
(1992) 02 DEL CK 0092

In the Delhi High Court

Case No : Income-tax Reference No. 46 of 1978

Gedore Tools (India) P. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-02-1992

Acts Referred:

Citation : (1992) 105 CTR 129 : (1993) 199 ITR 83

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : Rajendra, Adv Deepak Chopra, for the Appellant;

Judgement

B.N. Kirpal, J.

The Income Tax Appellate Tribunal has referred to this court the following question of law for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in excluding for the purposes of relief u/s 80 of the Income Tax Act, 1961, the sum of Rs. 2,19,617 and Rs. 12,549 representing the development rebate and relief u/s 35 that had been allowed to the assessed in the assessment ?"

2. Briefly stated the facts as found the Tribunal are that the assessed is engaged in the manufacture and sale of land tools. It declared a net profit in respect of the assessment year 1969-70 of Rs. 39,92,472 and claimed relief u/s 80 of the Income Tax Act, 1961. The Income Tax Officer made certain adjustments while arriving at the figure on which deduction u/s 80 was admissible.

3. An appeal was filed by the assessed where two contentions were raised. The contention with reference to relief u/s 80 was not dealt with by the Appellate Assistant Commissioner with the result that when further appeal was filed by the assessed to the Tribunal, the Tribunal sent back the matter to the Appellate Assistant Commissioner for a decision on this point.

4. After the matter came back to the Appellate Assistant Commissioner, he passed two orders section 154 of the Act. He came to the conclusion that relief u/s 80 was to be worked out on the assessed income and not on the book profits of the business.

5. The assessed filed a further appeal to the Tribunal. The question which was posed before Tribunal was whether the relief was to be allowed u/s 80 on the assessed income of Rs. 43,17,546 or on that income as enhanced by the claim of the assessed relating to development rebate amounting to Rs. 2,19,617 and weighted expenditure on exports u/s 35 amounting of Rs. 12,549. Following its decision for the earlier year, the Tribunal came to the conclusion that the decision of the Appellate Assistant Commissioner was correct. Thereafter, the aforesaid question of law has been referred to this court.

6. Before us, it has been contended by learned counsel for the assessed that the relief should really have been allowed on a figure of Rs. 45,49,712 and not on the assessed income of Rs. 43,17,546. According to learned counsel, the gross total income and the profits and gains of the industry in question would be the assessable income of Rs. 43,17,546 as enhanced by the amount of development rebate plus weighted expenditure which had been allowed as a deduction. In other words, before allowing the deduction of development rebate amount of Rs. 2,19,617 and the weighted expenditure of Rs. 12,549, relief u/s 80 should have been granted on the income of Rs. 45,49,712.

7. In order to appreciate the contention, it is necessary to refer to the provisions of section 80 as they stood at the relevant time. The said provisions were as follows :

"80-I. Deduction in respect of profits and gains from priority industries in the case of certain companies. - (1) In the case of a company to which the section applies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent. thereof, in computing the total income of the company.

(2) This section applies to a domestic company, save in a case where such company is a company which is referred to in section 108 and has a gross total income to fifty thousand rupees or less.

(3) Where a company to which this section applies is entitled also to the deduction 80H, the deduction under sub-section profits and gains attributable to the priority industry or industries as reduced to the deduction u/s 80H in relation to such profits and gains."

8. Learned counsel for the assessed has strongly relied upon the decision of the Calcutta High Court in the case of Commissioner of Income Tax Vs. Orient Paper Mills Ltd., . In that case, it was held that relief on income from a industry should

be given before setting off the unabsorbed development rebate of the priority industry itself. The court, while arriving at this conclusion, referred to and relied upon the decision of the Supreme Court in the case of Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, . It also referred to another decision of the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, but observed that there were certain aspects of the question which urged before the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, .

9. There can be no doubt that the decision of the Calcutta High Court in Commissioner of Income Tax Vs. Orient Paper Mills Ltd., supports the assessed. We, however, find that the decision in Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, , on which the Calcutta High Court had placed reliance, was overruled by the Supreme Court itself in the case of Distributors (Baroda) Pvt. Ltd. Vs. Union of India (UOI) and Others, . Furthermore, the decision of the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, . is indistinguishable. In that case. In that case, the Supreme Court was dealing with the interpretation of section 80 which was analogous to the provisions of section 80 in this case. Referring to the question of unabsorbed depreciation and development rebate being deducted while computing profits, the Supreme Court observed as follows (at page 94 of 113 ITR) :

"Turning to the appeal of the assessed, being Civil Appeal No. 785(NT) of 1977, the question is whether unabsorbed depreciation and development rebate are deductible or not in computing profits u/s 80 of the Act. Here again the answer to the question must depend upon the construction of sub-section (1) section 80 and the construction which we have placed on the said provision while disposing of the Revenue's appeal will furnish the correct answer to the question posed. As indicated earlier, sub-section (1) contemplates three steps being taken for computing the special deduction permissible there under the arriving at the net income exigible to tax and first two steps read together contain the legislative mandate as to how the total income - of which the profits and gains attributable to the business of the specified industry forms a part - of the concerned assessed is to be computed and according to the parenthetical clause, which contains the key words, the same is to be computed in accordance with the provisions of the Act except section 80 and since in this case it is income from business, the same will have to be computed in accordance with sections 30 to 43 which would include section 32 (which provides for carry forward of depreciation) and section 33 (which provides for carry forward of development rebate for eight years). In other words, in computing the income of the concerned assessed, items of unabsorbed depreciation and unabsorbed development rebate will have to be deducted before arriving at the figure that will become exigible to the deduction of 8% contemplated by section 80. On this construction, Therefore, the High Court, in our view, was right in deducting unabsorbed depreciation and

development rebate aggregating to Rs. 2,54,613 from Rs. 8,02,126 and holding the balance of Rs. 5,47,513 as being exigible to the 8% deduction."

10. In our opinion, merely because certain aspects may not have been urged before the Supreme Court cannot be a reason for not applying the ratio of the said decision. The observations of the Supreme Court in *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, are very clear and categorical. The Supreme Court has held that, while computing the profits and gains for the purpose of section 80, which is analogous to section 80 with which we are concerned, the rebate is to be allowed on the profits and gains which are assessable and computed under the provisions of the Indian Income Tax Act in relation to business income of the priority industry. Inasmuch as development rebate and weighted expenditure have to be deducted while arriving at the figure of assessable income, it is on this amount that the rebate u/s 80 would have to be allowed. We are fortified in this conclusion by the decision of the Madras High Court in the case of *Commissioner of Income Tax Vs. Marshall Sons and Co. Mfg. Ltd.*, . In that case also, following the decision of the Supreme Court in the case of *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, , it was held by the Madras High Court that, in computing the total income of the assessed for purposes of calculating the special deduction u/s 80 of the Income Tax Act, 1961, the unabsorbed depreciation and carried forward losses have to be deducted.

11. For the aforesaid reasons, the question of law referred to this Court is answered in the affirmative and in favor of the Revenue.

12. The respondents will also be entitled to costs.