

(1995) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Income Tax Reference No. 56 of 1984

JAI DRINKS (P) LTD.

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Income Tax Act, 1961 — Section 254, 256, 80J

Citation : (1997) 225 ITR 874

Hon'ble Judges : V.K. Singhal, J;V. K. Singhal, J

Bench : Division Bench

Judgement

V.K. SINGHAL J. - The Tribunal has referred the following question of law arising out of its order dated March 31, 1980, and July 1, 1981, in respect of the assessment year 1972-73 u/s 256(1) of the Act.

"Whether the Tribunal was correct in law in not considering the claim of the assessee during the assessment year 1972-73 holding that the assessee did not agitate the calculation of claim u/s 80J done by the Income Tax Officer during the assessment year 1968-69 ?"

The brief facts of the case are that the assessee is a manufacturer and is engaged in the production of cold drinks. The assessee claimed the deduction u/s 80J of the Act at the rate of six per cent. The deductions were allowed for six months. A contention was also raised that the assessee is also entitled for six per cent, deduction of capital employed for the whole assessment year 1968-69, a part of the amount will be carried forward and set off against the income of the assessment year 1972-73 on computation and calculation for earlier years. The assessee requested the Income Tax Officer to compute and calculate the deduction u/s 80J for the whole year 1968-69 in the previous (sic) year 1972-73 of six per cent. of the capital employed and to allow deficiency during the assessment year 1972-73. The claim was rejected. The appeal to the Appellate Assistant Commissioner was also rejected. In the second appeal before the Tribunal, the said question could not be considered while disposing of the appeal

on March 31, 1980, and as such the application u/s 254(2) of the Act was moved. The Tribunal rectified its order and came to the conclusion that the assessee should have raised his grievance when the appeal was preferred against the order of the Income Tax Officer relating to the assessment year 1968-69. Nowhere has it been shown by the assessee that the calculation or the finding of the Income Tax Officer in respect of the assessment year 1968-69 was agitated in any manner and, therefore, it was found that in respect of the appeal for 1972-73 the assessee cannot raise this issue. The order of the Appellate Assistant Commissioner observing that it is not the job of the Income Tax Officer who is seized of the matter relating to the year 1972-73 to correct the calculation pertaining to the year 1968-69 and then allow relief u/s 80J to the assessee. The appeal was accordingly dismissed.

The submission of Mr. Ranka on behalf of the assessee is that there were no profits prior to the assessment year 1972-73 and, therefore, it was not obligatory on the part of the assessee to have claimed or for the Income Tax Officer to determine the deduction in accordance with the provisions of section 80J starting from 1968-69.

Reliance has been placed on the decision of the Jammu and Kashmir High Court in the case of Commissioner of Income Tax Vs. Mattoo Worsted Spinning and Weaving Mills, wherein the court came to the conclusion that the right to claim deduction u/s 80J arose to the assessee only in the year when profits were made for the first time and not in the earlier assessment years when no such right to claim deduction had accrued to the assessee although the claim also related to the assessment year. In this case in the assessment year 1970-71 the profits were shown for the first time. The relief u/s 80J was granted for the assessment years 1968-69, 1969-70 and 1970-71. In 1972-73, it has applied for the relief u/s 80J for the assessment year 1967-68 in rectification proceedings. The application was rejected. The court came to the conclusion that the relief u/s 80J in the assessment year 1967-68 that no claim for the purposes of carry forward and set off as provided u/s 80J(3) of that Act in that assessment year could be claimed and allowed in the year 1970-71 and it constituted a mistake apparent from the record (sic). The decision of the Calcutta High Court in the case of INDIAN ALUMINIUM CO. LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL-II., has also been relied on where it was found that section 80J came into force with effect from April 1, 1968, and gave retrospective benefit to assessee whereby they could carry forward their deficiency in a newly established industrial undertaking with effect from the assessment year 1967-68. In such a case there could not have been any prior determination or claim for carrying forward the deficiency. The provisions of section 80J(3) were interpreted not to require to have the deficiency in each and every year determined and carried forward nor there was any procedure laid down in the rules for prior determination of the deficiency. Even the Income Tax return form was not having any column for asking such a claim. In these circumstances, it was held that the claim of the assessee could be allowed. The decision of the Bombay High Court in

the case of Commissioner of Income Tax Vs. T. Maneklal Mfg. Co. Ltd., has also been relied on to show that the assessee is entitled to avail of the benefit of carry forward and set off of section 80J deficiency in the year of profit even in the absence of computation thereof in the year of loss. In this case the view taken by the Karnataka High Court in Raja Industrial Works, Sringeri Vs. Assistant Collector of Central Excise Davangere and Others, was dissented from and the view taken by the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Veljan Hydair (P.) Ltd., was followed as also the decisions of the Madras High Court in Commissioner of Income Tax, Tamil Nadu-V Vs. Bluemount Ceramics Ltd., the Allahabad High Court in Addl. Commissioner of Income Tax Vs. Sheetalaya, and the Calcutta High Court in INDIAN ALUMINIUM CO. LTD. Vs. COMMISSIONER OF Income Tax, WEST BENGAL-II., . The decision of the Punjab and Haryana High Court in the case of Commissioner of Income Tax Vs. Amrit Lal (Prop. Kismat Industries), was also found to the same effect. The Madhya Pradesh High Court in Commissioner of Income Tax Vs. Caps and Caps, have also taken the same view. The claim before the Appellate Assistant Commissioner was made on the basis that for the assessment year 1968-69 the deduction should have been worked out at six per cent, of the capital employed and not restricted to the six month period. It has also stated that borrowed capital should not have been excluded. The Appellate Assistant Commissioner found that the assessee should have agitated the matter in the year for which the said deduction came to be actually allowed. The contention of the assessee was rejected. In the second appeal before the Tribunal the benefit even in respect of the borrowed capital was given following a Full Bench decision of the Tribunal in the case of Amar Dye-Chem. Ltd. (this point has since been decided in favour of the Revenue by the apex court in the case of Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, In the miscellaneous application moved before the Tribunal it was observed that the assessee should have raised the grievance that the deduction at six per cent. for the assessment year 1968-69 has to be allowed for the whole of the year and not for six months in the appeal preferred against the order of the Income Tax Officer relating to the assessment year 1968-69. Nowhere has it been shown by the assessee that the calculation or finding of the Income Tax Officer were agitated in any manner. The observation of the Appellate Assistant Commissioner that no part of the deduction is available for set off against the income of the year under appeal was found correct. It was observed that the Income Tax Officer will allow deduction in the light of the order passed for the preceding years. It was further observed that it was not the job of the Income Tax Officer to correct the calculation or assessment pertaining to the assessment year 1968-69 and then to allow the deduction. On the basis of the finding which has been recorded by the authorities below, it is clear that there was determination of deduction u/s 80J which according to the assessee, should have been for whole of the year instead of six months. Against such an order an appeal was preferred but this point was not agitated and the assessee allowed the order of the Income Tax Officer to become final in this regard. It was further observed that no part of the deduction is liable to be set off in the year under

dispute and, as such, the closed matter of 1968-69 cannot be reopened. We feel that the finding which has been recorded by the Tribunal is in accordance with law and the various decisions relied on by learned counsel for the assessee have no relevance to the facts of this case because there was a determination of deduction and no steps were taken in accordance with the provisions of the Act for correcting the said mistake, even if for the sake of arguments, there was any. The order passed by the Income Tax Officer had become final and cannot be reagitated or reopened in the assessment year 1972-73 in which neither the deduction was required to be determined nor any part of such deduction could be set off against the profits of such year. It is not a case where there was no claim for deduction or non-determination of the deduction on account of non-availability of profits to be set off against such deduction. The claim was made, deduction was determined and the order was passed. The Act has provided a machinery for challenging such an order and if the procedure as provided under the Act has not been followed, then the claim could not be made in the year which has no relevance either with regard to the determination or even with regard to the set off of such deduction.

In these circumstances, we are of the view that the Tribunal was correct in law in not considering the claim of the assessee during the assessment year 1972-73 holding that the assessee did not agitate the calculation of claim u/s 80J done by the Income Tax Officer during the assessment year 1968-69.

Accordingly, the reference is answered in favour of the Revenue and against the assessee. No order as to costs.