(1997) 02 MAD CK 0092

In the Madras High Court

Case No : TC No''s. 2121 to 2124 of 1984

Commissioner of Income Tax APPELLANT

Vs

Veeraraghava Textiles (P) Ltd. RESPONDENT

Date of Decision : 17-02-1997

Acts Referred:
Income Tax Act, 1961 — Section 280, 32(1), 32(2), 80A(2), 80B(5)

Citation : (1998) 234 ITR 529

Hon'ble Judges : N.V. Balasubramanian, J;Abdul Hadi, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; R. Janakiraman, for the Respondent

Judgement

N.V. Balasubramanian, J.—At the instance of the Revenue, the Tribunal has stated a case and referred the following common questions of

law under s. 256(1) of the IT Act, 1961 (hereinafter referred to as the ''Act'') for the opinion of this Court :

1. Whether, on the facts and in the circumstances of the case, the deduction under s. 80J is available on the gross total income as defined in s.

80B(5) with reference to the income of the previous year alone before setting off deductions carried forward from the earlier years ?

2. Whether, on the facts and in the circumstances of the case, the deductions available under the IT Act are to be allowed according to the list of

priority decided by the Tribunal ?

2. The assessee is a company and the assessment years involved are 1974-75, 1975-76, 1977-78 and 1978-79. The short question that arises in

all the cases is whether the deduction under s. 80J is to be allowed after setting off deductions of the carried forward loss and depreciation of the prior assessment years.

3. The Tribunal found that under the provisions of s. 80A(2), the aggregate amount of deductions under Chapter VI-A shall in no case exceed the

gross total income and s. 80B(5) defined the gross total income as the total income computed in accordance with the provisions of the Act before

making any deductions under this Chapter or under s. 80-o. However, the Tribunal placing reliance on the speech of the Finance Minister [64 ITR

101] held that the deduction under s. 80J has to be allowed first even before deducting the carried forward business loss or unabsorbed

depreciation on the ground that the embargo under s. 80A(2) cannot operate, and if it operates it would defeat the assurance of the Finance

Minister given before the Parliament. It is this order which is the subject-matter of the tax case references before us.

4. Mr. C. V. Rajan, learned counsel appearing for the Department strongly placed reliance on the decision of this Court in the case of

Commissioner of Income Tax, Tamil Nadu-II, Madras Vs. North Arcot District Co-operative Spinning Mills Limited, , and the decision in the

case of Commissioner of Income Tax Vs. Rockweld Electrodes India Ltd., and contended that the deduction under Chapter VI-A has to be

allowed after setting off the business loss of the current year as well as setting off the forward business loss and depreciation of the earlier years.

5. Mr. R. Janakiraman, learned counsel for the assessee contended that this Court should take into account the intention of the Parliament and the

earlier decisions of this Court in CIT v. Rockweld Electrodes India Ltd. (supra) did not take into account the intention of the Parliament while

construing the provisions of s. 80B(5) of the Act.

6. We have carefully considered the rival contentions of the parties.

7. Sec. 80B(5) of the Act defines ''gross total income'' as under : ""gross total income"" means the total income computed in accordance with the

provisions of this Act, before making any deduction under this Chapter or under s. 80-O.

The definition of ''gross total income'' is very clear that total income should be computed in accordance with the provisions of the Act, before

making any deduction under the Chapter or under s. 80-O of the Act. In other words, only after granting all deductions provided under the said provisions of the Act, the deduction under Chapter VI-A can be granted.

7. This Court in CIT v. North Arcot District Co-operative Spinning Mills Ltd. (supra) has held that no distinction can be made between the current

year''s depreciation and carried forward unabsorbed depreciation of the earlier years in view of the specific provisions of s. 32(2) of the Act.

Giving effect to s. 32(2) which deems unabsorbed depreciation of the earlier year as part of the current year''s depreciation, the deduction under s.

32(1) must relate to both the current year''s depreciation as well as the depreciation of the earlier years. This Court, therefore, held that from the

language of s. 80J(1) of the Act that the profits or gains of a new industrial undertaking from which deduction of the relevant amount of capital

employed during a particular assessment year is allowable under that provision can only the profits and gains includible in the computation of the

total income chargeable to tax. In other words, the profits and gains should be computed in accordance with the provisions of the Act, before

granting deduction under s. 80J of the Act. The same view was also reiterated in Rockweld Electrodes India Ltd. case (supra), wherein this Court

has held that the set off of deficiency under s. 80J should be made after setting off business losses of earlier years which have been carried

forward. This Court has arrived at the above view, after considering the decisions of the Supreme Court in the case of H.H. Sir Rama Varma Vs.

Commissioner of Income Tax, Kerala, and Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, . In view of the decisions cited

above, the Tribunal is not correct in holding that the assessee is entitled to deduction under s. 80J of the Act before setting off the earlier loss

carried forward or unabsorbed depreciation of the earlier years. The Tribunal was not right in holding that the deduction under Chapter (sic - s.)

80J has to be allowed first before deducting the carried forward business loss or unabsorbed depreciation. Since the view of the Tribunal is in

direct conflict with the above decisions of this Court as well as the decision of the Supreme Court, we are unable to subscribe to the view of the

Tribunal on the basis of the alleged intention of the Parliament. Therefore, we answer the questions of law referred to us in the negative and in

favour of the Department. No costs.