
(1981) 09 KL CK 0015

In the High Court Of Kerala

Case No : Income-tax Reference No's. 54 and 55 of 1979

Traco Cable Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-09-1981

Acts Referred:

Income Tax Act, 1961 — Section 33(1), 80J

Citation : (1982) 28 CTR 307 : (1982) 138 ITR 385 : (1982) 8 TAXMAN 7

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; George Abraham Vadakkal, J

Bench : Division Bench

Advocate : K.V.R. Shenoi and K.A. Nayar, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

Subramonian Poti, Actg. C.J.

1. On two reference applications, one by the Commissioner of Income Tax and the other by the assessee, the Income Tax Appellate Tribunal, Cochin Bench, has referred these cases consequent upon which two questions, one raised at the instance of the assessee and the other raised at the instance of the department call for answer by this court. The questions referred are :

At the instance of the assessee

" (1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the plant and machinery installed by the applicant for the manufacture of telephone cables do not fall under item No. 7 of the Fifth Schedule to the Income Tax Act, 1961 ? "

At the instance of the department

" (2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in not excluding " borrowed capital" from the computation of capital for the purposes of Section 80J of the I.T. Act, 1961 ? "

3. The facts on which these questions arise may now be stated.

4. The assessee is a public sector company in which the Govt. of Kerala is a major shareholder. We are concerned with the assessment year 1975-76 during which year the company was manufacturing telephone cables. In 1969, they had applied to the Govt. of India for a licence for the manufacturing of telephone cables. In the application form the particulars of the article to be manufactured were shown as " paper insulated telephone cables ". As against the column " scheduled industries or industries to which they relate " the entry made was that it was a priority industry, i.e., electrical cables and wires. The Govt. of India granted the licence by their letter dated February 20, 1970. The assessee put up a plant for the manufacture of telephone cables. The project was commissioned during the accounting year relevant to the assessment year 1975-76. The total cost of the plant and machinery amounted to Rs. 74,78,450. The assessee claimed development rebate on the capital at 25%. u/s 33 of I.T. Act the allowance of development rebate in respect of machineries installed after 31st March, 1970, is to be granted at the rate of 25% if the machinery or plant is installed for the purpose of the business of manufacture of any of the items mentioned in the Fifth Schedule of the I.T. Act and if it is not any of such items the development rebate would be at 15% only. The assessee claimed development rebate at 25% on the footing that item No. 7 of the Fifth Schedule applied to the assessee's case. Item No. 7 in the Fifth Schedule reads as follows :

" (7) Equipment for the generation and transmission of electricity, including transformers, cables and transmission towers. "

5. The ITO did not allow the claim. That was because, according to him, "telephone cables " did not fall within item No. 7 in the Fifth Schedule of the I.T. Act. Hence he limited the development rebate to 15%.

6. The controversy that arises as reflected in the question raised at the instance of the Revenue concerns the claim for deduction u/s 80J of the I.T. Act. This is in regard to the deduction at 6% on the capital. That the assessee is entitled to a deduction is not in dispute. The dispute concerns the quantification of the deduction. That in turn depends on the computation of the capital employed as laid down under Rule 19A of the I.T. Rules. According to the assessee the capital employed should be taken as such irrespective of whether a part of the capital is borrowed capital. But, according to the department, to the extent the capital represented borrowed capital, deductions at 6% would not arise. The ITO did not accept the claim of the assessee. He confined the deduction u/s 80J to the capital after deducting therefrom the amounts borrowed for the purpose of capital.

7. The assessee appealed. The appeal concerned both the claim for development rebate at 25% and the claim for deduction u/s 80J on the entire capital inclusive of borrowings. The AAC found that telephone cables were not manufactured for generation of electricity, that what was transmitted along the cables was not electricity but speech and so the assessee was not entitled to succeed. The claim u/s 80J was also rejected by the AAC. The matter was taken to the Tribunal by the assessee. The Tribunal held that the requirements under item No. 7 of the

Fifth Schedule were to be considered conjunctively and not disjunctively and on that approach it held that telephone cables could not be brought under item No. 7. The claim u/s 80J was allowed following a decision of the Special Bench of the Bombay Appellate Tribunal. The assessee as well as the Revenue have come up in reference in respect of the matters in regard to which they lost before the Tribunal.

8. We will first deal with the claim u/s 80J. We need not go into the controversy in this case whether Section 80J as it stood during "the relevant assessment year before its retrospective amendment by the Finance (No. 2) Act of 1980, enables a deduction of the amount borrowed for the capital from the capital for the purpose of computation u/s 80J. What that Section allows is a deduction from the profits and gains of so much of the amount thereof as does not exceed the amount calculated at the rate of 6% per annum on the capital employed in the industrial undertaking. What is the capital employed is the question to be decided. But since the relevant provision in the Finance (No. 2) Act of 1980 came into force with retrospective effect from April 1, 1972, it is that which applied and that provides the computation in the manner specified in Sub-section (1A) duly introduced by the Act. Clause (III) of Sub-section (1A) provides :

" From the aggregate of the amounts as ascertained under Clause (II) shall be deducted the aggregate of the amounts, as on the first day of the computation period, of borrowed moneys and debts owed by the assessee (including amounts due towards any liability in respect of tax)."

9. Therefore, whatever might be the position under the Section before amendment it is evident from the amendment that amounts borrowed will have to be deducted in determining the capital employed for the purpose of Section 80J. This is what has been done by the officer. Therefore, that question has necessarily to be answered in favour of the Revenue.

10. Now we will come to the question concerning development rebate. Reading Section 33(1)(b)(B)(i)(b) development rebate at 25% could be claimed by the assessee if the machinery or plant was installed for the purpose of the business of manufacture of equipment for the generation and transmission of electricity including transformers, cables and transmission towers. That the assessee manufactures telephone cables is a matter beyond controversy. Telephone cables are used as a part of the telephone system and it is agreed that telephone cables cannot be used in place of cables for the normal transmission of electricity. No doubt even through telephone cables there is a transmission of electricity, but that at a low voltage. That is how the telephone system works. Telephone cables cannot be substituted for electrical cables used in electricity transmission lines. Could it be said that telephone cable is an equipment for the generation and transmission of electricity ? If not could it still be said that telephone cables falls within the scope of Section 33(1)(b)(B)(i)(b) for the reason that it falls within the term " cable " in item No. 7 of the Fifth Schedule.

11. The term " equipment for generation and transmission of electricity ", understood plainly, requires that the equipment should be not only for generation, but also for the transmission of electricity. The requirements cannot be understood disjunctively. The word " and " cannot be read as "or". There is no reason why such a construction should be given to the term. There are equipments for the generation and transmission of electricity and those are taken in by the provision. The inclusive part of the definition enumerates specifically transformers, cables and transmission towers as also falling within the scope of the term " equipments ". The device of employing the word " includes " is resorted to in order to enlarge the meaning of the words or phrases and when they are so used such words or phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the clause declares as " including " : (See Maxwell, p. 270). Section 10(1) of the Income Tax Ordinance of Trinidad and Tobago read :

" For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income, including--...(f) annuities or other annual payments whether payable within or out of the Colony,...."

12. In *Reynolds v. CIT* [1967] 1 AC 1, the Judicial Committee of the Privy Council held that an annual payment might be deducted under para, (f) notwithstanding that it was not an expense incurred in the production of income. This was because the effect of the term " including " was to comprehend payments which would not fall within the natural meaning of the words " all outgoings and expenses incurred in the production of income". The position is the same here. But for the use of the term " includes " in item No. 7 and the enumeration of things so included, the item would have been restricted to equipments for the generation and transmission of electricity. But, as it is, it includes transformers, cables and transmission towers which are not equipments which satisfy the test of being equipments for the generation and transmission of electricity. Hence the argument urged before us that the term " equipment for generation and transmission of electricity " must be understood to take in equipment for the generation of electricity as well as equipment for transmission of electricity cannot be accepted. The interpretation of the said term is not to depend on the test whether the equipments specifically included by the inclusive devise are equipments not for generation as well as transmission.

13. There is yet another reason why telephone cables cannot be said to fall within item No. 7. Even construing the term " for the generation of electricity and transmission of electricity " as laying down not two independent requirements, so much so, the satisfaction of one of them would bring the case within item No. 7, telephone cable will not fall within it, for, it cannot be said to be an equipment for the transmission of electricity. It is true that through the telephone cable electricity is transmitted. It is one thing to say that electricity is transmitted

through a telephone cable and another to say that telephone cable is an equipment for the transmission of electricity. The intended function of a telephone cable is not the transmission of electricity as in the case of a cable that can be used for transmission of electricity. Therefore, even assuming that any equipment for the transmission of electricity which does not satisfy the requirement of an equipment for the generation of electricity would also fall within item No. 7, a telephone cable would not satisfy even that test and, therefore, the case cannot fall under item No. 7.

14. The learned counsel for the assessee raised yet another argument. According to him even if the case does not fall under the main part of item No. 7 since cable has been independently mentioned as one of the items included within the equipments contemplated by item No. 7, that will be sufficient to make item No. 7 applicable to the present case. We have to read the term " cable " in the context of what is said in item No. 7 in the Fifth Schedule. That item relates to equipment for the generation and transmission of electricity and it is in that context that the inclusive part mentions transformers, cables and transmission towers. Necessarily what is taken in is not any cable but a cable concerned with the transmission of electricity. It need not be concerned with the generation of electricity, since, nevertheless, it has been brought within item No. 7 because of the inclusive definition. Read in the context in which the term "cable" appears in the provision, the indication, that what is referred to is a cable used for the transmission of electricity, and not any cable whatsoever, is clear. Hence also the assessee would not succeed. The consequence is that question No. 1 will have to be answered against the assessee and in favour of the Revenue.

15. A copy of this judgment under the signature of the Registrar and seal of the High Court will be sent to the Income Tax Appellate Tribunal, Cochin Bench.