
(1989) 09 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 18 and 19 of 1983

HMM Limited

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-09-1989

Acts Referred:

Income Tax Act, 1961 — Section 37, 80J

Citation : (1990) 181 ITR 473

Hon'ble Judges : Sukhdev Singh Kang, J;Jai Singh Sekhon, J

Bench : Division Bench

Advocate : G.C. Sharma, S.S. Mahajan, Pardeep Aggarwal and Lakhinder Singh, for the Appellant; Ashok Bhan and A.K. Mittal, for the Respondent

Judgement

Singh Sekhon, J.—The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, had referred question. No. 1 for the opinion of this court at the instance of the assessee, while questions Nos. 2 and 3 have been referred at the instance of the Revenue. The questions run as follows :

"(1) Whether the Income Tax Appellate Tribunal has been right in law in holding that the assessee was not entitled to the deduction of surtax payable by it in pursuance of the Companies (Profits) Surtax Act, 1964, in arriving at the taxable income ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that, for the purpose of computing capital employed for deduction u/s 80J, liabilities are not to be deducted ?

(3) Whether? on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that, for the purpose of relief u/s 80J, the computation of capital should be based on average amounts of increase/decrease in the assets and liabilities during the relevant previous year ?"

2. The brief factual matrix is that the assessee is a limited company. Reference applications are for the Income Tax assessment year 1974-75 for which the

relevant "previous year" ended on March 31, 1974. The assessee claimed surtax liabilities as business expenditure which was disallowed by the Income Tax Officer and also by the Appellate Assistant Commissioner. The assessee then came up in appeal before the Tribunal. The Tribunal, placing reliance on the decision of the Special Bench in the case of *Amar Dye Chem Ltd. v. ITO* in I. T. A. No. 3643/Bom./1974-75, upheld the disallowance of surtax liability. During the course of these very assessment proceedings, the Income Tax Officer did not agree to compute the relief u/s 80J as per the claim of the assessee both in respect of the quantum of capital and the point of time. The assessee carried the matter before the Appellate Assistant Commissioner in appeal. He also took up the additional ground contending that the claim of the assessee u/s 80J of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), be worked out at Rs. 9,40,593 instead of Rs. 5,93,719 as allowed by the Income Tax Officer. The contentions of the assessee did not find favour with the Appellate Assistant Commissioner. The assessee then went up in appeal before the Tribunal. The Tribunal ultimately held that the liabilities be not deducted while computing the capital employed for the purpose of Section 80J of the Act, and an average value of the assets be taken during the year instead of the value of the assets and liabilities as on the first day of the previous year. The Tribunal also accepted the additional ground raised by the assessee that, for the purpose of computing relief u/s 80J, the original cost of the fixed assets be taken into account in the computation of the capital employed and not their written down value.

3. We have heard learned counsel for the parties, besides perusing the relevant record. The controversy whether the assessee was entitled to deduction of surtax while computing its taxable income for the relevant assessment year is not only covered by the decision of this court in *Highway Cycle Industries Ltd. Vs. Commissioner of Income Tax*, , but also by the decisions of the Calcutta High Court and the Gujarat High Court. The Calcutta High Court in *Commissioner of Income Tax Vs. Thakurmal Bajranglal*, and in *Organon (India) Limited Vs. Commissioner of Income Tax*, , had taken the view that the Tribunal had rightly disallowed the assessee's claim for surtax liability. Similar view was also taken by the Gujarat High Court in *S.L.M. Maneklal Industries Ltd. Vs. Commissioner of Income Tax*, . Thus, question No. 1 is answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

4. The controversy posed in questions Nos. 2 and 3 is also covered by the decision of the apex Court in *Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others*, . The majority judgment delivered by my Lord P.N. Bhagwati J., while upholding the validity of Sub-rule (3) of Rule 19A of the Income Tax Rules, 1962, and the amended provisions of Sub-section (1) of Section 80J, vide Finance (No. 2) Act, 1980, incorporating Rule 19A in the section with retrospective effect from 1st April, held as under (at p. 358) :

"We are, therefore, of the view that Rule 19A in so far as it excluded borrowed monies and debts in the computation of the "capital employed" and provided for

the computation of the "capital employed" as on the first day of the computation period was not ultra vires Section 80J and was a perfectly valid rule within the rule-making authority conferred upon the Central Board. So also, for the same reasons, Rule 19A in so far as it provided that the "capital employed" in a ship shall be taken to be the written down value of the ship as reduced by the aggregate of the amounts owed by the assessee as on the computation date on account of monies borrowed or debts incurred in acquiring that ship must be held to be valid as being within the rule-making authority of the Central Board. Since, on the view taken by us, Rule 19A did not suffer from any infirmity and was valid in its entirety, the Finance (No, 2) Act of 1980 in so far as it amended Section 80J by incorporating Rule 19A in the section with retrospective effect from 1st April, 1972, was merely clarificatory in nature and must, accordingly, be held to be valid."

5. Thus, in the light of the above-referred decision of the Supreme Court, both these questions are answered in the negative, i.e., in favour of the Revenue and against the assessee.

6. These references are disposed of accordingly. There will, however, be no order as to costs.