Bombay High Court Hardiallia Chemicals Ltd. vs Commissioner Of Income-Tax on 15 December, 1995 Equivalent citations: 1996 221 ITR 194 Bom Author: . B Saraf Bench: B Saraf, M Dudhat JUDGMENT Dr. B.P. Saraf, J. 1. By this reference under s. 256(1) of the IT Act, 1961 made at the instance of the assessee, the Tribunal, Bombay 'C' Bench, Bombay, has referred the following questions of law to this Court for opinion : "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in view of the order of the CIT under s. 263 of the IT Act, 1961, it was not open to the ITO to consider afresh the issue of the claim of the assessee for inclusion of work-in-progress in the capital employed for the purpose of computing the relief under s. 80J ? 2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no appeal will lie against the order of the ITO with regard to matters already decided by the CIT in exercise of his powers under s. 263 of the IT Act, 1961 ?" 2. The controversy pertains to asst. yr. 1972-73, the relevant previous year being the year ended on 31st Dec., 1971. The original assessment of the assessee was completed by the ITO on 30th Nov., 1974. In the said assessment, the ITO while computing the capital employed for the purposes of working out relief under s. 80J of the Act took into consideration Rs. 2,70,023, being the value of capital work-in-progress. He also did not reduce the written down value of the assets entitled to depreciation by the amount of extra shift allowance allowed in the past. The CIT called for the records of the said assessment and, on examination thereof, was satisfied that the order of assessment passed by the ITO was erroneous and prejudicial to the interests of the Revenue. He, therefore, initiated proceedings under s. 263 of the IT Act, 1961 (the "Act") and after giving the assessee an opportunity of being heard, by his revisional order dt. 25th Nov., 1976 withdrew the relief granted to the assessee by the ITO under s. 80J of the Act and directed the ITO to redetermine the relief afresh in accordance with law after giving an opportunity to the assessee of being heard in the matter. The appeal filed by the assessee before the Tribunal against the above revisional order of the CIT under s. 263 of the Act was dismissed as barred by limitation. 3. In pursuance of the direction of the CIT in the revisional order, the ITO took up the case for redetermination of the amount of relief under s. 80J. A notice was given to the assessee for that purpose. In pursuance thereof the assessee appeared before the ITO and claimed that "work-in-progress" formed part of the capital employed for the purpose of relief under s. 80J. This contention of the assessee was rejected by the ITO as this issue, according to him, stood concluded by the revisional order of the CIT under s. 263 of the Act which had attained finality after dismissal of the appeal of the assessee against the same by the Tribunal. With regard to the value of the fixed assets, the ITO took the written down value as on 1st Jan., 1971 after giving effect to certain orders of the Tribunal in respect of assessment for other years. He recalculated the relief under s. 80J accordingly. Against the above order of the ITO, the assessee appealed to the CIT(A). The CIT(A), however, held that the appeal was not maintainable, as according to him, in view of the definite finding of the CIT in his revisional order under s. 263 of the Act to the effect that value of work-in-progress was

not includible in the value of assets for the purpose of computation of capital employed and the same having attained finality consequent upon dismissal of appeal of the assessee against the same by the Tribunal, it was obligatory on the part of the ITO to give effect to the same and to recalculate the relief due under s. 80J of the Act in the light thereof. It was not open to the ITO to decide the issue afresh. It was held that the ITO was fully justified in doing so and no fault can be found in his action. The impugned order of the ITO is in fact and reality an order giving effect to the revisional order of the CIT. No fresh determination of any issue has been done by him therein except recalculating the amount of relief under s. 80J of the Act in the light of the directions of the CIT. No fault can be found with such order of the ITO. The CIT(A) held that no appeal was maintainable from such order of the ITO giving effect to the revisional order of the CIT. The assessee went in further appeal to the Tribunal against the above order of the CIT(A). The Tribunal heard the assessee and its counsel, and on careful consideration of the same, summed up the legal position in regard to the maintainability of appeal against such orders in the following words : "While an appeal will be maintainable from the fresh order passed by the ITO, only matters which had not become final by the earlier orders of the appellate or revisional authorities can be agitated in the appeal. If in the earlier orders, the appellate or revisional authorities had recorded definite findings and if they had become final on account of the assessee not pursuing the statutory remedies prescribed against such orders, the assessee cannot attack these findings collaterally in an appeal filed against the fresh order passed by the ITO." 4. In the light of the above observation, the Tribunal considered the question whether in the instant case the CIT had, in his order under s. 263, recorded a definite finding on the question of inclusion of the value of work-in-progress in the capital employed for the purpose of computing relief under s. 80J or whether he had merely made some observations in regard to relief under s. 80J and remanded the matter to the ITO without any finding on that question, leaving it open to him to decide the controversy afresh in the light of his observations. For that purpose, the Tribunal considered the revisional order of the CIT and on a careful perusal of the same, found that in the present case, the CIT had himself finally decided the issue and held that the value of work-in-progress cannot be included in the computation of capital employed for the purpose of calculating relief under s. 80J of the Act. The Tribunal further found that the CIT also decided himself the question whether written down value of assets entitled to depreciation should be reduced by the extra shift allowance allowed in the past and held in the affirmative. The Tribunal, therefore, held that the ITO could not have considered the above controversies while passing a fresh order of assessment to give effect to the revisional order and recomputing the amount of relief under s. 80J in accordance with the directions of the CIT contained therein. In that view of the matter, the Tribunal affirmed the view of the CIT(A) and dismissed the appeal of the assessee and held that the appeal of the assessee before the CIT(A) was not competent. Hence, this reference to this Court at the instance of the assessee. 5. We have heard Mr. P. F. Kaka, the learned counsel for the assessee, at quite some length. He

submits that in the instant case, the CIT in his revisional order under s. 263, has given no finding of his own in regard to claim of the assessee about the inclusion of value of work-in-progress in the capital employed for the purpose of relief under s. 80J and in that view of the matter, it was open to the ITO to examine this controversy which he failed to do. In such a situation, according to the learned counsel, appeal is maintainable against the above order of the ITO and the CIT(A) was not justified in law in rejecting the same. According to the learned counsel, the CIT has opined that the order of the ITO was erroneous and prejudicial to the interests of the Revenue only for the purpose of assuming jurisdiction under s. 263 of the Act and has not recorded any finding in regard to the question of includibility of the value of work-in-progress for computation of "capital employed" and the controversy regarding deductibility of extra shift allowance from the written down value of an asset for computing depreciation in the succeeding year. Counsel submits that these questions were left open to the ITO for decision. Reliance was placed in support of the above contention on the operative part of the revisional order of the CIT which is in the following terms : "In the circumstances, I hereby withdraw the relief under s. 80J of the Act, granted by the ITO of a sum of Rs. 20,51,458 and direct the ITO to determine the relief afresh in accordance with the law after giving an opportunity to the assessee of being heard in this regard." In support of his above contention, the learned counsel also relied on the decision of the Punjab & Haryana High Court in CIT vs. R. K. Metal Works (1978) 112 ITR 445 (P&H), and decision of this Court in CIT vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom). 6. We have carefully considered the above submissions of the learned counsel for the assessee. We, however, do not find any merit in the same because even on a plain reading of the revisional order of the CIT passed under s. 263 of the IT Act, it is obvious that the CIT has specifically decided the question whether value of work-in-progress would form part of the capital employed for the purpose of relief under s. 80J of the Act or not and has categorically held that it will not be so included. This is evident from the discussion contained in paragraphs 4 and 5 of the revisional order of the CIT. The following extracts from the said paragraphs are pertinent : "The first contention of the assessee is that the item of capital works is an asset within the meaning of r. 19A. It was stated that the said asset could be treated as an asset not entitled to depreciation within the meaning of r. 19A(2)(ii)/(iii). It was thus argued that the asset in question formed part of the capital employed by the industrial undertaking. I have carefully considered the matter, and I cannot accept the assessee's view..... In the above sense of the word"employed" assets not brought into use cannot be treated as assets employed, though they may be owned by the industrial undertaking. For these reasons, I am unable to agree with the assessee's contention in this regard. The assessee's contention is, therefore, rejected." The CIT also decided the second issue which is evident from the discussion contained in paragraph 6 of the order which reads : "The second submission of the assessee was regarding the reduction of the written down value of the assets by the amount of extra shift allowance made in the earlier years. The ITO had made the allowance for extra shifts without the same being

claimed. The AAC had held that the allowance should not be thrust upon the assessee. The assessee's representative thus contended that the written down value could not be reduced by the amount of such allowance till the issue is finalised. I find that the ITO had allowed extra shift allowance in the earlier years and had also reduced the opening written down value of the assets by such allowance made in the past for the purpose of depreciation. He had, however, failed to consider such reduction for the written down value for the purpose of computing the capital employed under r. 19A of the IT Rules. Since the assets had actually been subjected to extra shift as per the particulars furnished by the assessee itself, the ITO in the earlier assessments was justified in allowing extra shift allowance. The ITO, therefore, erred in the course of 1972-73 assessment in not reducing written down value accordingly for the purpose of relief under s. 80J." 7. It is abundantly clear from the above extracts that the CIT did decide both the issues raised before him and held in no less clear terms that the ITO had allowed excessive amount under s. 80J on both the counts mentioned above. It was only after arriving at such a finding that the CIT withdrew the relief under s. 80J of the Act granted by the ITO and directed him to determine the relief afresh in accordance with law after giving an opportunity to the assessee of being heard in this regard. 8. On a reading of the revisional order of the CIT, we have no doubt in our mind that the direction of the CIT to the ITO to determine the relief under s. 80J after giving an opportunity of being heard to the assessee was only for the purpose of recomputation of the amount of relief under s. 80J by reducing the value of work-in-progress from the capital employed as held by him in paragraphs 4 and 5 and by reducing the written down value of the assets by the extra shift allowance allowed in the past as held in para 6 of the revisional order. The direction to the ITO in the operative part of the order cannot be read in isolation. The order of the CIT read as a whole makes it abundantly clear that the CIT arrived at categorical and definite findings in regard to the contentions of the assessee about inclusion of work-in-progress in the capital employed for the purpose of claiming relief under s. 80J of the Act and in regard to deductibility of extra shift allowance allowed in the past from the value of fixed assets for the very same purpose and remitted the matter to the ITO merely to perform the ministerial function of recalculating the amount of relief under s. 80J. 9. In such a situation, it is extremely difficult on our part to accept the contention of the learned counsel for the assessee that in his revisional order the CIT did not decide the points at issue and left it open to the ITO to examine the same after hearing the assessee. In fact, as stated above, what was left to the ITO was only the ministerial work of recomputing the relief under s. 80J of the Act, obviously, subject to the findings contained in the order. 10. In our view, reference to and reliance on the operative part of the order without regard to the text of the order and the findings recorded therein is wholly misplaced and improper. To understand the true purport of an order, it has to be read as a whole. The operative part of the order in this case has to be read and understood in the light of the controversy before the CIT and the questions decided by him. It cannot be read in isolation from the text of the order and the determination of the questions arising therein by the

CIT. It is neither proper nor permissible to pick out any part of the order, and in case of remand order the operative part thereof and to read the same without regard to the questions decided therein to support the contention that all issues are left open for determination by the authorities below. The Tribunal, in this case, in our opinion, was right in holding that the revisional order, wherein a definite finding is recorded on both the points at issue, having become final on account of the failure of the assessee to pursue the statutory remedies provided in the Act against that order, the assessee cannot be allowed to challenge such concluded findings collaterally in an appeal filed against the fresh order passed by the ITO with a view to giving effect to the same. 11. In our opinion, though appeal is maintainable from the fresh order passed by the ITO to give effect to a revisional order or an appellate order, only such issues can be agitated in such appeal which have not attained finality by virtue of earlier orders of the revisional or appellate authorities. it is not open in such an appeal to agitate any point which has already been decided by the revisional or the appellate authorities in their order. 12. In view of the above, we do not find any infirmity in the finding of the Tribunal in the instant case. Accordingly, question No. 1 is answered in the affirmative and in favour of the Revenue. On the very same reasoning question No. 2 is also answered in favour of the Revenue. In the facts and circumstances of the case, there shall be no order as to costs.