80J in full to the assessee for the relevant assessment year. According to him, as per the provisions of

Section 80J of the Act, a total limit has been prescribed for the purpose of deduction under Sections 80HH, 80HHA and 80J. According to him, Section 80J prescribes an overall ceiling, which is equivalent to 6 per cent, of the capital employed by the assessee in the new industry. In other words, according to him total benefit of deduction under the provisions of Sections 80HH and 80J of the Act, cannot exceed the outer limit, which is 6 per cent, of the capital employed in the industry by the assessee. It has been submitted by him that upon a reading of the provisions of Section 80J(1) it is clear that the deduction from the profits and gains should be reduced by the deduction, if any, admissible to the assessee u/s 80HH or Section 80HHA as stated in the said subsection. He has relied upon the following portion of the said sub-section so as to submit that the Legislature wanted to clarify the fact that the benefit of deduction to be given under the provisions of Section 80J should be reduced by the benefit of deduction given under the provisions of Section 80HH :

"a deduction from such profits and gains (reduced by the deduction, if any, admissible to the assessee u/s 80HH or Section 80HHA), 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 manner specified in sub-section (1A) . . ."

11. On the other hand, Mr. Bhargav Karia, learned advocate appearing for the respondent-assessee, has submitted that the Tribunal was absolutely justified in giving the direction to the Assessing Officer that the assessee should be entitled to complete deduction under the provisions of Sections 80HH and 80J as well.

12. It has been submitted by him that the benefit u/s 80J is to be given for a period of five years as provided in Section 80J(2) of the Act. It has been further submitted by him that it is not in dispute that except for the assessment year 1981-82, from the assessment years 1978-79 to 1982-83 the assessee has been given benefit as interpreted by the Tribunal. Thus, out of five years, for four assessment years the assessee has got the benefit and the view expressed by the Tribunal for the years 1979-80 and 1982-83 has been confirmed by this court as well as by the Supreme Court. He has therefore submitted that for the assessment year in question also, the assessee should get deduction as ordered by the Tribunal.

13. We have heard the learned advocates and have also gone through the relevant Sections and the impugned orders. Upon a perusal of the provisions of Section 80HH(9) of the Act, it is clear that when the benefit of deduction under the provisions of Sections 80HH and 80J is admissible to a particular assessee, first of all benefit under the provisions of Section 80HH is to be given to the assessee. Thus, the assessee becomes entitled to the deduction under the provisions of Section 80HH first. Thereafter, the assessee gets the benefit of deduction under the provisions of Section 80J of the Act. It is clear from the provisions of Section 80J(3) that if the assessee is not in a position to avail of

complete deduction under the provisions of Section 80J on account of not having sufficient profits, he is entitled to carry forward the deficiency and can get the whole or the balance of the deficiency, as the case may be, set off against the profits and gains for the next assessment year. This fact denotes that the Revenue cannot deprive the assessee of the benefit of deduction under the provisions of Section 80J even if the assessee is not having sufficient profits to have complete advantage under the provisions of Sections 80HH and 80J in one particular year. Thus, in our opinion, the submission of Mr. Joshi, learned advocate appearing for the Revenue, that Section 80J prescribes the maximum ceiling for the purpose of deduction does not appear to be just and proper. As stated hereinabove, the deductions under Sections 80HH and 80J are based on different considerations. The benefit of deduction u/s 80HH is given to those industrial units which establish their industries in a backward area whereas so far as Section 80J is concerned, the benefit under the said Section is given to new industrial units. Moreover, the manner in which the benefit of deduction is to be given under the said Sections is also absolutely different. So far as Section 80HH is concerned, it depends upon the amount of gross profits whereas deduction under the provisions of Section 80J is based upon the quantum of capital employed in the new industry. Otherwise also, we do not find anything to justify the submission of Mr. Joshi. Even if we look at the legislative history, Section 80J was brought into force with effect from April 1, 1968, so as to give benefit to those who establish new industries. It is clear that the Government wanted to see that new industries are set up and for the purpose of encouraging industrialists to set up new industries, etc., the said Section was enacted. It appears that the Government was more keen to see that new industries are set up in backward areas and therefore some additional benefit was proposed to be given to those who set up their industries in backward areas and so as to see that the said purpose is served, the Legislature introduced Section 80HH with effect from April 1, 1974. Thus, we can very well presume that the Legislature wanted to give some additional benefit to those who establish new industries in a backward area. If the benefit given u/s 80J is restricted as submitted on behalf of the Revenue, in our opinion, the entire object of giving additional benefit to those who establish new industries in a backward area would be frustrated. Section 80J(3) of the Act enables the assessee to carry forward the benefit of deduction under the provisions of Section 80J of the Act to a subsequent year if the profits and gains are not sufficient to cover the benefit of deduction u/s 80J of the Act. If an overall limit or ceiling is imposed on the deduction as submitted on behalf of the Revenue, the provisions of Section 80J(3) of the Act would practically become nugatory.

14. For the reasons stated hereinabove, we are of the view that the assessee is entitled to benefit of deduction under the provisions of Sections 80HH and 80J in full as directed by the Tribunal. In our opinion, the Tribunal has interpreted the provisions of Sections 80HH and 80J correctly and we do not find any reason to opine in a different manner especially in view of the fact that for other

assessment years this court and the Supreme Court have also upheld a similar view of the Tribunal.

15. For the reasons stated hereinabove, we answer both the questions in the affirmative, i.e., in favour of the assessee and against the Revenue.

16. Reference stands answered accordingly and is disposed of with no order as to costs.