
(1996) 03 MAD CK 0104
In the Madras High Court
Case No : Tax Case No. 809 of 1983

Commissioner of Income Tax

APPELLANT

Vs

S.S.M. Processing Mills

RESPONDENT

Date of Decision : 27-03-1996

Acts Referred:

Income Tax Act, 1961 — Section 29, 30, 31, 32, 32(1)

Citation : (1997) 138 CTR 106 : (2003) 156 ELT 5 : (1997) 227 ITR 596

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; Mrs. Praba Sridevan, for the Respondent

Judgement

Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following two questions for the opinion of this Court under s. 256(1) of the IT Act, 1961 (in short "the Act") :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was manufacturing textiles within the meaning of Entry 32 of the Fifth Schedule and Entry 21 of the Ninth Schedule and, therefore, the assessee was entitled to higher development rebate and initial depreciation in respect of the plant and machinery installed during the previous year relevant for the asst. yr. 1975-76 ?

and

(ii) Whether, on the facts and in the circumstances of the case and having regard to the provisions of s. 80B(5) of the IT Act, 1961, the Tribunal was right in holding the relief under s. 80J should be allowed before set off of unabsorbed development rebate ?"

2. The assessee, M/s S. S. M. Processing Mills, Komarapalayam is a registered firm, carrying on business in processing of textiles. In respect of the machinery purchased during the previous year relevant for the asst. yr. 1975-76, the

assessee claimed development rebate at the higher rate of 25 per cent on the ground that the assessee should be considered to have been manufacturing textiles falling within Entry 32 of the Fifth Schedule. In the same view, it also claimed initial depreciation as the item was falling under Entry 21 of the Fifth Schedule. The ITO denied the claim for development rebate as well as initial depreciation on the ground that the items processed by the assessee cannot be considered to be textiles to entitle it for higher development rebate and initial depreciation. He also held that the relief under s. 80J could not be given set off, as there was no income after set off of the unabsorbed development rebate in this year.

3. The CIT(A), on appeal, following the Tribunal's earlier order held that the assessee is entitled to higher development rebate as well as initial depreciation. The CIT(A) further held that the relief under s. 80J should be allowed first before set off of the unabsorbed development rebate. Aggrieved, the Department filed a second appeal before the Tribunal. The Tribunal confirmed the order passed by the CIT(A).

4. Before us, learned standing counsel for the Department submitted that the assessee is not engaged in manufacturing activity and that, therefore, the assessee is not entitled to higher development rebate and the initial depreciation, as claimed. According to learned standing counsel, the assessee is not doing any manufacturing activity in textiles falling within Entry 32 of the Fifth Schedule. So, also, there is no manufacturing activity so as to claim initial depreciation under Entry 21 of the Fifth Schedule. The assessee purchased cloth manufactured by others and then bleached, dyed and sentered the same. The assessee claimed higher development rebate on the machinery used in its business under s. 33(1)(b)(B)(i) r/w item 32 of the Fifth Schedule to the Act. So also, initial depreciation was claimed under s. 32(1)(vi) of the Act. Unless the assessee is manufacturing the textiles, the assessee cannot claim higher development rebate and so also without manufacturing activities, initial depreciation also is not possible.

5. On the other hand, learned counsel appearing for the assessee submitted that the assessee while purchasing the cloth manufactured by others, bleaching, dyeing and sentering the same, the assessee was doing manufacturing activities. Manufacturing involves series of processes. Processes in manufacture or in relation to the manufacture implies not only production but also various stages through which the material is subjected to change by different operations. It is the cumulative effect of the various processes to which the material is subjected to, manufactured product emerges. Therefore, each step towards such production would be a process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods, that but for which process manufacture of processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture. According to learned counsel simply because the cloth which was used as a raw material remains as it is in the end would not mean that there is

no manufacturing activity. Therefore, it was submitted that the assessee is entitled to higher development rebate and initial depreciation, as claimed.

6. A similar question came up for consideration before this Court in respect of the very same assessee in Commissioner of Income Tax Vs. S.S.M. Finishing Centre, for the asst. yr. 1970-71. The name of the assessee in the present case is "S. S. M. Processing Mills". In the said decision, while considering the provisions of s. 33(1)(b)(B)(i) of the Act, this Court held as under :

"that the basic quality of the commodity as cloth remained the same both at the time of the purchase by the assessee and even after the carrying on by the assessee of the various operations on the said cloth. The important requirement contemplated by the provisions for grant of higher development rebate is that the operations carried on must be directed towards manufacture or production of textiles which would include dyed clothing material, printed clothing material or clothing material otherwise processed made wholly or mainly of cotton. But, in the instant case, the feed in material was cloth and the resultant product, after the operations on the cloth were done by the assessee was again cloth, probably neater and more presentable cloth. Consequently, the assessee could not be said to be engaged in the business of manufacture or production of textiles within the meaning of item 32 of the Fifth Schedule and, hence, would not be eligible for the higher development rebate."

7. It was further held in that case, that the feed-in-material is only cloth and the resultant product after the operations are done on the cloth by the assessee is again cloth or probably neater or more presentable cloth as found by the AAC; but that is not the same thing as saying that the assessee has "manufactured or produced" the cloth or textiles. We had occasion to refer and consider in detail all these aspects in TC No. 669 of 1978, Commissioner of Income Tax (Central), Madras Vs. S.S.M. Sizing Centre, and TC No. 146 of 1979, Commissioner of Income Tax Vs. Veena Textiles Pvt. Ltd., . We are, therefore, unable to share the interpretation put upon the word "textiles" by the Tribunal.

8. Similarly in the case of the same assessee, a similar question came up for consideration before this Court for the asst. yr. 1974-75 in Commissioner of Income Tax (Central), Madras Vs. S.S.M. Finishing Centre, . While considering the assessee's claim for higher development rebate, this Court held that the nature of the operations carried on by the assessee during the accounting period relevant to the assessment year in question had remained what it was during the previous assessment year. There was no manufacture or production of any article mentioned in the Fifth Schedule to the Act. Hence, the assessee was not entitled to development rebate at a higher rate. In this decision, this Court had considered a decision of the Supreme Court in Ujagar Prints vs . Union of India : [1989]179ITR317(SC) and pointed out that the above said decision of the Supreme Court is concerned with s. 2(f) (prior to 1980 amendment) of Central Excises and Salt Act, 1944. In the said decision, while considering what is manufacture it was held that the view taken in Empire Industries vs. Union of

India 1985 Supp (1) SCR 282 that "gray fabric" after they undergo the various processes of bleaching, dyeing, sizing, printing, finishing, etc., emerges as a commercially different commodity with its own price structure, custom and other commercial incidents and that there was in that sense a manufacture within the meaning of s. 2(f), even as unamended, is an eminently plausible view and does not suffer from any fallacy. Therefore, this decision of the Supreme Court was rendered while considering what is manufacture as contemplated under s. 2(f) prior to amendment of the Central Excises and Salt Act, 1944. So, also the Patna High Court had an occasion to consider what is manufacture of article, while considering special deduction under s. 80J of the Act. According to the facts arising in that case, the assessee purchased grey cloth and added to it various chemicals and thereafter put it in a damping machine. The cloth was thereafter folded according to the size and stamped according to its length and breadth and a specific brand name was printed on its top. The calendering process employed by the firm was such as to give a temporary finish by pressing the fabric for making it marketable. No lasting change was brought about. On these facts, a question arose whether the Tribunal was correct in holding that the assessee is engaged in manufacturing and producing articles within the meaning of s. 80J of the Act, thereby entitling it to claim a deduction under that section. While answering this question, the Patna High Court held that if this is the nature of the operation, the "grey" fabric, on the facts of the instant case, does not become a new and commercially different commodity and ceases to be "grey" cloth. For this reason, the assessee-firm is not entitled to relief under s. 80J of the Act.

9. Learned counsel appearing for the assessee in order to support the contention that the assessee was doing manufacturing activity relied upon a decision of the Allahabad High Court in Tarai Development Corporation Vs. Commissioner of Income Tax, . According to the facts arising in that case, the assessee is engaged in processing of seeds and claimed relief under s. 80J. A question arose whether the Tribunal was correct in holding that the income derived by the assessee from processing of seeds was not entitled to relief under s. 80J of the Act for the asst. yr. 1970-71. While answering the said question, the Allahabad High Court held that there is inherent indication in the Act which shows that, in its context, processed seeds must be treated as falling either in the category of manufacture or production. One of the articles or things which is treated to be manufactured or produced for purposes of s. 33 of the Act, as set out in Sch. V, is "processed seeds" which finds a place in item 28 thereof. "Processed seeds" is thus treated as an article which is obtained by the process of manufacture or production for purposes of s. 33 also. Furthermore, s. 80B and Sch. VI, also treat "processed seeds" as an article obtained by the process of manufacture or production. Again, s. 80-I which granted relief to specified industries, including those which sold "processed seeds" occurred in Chapter VI-A of the Act along with s. 80J. In view of the various provisions contained in the Act, as pointed out earlier, "processed seeds" were treated as an article which is obtained by the process of "manufacture" or production for the purpose of getting benefit under those

provisions. In order to have an uniform interpretation, the Allahabad High Court held that the "processed seeds" should be taken as an article which is obtained either by process of "manufacture or production for the purposes of s. 80J of the Act. In other words, in order to come to the conclusion that the "processed seeds" should be taken as an article which is obtained either by process of manufacture or production for the purposes of s. 80J of the Act, the Allahabad High Court was depending upon the meaning of the words, "processed seeds" contained in various provisions, as pointed out earlier. Therefore, it was in that context, the Allahabad High Court held, in order to get an uniform interpretation that the "processed seeds" was considered as an article, which is obtained either by the process of manufacture or production for the purposes of s. 80J. Learned counsel for the assessee relied on a decision reported in Commissioner of Income Tax, Gujarat-I Vs. Lakhtar Cotton Press Co. (Pvt.) Ltd., according to which the assessee-company received cotton in bulk having lighter density which was sprinkled with water and through a mechanical device pressed into small units of convenient sizes and then packed into bales, because cotton packed in bales was commercially acceptable as merchants found it convenient to store cotton in that form because unpressed cotton would require considerable storing space which might ultimately prove uneconomical to the traders dealing in or using cotton. The assessee-company claimed that pressing of cotton fell within the expression "processing of goods" within the meaning of s. 2(7)(c) of the Finance Act, 1973, and, therefore, it was an "industrial company" entitled to the concessional rate of tax. On these facts, Gujarat High Court held that loose cotton in bulk quantity with lighter density was, as a result of pressing, converted into cotton bales and to that extent it underwent a change and, therefore, the assessee-company fell within the definition of an "industrial company" because it processed cotton into cotton bales and was entitled to the concessional rate of tax within the meaning of ss. 2(7)(c) and 2(8)(c) of the Finance Act, 1973 and 1974 respectively.

10. Thus, while considering the provisions of s. 2(7)(c) of the Finance Act, 1973, the Gujarat High Court on the facts available on records, held "that the assessee was carrying on business in ginning and pressing of cotton. The cotton was pressed and packed in bales. Therefore, the assessee-company fell within the definition of an "industrial company". Reliance was also placed in the decision reported in Shree Mulchand Co. Ltd. Vs. Commissioner or Income Tax, . According to the facts arising in that case, the assessee, which was engaged in the export of goods to foreign countries, purchased mixed clipped glazed raw wool in heaps from shepherds and petty traders at upcountry centres, which wool was of various colours, fibres and different staple lengths. The assessee sorted out his wool in different qualities, colours and staple lengths and had the wool hand-washed to eliminate dirt, grease and other vegetable matter. Thereafter, the wool was dried in the sun on open ground and then it was opened by opener so that lots were blended uniformly to get average export type quality. The assessee claimed that it was an "industrial company" within the meaning of s. 2(6)(c) of the Finance (No. 2) Act, 1971, and entitled to the concessional rate

of tax. On these facts on a reference, the Bombay High Court held that the activity must be regarded as a process within the meaning of the expression in s. 2(6)(c) of the Finance (No. 2) Act, 1971. The Bombay High Court further held that, therefore, the assessee was an "industrial company" entitled to the concessional rate of tax and that in the context of the statute which had used the expression "processing" in contradistinction to or differently from the expression "manufacture" the assessee-company was engaged in the act of processing the goods in terms of the Finance Act in force at the relevant time. It is in this context, the above decision was rendered. Reliance was also placed upon a decision in Commissioner of Income Tax, Central-I Vs. R. Narayanaswami Naicker and Sons, . According to the facts arising in that case, the assessee claimed investment allowance under s. 32A of the Act since the assessee was ginning cotton. A Division Bench of this Court in Commissioner of Income Tax, Central-I Vs. R. Narayanaswami Naicker and Sons, referred to the decision of the Supreme Court in State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, . This Court further held that ginning of cotton results in manufacture and hence, the assessee was entitled to the investment allowance. The fact of ginning of cotton was common both in the decision of the Supreme Court cited supra, as well as in the tax case pending before this Court. Therefore, following the decision of the Supreme Court, this Court held that ginning process would amount to "manufacturing process". Our attention also was drawn to the decision reported in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, wherein the Supreme Court held that the activity of construction of dam could not be characterised as manufacture or production of an article or articles within the meaning of s. 80HH(2)(i). In the above decision, the Supreme Court further held that the word "production" has a wider connotation than the word "manufacture". While every manufacture can be characterised as production, every production need not amount to manufacture. The word production or produce when used in juxtaposition with the word manufacture, takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods. Again, the Supreme Court pointed out that the principle of adopting a liberal interpretation which advances the purpose and object of beneficial provisions cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the Court to rewrite the section or substitute words of its own for the actual words employed by the legislature in the name of giving effect to the supposed underlying object.

11. Lastly, reliance was placed upon a decision of the Punjab & Haryana High Court (Full Bench) in Commissioner of Income Tax Vs. Sovrin Knit Works, wherein the Punjab and Haryana High Court held that dyeing, bleaching, printing and embroidering of grey cloth constitutes production and manufacture in terms of item No. 32 of the Fifth Schedule to the Act and, hence, also falls under Entry

23 of the First Schedule to the Industries (Development and Regulation) Act, 1951. Machinery installed for such manufacture is entitled to development rebate. This decision was rendered by a Full Bench of Punjab & Haryana High Court relying upon the decision of the Supreme Court in Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, , wherein the Supreme Court held "that sizing, bleaching and dyeing of grey cloth did amount to processing as it had the effect of converting grey cloth into a commercially different marketable commodity and it, therefore, amounted also to manufacture of a commercially new product and the user of the goods in sizing, bleaching and dyeing grey cloth was consequently within the terms of s. 8(3)(b) read with the certificate of registration under the Central Sales-tax. The Full Bench of the Punjab & Haryana High Court also had an occasion to consider the judgment of the Supreme Court in Empire Industries Limited and Others Vs. Union of India and Others, , where, it was held that for the purposes of Central Excises and Salt Act, 1944, the expression manufacture was taken to include processes like bleaching; shrink proofing, grease resisting and the like. This view was subsequently endorsed and taken by the Supreme Court in Ujagar Prints vs. Union of India (supra). Thus, relying upon the above earlier decisions of the Supreme Court, the Punjab & Haryana High Court held that dyeing, bleaching, printing and embroidering of grey cloth constitutes production and manufacture in terms of item No. 32 of the Fifth Schedule to the Act. The decisions rendered in the case of the assessee for the earlier assessment years as reported in Commissioner of Income Tax (Central), Madras Vs. S.S.M. Finishing Centre, were brought to the notice of the Full Bench of Punjab & Haryana High Court, while rendering the decision in CIT vs. Sovrin Knit Works (supra). It was also submitted that as against the decision rendered in Commissioner of Income Tax Vs. Sovrin Knit Works, , appeal is pending before the Supreme Court in Tarajan Tea Co. Pvt. Ltd. Vs. Commissioner of Income Tax, and as against the decision rendered in Commissioner of Income Tax (Central), Madras Vs. S.S.M. Finishing Centre, , appeal is pending before the Supreme Court in (1992) 198 ITR 42 and as against the judgment rendered in Commissioner of Income Tax Vs. S.S.M. Finishing Centre, appeal is pending before the Supreme Court in (1991) 187 ITR 155. Thus, inasmuch as the Full Bench decision rendered by the Punjab & Haryana High Court in CIT vs. Sovrin Knit Works (supra), is under appeal before the Supreme Court and with regard to the decision rendered by this Court in the case of the very same assessee in CIT vs. S. S. M. Finishing Centre (supra), an appeal is pending before the Supreme Court, in order to adopt an uniform view, we would like to follow and endorse the earlier view taken by this Court in the case of the very same assessee in the earlier assessment years cited supra. Accordingly, we hold that the Tribunal is not correct in coming to the conclusion that the assessee was manufacturing textiles within the meaning of Entry 32 of the Fifth Schedule and Entry 21 of the Ninth Schedule and therefore, the assessee was entitled to higher development rebate and initial depreciation in respect of the plant and machinery installed during the previous year relevant for the asst. yr. 1975-76. Accordingly, we

answer question No. 1 in the negative and in favour of the Department.

12. In so far as the second question is concerned, the assessee claimed relief under s. 80J of the Act before set off of unabsorbed development rebate. The ITO held that the relief under s. 80J could not be given set off, as there was no income after set off of the unabsorbed development rebate in this year. On appeal, the AAC held that the set off of amount brought forward under s. 80J(3) of the Act, would have to be allowed against the profits and gains, as included in the gross total income, i.e., before set off of carried forward loss. On further appeal, the Tribunal upheld the view taken by the AAC, viz., the relief under s. 80J of the Act should have priority over some other items including the unabsorbed development rebate.

13. Learned standing counsel appearing for the Department submitted that the relief under s. 80J of the Act should be given priority, after the set off of unabsorbed development rebate was given. He relied upon a decision of the Supreme Court in *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, and submitted that the relief under s. 80J of the Act should be given only after the unabsorbed development rebate was given a set off. Therefore, according to learned standing counsel for the Department, the Tribunal was not correct in holding that the relief under s. 80J of the Act is possible even prior to the set off of the unabsorbed development rebate. In order to support his contention, learned standing counsel also relied upon the decisions reported in *Commissioner of Income Tax Vs. Rockweld Electrodes India Ltd.*, *Mettur Chemical and Industrial Corporation Limited Vs. Commissioner of Income Tax, Madras-1*, and *Scindia Steam Navigation Co. Ltd. Vs. Commissioner of Income Tax*, .

14. On the other hand, learned counsel appearing for the assessee submitted that the relief under s. 80J of the Act should be given in the gross total income determined in accordance with the other provisions of the Act. Sec. 80J(1) of the Act speaks of profits and gains included in the gross total income. Therefore, the development rebate is a charge on the profits even before the total income is computed. According to learned counsel, the decision reported in *Cambay Electric Supply Industrial Co. vs. CIT (supra)* has got nothing to do with the question of priority between various amounts which are carried forward for set off against the profits of the year. It was further submitted that the said decision, viz., *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, is concerned with ss. 80E and 84 of the Act, where the computation of gross total income does not arise for considerations. Accordingly, it was submitted that there is no error in the order passed by the Tribunal, while directing to grant relief under s. 80J of the Act before set off of unabsorbed development rebate.

15. For the assessment year under consideration, the assessee had claimed relief under s. 80J of the Act. According to the assessee, set off of amount brought forward under s. 80J(3) of the Act would have to be allowed against the profits

and gains as included in the gross total income, i.e., before set off of carried forward losses. A similar question came up for consideration before this Court in the decision in CIT vs. Rockweld Electrodes India Ltd. (supra), wherein while considering ss. 72, 80B and 80J of the Act, a Division Bench of this Court after taking into consideration the decision of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. vs. CIT (supra) and a decision of this Court in Commissioner of Income Tax, Tamil Nadu-III, Madras Vs. Madras Motors (P.) Ltd., and another decision of the Supreme Court in H.H. Sir Rama Varma Vs. Commissioner of Income Tax, Kerala, and two decisions of this Court in Commissioner of Income Tax, Tamil Nadu-II, Madras Vs. North Arcot District Co-operative Spinning Mills Limited, and Commissioner of Income Tax Vs. Rane Brake Linings Ltd., , and yet another decision of the Supreme Court in Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, , held that the definition of "gross total income" contained in s. 80B(5) of the Act, as the total income computed in accordance with the provisions of the Act before giving deductions under Chapter VI-A clearly shows the intention of Parliament that s. 72 has to be applied before the total income of an assessee is determined, that is, before the deductions under Chapter VI-A are allowed. Hence, the set off of development rebate under s. 80J should be made after setting off business losses of earlier years which have been carried forward.

16. Similarly, in the decision reported in Mettur Chemical & Industrial Corpn. Ltd. vs. CIT (supra), the Supreme Court while considering the provision of s. 84 of the Act and s. 15C of Indian IT Act, 1922, following the decision of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. vs. CIT (supra) held that the profits and gains of an industrial undertaking to which s. 84 of the Act, applies have to be computed in accordance with the provisions contained in Chapter VI-D of the Act and development rebate has first to be deducted from the total income and it is only thereafter, if any profits and gains remain from this business, that the benefit under s. 84(1) of the Act would be applicable.

17. In the decision reported in Cambay Electric Supply Industrial Co. vs. CIT (supra), while interpreting the provision similar to s. 84(5) of the Act, the Supreme Court held that the profits and gains from an industrial undertaking to which the section applies have to be computed in accordance with the provisions contained in Chapter VI-D of the Act and development rebate has first to be deducted from the total income and it is only thereafter if any profits and gains remain from the business, the benefit under s. 84(1) of the Act could be applicable.

18. The Bombay High Court in Scindia Steam Navigation Co. Ltd. Vs. Commissioner of Income Tax, while considering the provisions of s. 29 of the Act held that in order to calculate the maximum deduction which is allowable under s. 80G(4) of the Act, it is necessary to ascertain first, the gross total income. This is defined in s. 80B(5) as the total income computed in accordance with the provisions of this Act, before making any deduction under Chapter VI-A or under

s. 280-O of the Act. Secondly, from this gross total income, it is necessary to deduct inter alia, any amount which the assessee is entitled to deduct under any provision of Chapter VI-A, other than s. 80G. This would include a deduction under s. 80J also. The gross total income thus gets reduced. The Bombay High Court further held that for the purpose of s. 80J, gross total income has to be computed without reference to Chapter VI-A. If this total income includes income from profits and gains from business, it will have to be calculated under s. 29 and in accordance with the provisions contained in ss. 30 to 43A. The Tribunal was, therefore, correct in holding that relief under s. 80J of the Act had to be restricted and that the relief under s. 80J of the Act has got to be given, after deducting the unabsorbed development rebate.

19. Learned counsel appearing for the assessee pointed out the difference between the definitions of the provisions contained in ss. 80E and 84 of the Act and s. 80J of the Act. According to learned counsel for the assessee in computing the gross total income as occurring in s. 80J was not found a place in s. 80E or s. 84 of the Act. The Supreme Court in *Mettur Chemical & Industrial Corpn. Ltd. vs. CIT* (supra), while considering the decision of *Cambay Electric Supply Industrial Co. Ltd.* (supra), held that the profits and gains of an industrial undertaking to which s. 84 of the Act applies have got to be computed in accordance with the provisions of Chapter IV-D) of the Act. Unless there are profits or gains, while computing the total income of the assessee, relief under s. 80J cannot be granted. Therefore, in the decision reported in *Cambay Electric Supply Industrial Co. Ltd.* (supra), the Supreme Court was concerned with the profits and gains from an industrial undertaking. So, also, while ascertaining the gross total income of the assessee under s. 80J of the Act, we are concerned with the profits and gains from an industrial undertaking, enabling the assessee to get relief under s. 80J of the Act. Therefore, it cannot be said that the decision in *Cambay Electric Supply Industrial Co. Ltd.* (supra) would not be applicable, while considering the relief under s. 80J of the Act.

20. Therefore, we hold that the Tribunal was not correct in coming to the conclusion that the relief under s. 80J of the Act should be allowed before set off of unabsorbed development rebate. Accordingly, we answer question No. 2 in the negative and in favour of the Department. Learned counsel appearing for the assessee seeks the leave of this Court for appeal to the Supreme Court on the ground that a similar question in respect of the very same assessee is pending before the Supreme Court and that an appeal as against the decision of the Punjab & Haryana High Court (Full Bench) in *CIT vs. Sovrin Knit Works* (supra) is also pending. Learned standing counsel appearing for the Department also concedes the above position. Leave is granted. There will be no order as to costs.