Commissioner Of Income Tax, Patiala vs Patiala Flour Mills Co. Pvt. Ltd., ... on 6 October, 1968

Equivalent citations: 1979 AIR 216, 1979 SCR (2)1128

PETITIONER:
COMMISSIONER OF INCOME TAX, PATIALA

Vs.

RESPONDENT:
PATIALA FLOUR MILLS CO. PVT. LTD., PATIALA

DATE OF JUDGMENT:
06/10/1968

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
TULZAPURKAR, V.D.
PATHAK, R.S.

CITATION:
1979 AIR 216 1979 SCR (2)1128
1979 SCC (2) 621

ACT:
Income Tax Act, 1961, Section 80 J-Interpretation of.

HEADNOTE:
The Respondent-assessee claimed in its assessment to tax for the assessment year 1970-71 that the amounts of deficiency under Sec. 801 for the current as well as past assessment years were liable to be adjusted against the profit of Rs. 1,51,011/- earned by its cold storage plant which was a new industrial undertaking to which sub-section (4) of Sec. 80J of the Income Tax Act applied. The assessee did not make any profit in the business of cold storage plant during the assessment years 1967-68, and 1968-69 and 1969-70, but there was profit in the other businesses and the losses, depreciation allowance and development rebate in respect of the cold storage plant were adjusted against the profit from the other businesses in computing the total income of the assessee chargeable to tax for those assessment years. The Income Tax officer and in appeal the Appellate Assistant Commissioner rejected the claim of the assessee for adjustment. But in further appeal the Tribunal

held that since the losses as well as depreciation allowance and development rebate in respect of the cold storage business for the past assessment years were already adjusted against the profit from other businesses, no part of such losses, depreciation allowance or development rebate remained unabsorbed so as to be carried forward and set off against the profit for the assessment year 1970-71 and hence the profit of Rs. 1,51,011/- from the cold storage business was not liable to be reduced by any such set off and the assessee was entitled to claim that from out of such profit there should be deducted, first, the amount of Rs. 83,891/- representing the relevant amount of capital employed during the previous year and then the amounts of deficiency for the past assessment years. The High Court on a reference, at the instance of the Revenue answered the question in favour of the assessee.

Dismissing the appeal by special leave the Court,

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HELD: (1) The proper construction of sub-section (1) of Sec. 80J must, be taken to be that the profits or gains of the new industrial undertaking must be computed in accordance with the provisions of the Act in the same manner as they would be in determining the total income chargeable to tax and it must follow a fortiori that if the losses, depreciation allowance and development rebate in respect of the new industrial undertaking for the past assessment years have been fully set off against the profit of the assessee from other business or for the matter of that, against the income of the assessee under any other head by reason of sections 70 and 71 read with sub-section (2) of Sec. 32 and sub-section (2) of Sec. 32A, no part. Of such losses, depreciation allowance or development rebate would be liable to be adjusted over again in computing the profits or gains of the new industrial undertaking for applying the provision contained in sub-section (1) of Sec. 80J. The same mode of computation must Prevail also in applying the provision contained in

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sub-section (3) of Sec. 80J, because that sub-section provides for setting off the carried-forward amount of deficiency of the past assessment years against "the profits and gains referred to in sub-section 1 or Sec. 80J, as computed after allowing inter alia the deduction admissible under sub-section and, therefore, if, for the purpose of sub-section (I) of Sec. 80J, the profits or gains of the new industrial undertaking are to be computed in accordance.. with the provision of the Act and no part of the losses, depreciation allowance or development rebate for the past assessment years which has been fully set off against the profit from other businesses or income under any other head is liable to be adjusted over again in computing the profits or gains of the awe industrial undertaking, no such adjustment would equally be permissible in applying the

provision contained in sub-section of Section 80J.[1136 D-H, 1137-A]

(2) It is clear from the language of sub-section (1) of Section 80J that the profits or gains of a new industrial undertaking from which deduction of the relevant amount of capital employed during a particular assessment year is allowable under. that provision, are the profits or gains includible in the computation of the total income chargeable to tax. Therefore, whatever- be the profits or gains of the new industrial undertaking computed for the purpose of arriving at the total income chargeable to tax, would have to be taken to be the profits or. gains for applying the provision contained in sub-section (I) of Section 80J. [1135 D-E]

(3) There are no two modes of computation of the profits or gains of the new industrial undertaking contemplated by sub-section(1) of Sec. 80J, one for determining the total income chargeable to tax and the other for applying the provision contained in that sub-section. The language of sub-section of Section 80J is clear and explicit and leaves no doubt that the profits or gains of the new industrial undertaking for the purpose of allowing the deduction provided in that sub-section, have to be computed in the same manner in which they would be in determining the total income chargeable to tax and a deduction has then to be made from such profits or gains, of the relevant amount of. capital employed during the assessment year in question. It cannot be held by any process of construction, even by turning and twisting the language of sub-section (I) of Sec. 80J that for the purpose of allowing the deduction contemplated under that section the profits or gains of the new industrial undertaking must be computed in a manner different from that in which they would be computed in determining the total income chargeable to tax. Sub-section (1) of Section 80J does not create a legal fiction that for the purpose of applying the provision contained in that sub-section, the profits or- gains of the new industrial undertaking shall be computed as if the new industrial undertaking were the only business of the asseesee right from the date of its establishment or the losses, depreciation allowance or development rebate in respect of the new industrial undertaking for the past assessment years were not set off against the profit from other businesses. If the construction of sub-section (1) of Sec. 80J contended for and on behalf of the Revenue were accepted, it would lead to the absurd result that there would be two species of profits or gains of the new industrial undertaking, one for inclusion in the total income chargeable to tax and the other for determining the availability of the deduction under sub-section (I) of Section 80J. That would be plainly contrary to the express language of sub-section (I) of Section 80J. [1135 E-H,1136 A-D]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2395 of 1977.

Appeal by Special Leave from the Judgment and Order dated 28-10-1976 of the Punjab and Haryana High Court in I.T. Ref. No. 16/74.

P. A. Francis, B. B. Ahuja and Miss A. Subhashini for the Appellant.

G. C. Sharma and S. P. Nayar for the Respondent. Devi Pal, S. R. Banerjee, J. B. Dadachanji, Ravinder Narain and Mrs A K Verma for the Intervener (The Indian Aluminium) R. N. Bajoria, P. V. Kapur, U. K. Khaitat, Praveen Kumar and R.K. Chaudhary for the Intervener (orient Sugar Mills) The Judgment of the Court was delivered by BHAGWATI, J.-The assessee, a private limited company, carried on several businesses amongst which there was a business of cold storage plant. This cold storage plant was put up in the accounting year relevant to the assessment year 1967-68 and it was a new industrial undertaking to which sub-section (4) of section 80J of the Income Tax Act, 1961 applied. The assessee did not make any profit in the business of cold storage plant during the assessment years 1967-68, 1968-69 and 1969-70, but there was profit in the other businesses and the losses, depreciation allowance and development rebate in respect of the cold storage plant were adjusted against the profit from the other businesses in computing the total income of the assessee chargeable to tax for those assessment years. No loss and no part of the depreciation allowance or development rebate in respect of the cold storage plant remained unabsorbed so as to be available for carry forwarded and set off in the assessment year 1970-71. The business of cold storage plant turned the corner after the initial teething trouble and it made a profit of Rs. 1,51,011/- in the assessment year 1970-71 after taking into account the current year's depreciation allowance and development rebate. The assessee claimed in its assessment to tax for the assessment year 1970-71 that the amounts of deficiency under section 80J for the current as well as past assessment years were liable to be adjusted against the pro fit of Rs. 1,51,011/- for that assessment year. Since the claim was based on section 80J, it would be convenient at this stage to refer to the relevant provisions of that section. Section 80J was introduced in the Act in place of section 84 by Finance Act, 1967 with effect from 1st April, 1968. The material portions of that section read as under:

> "80J. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains (reduced by the deduction, if any, admissible to the assessee, under section 80HH) of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, computed in the prescribed manner in respect of the previous year relevant to the

assessment year (the amount calculated as aforesaid being hereafter, in this section, referred to as the relevant amount of capital employed during the previous year):

(2) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the the industrial undertaking begins to manufacture or produce articles or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning (such assessment year being hereafter, in this section, referred to as the initial assessment year) and each of the four assessment years immediately succeeding the initial assessment year: (3) Where the amount of the profits and gains derived from the industrial undertaking or ship or business of the hotel, as the case may be, included in the total income (as computed without applying the provisions of section 64 and before making any deduction under Chapter VI-A or section 280-D) in respect of the previous year relevant to an assessment year commencing on or after the 1st day of April 1967, (not being an assessment year or subsequent to the fourth assessment year as reckoned from the end of the initial assessment year) falls short of the relevant amount of capital employed during the previous year, the amount of such shortfall, or, where there are no such profits and gains, an amount equal to the relevant amount of capital employed during the previous year (such amount, in either case, being hereafter, in this section referred to as deficiency) shall be carried forward and set off against the profits and gains referred to in sub-section (1) [as computed after allowing the deductions, if any, admissible under section 80 HH and the said sub-section (1)] in respect of the previous year relevant to the next following assessment year and, if there are no such profits and gains for that assessment year, or where the deficiency exceeds such profits and gains, the whole or balance of the deficiency, as the case may be, shall be set off against such profits and gains for the next following assessment year and if so far as such deficiency cannot be wholly so set off, it shall be set off against such profits and gains assessable for the next following assessment year and so on:

Provided that-

(i) in no case shall the deficiency or any part thereof be carried forward beyond the seventh assessment year as reckoned from the end of the initial assessment year;

(ii) where there is more than one deficiency and each such deficiency relates to a different assessment year, the deficiency which relates to an earlier assessment year shall be set off under this sub-section before setting off the deficiency in relation to a latter assessment year:

x x x x x (4) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

(i) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of machinery or plan previously used for any purpose;

(iii) it manufactures or produces articles, or operates one or more cold storage plant or plants, in any part of India, and has begun or begins to operate such plant or plants, at any time within the period of thirty-three years next following the 1st day of April, 1948, or such further period as the Central Government may, by notification in the official Gazette, specify with reference to any particular industrial undertaking;

(iv) in a case where the industrial undertaking manufactures or produces articles, the undertaking em ploys ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid or power;

Since there was no profit from the cold storage plant in the assessment years 1967-68, 1968-69 and 1969-70, the whole of the relevant amount of capital employed during each of the relevant previous years remained unabsorbed and constituted deficiency for each of those assessment years and had to be carried forward from year to year upto the assessment year 1970-71 under sub-section (3) of section 80J. The amounts of deficiency for the assessment years 1967-68, 1968-69 and 1969-70 came to Rs. 11,155/-, Rs. 1,14,153/- and Rs. 90,228/-. The relevant amount of capital employed during the previous year relevant to the assessment year 1970-71 was Rs.83,391/-. The assessee claimed that this amount of Rs. 83,391/ representing the relevant amount of capital employed in the assessment year 1970-71 was liable to be set off against the profit of Rs.1,51,011/- derived from the cold storage business under subsection (1) of section 80J and so far as the balance of the profit was concerned, the amounts of deficiency for the past assessment years, namely, Rs. 11,155/-, Rs. 1,14,153/- and Rs. 90,228/- which were carried forward to the assessment year 1970-71, were liable to be adjusted against it under sub-section (3) of section 80J. The Income Tax officer did not dispute the figures of the relevant amount of capital employed in the assessment year 1970-71 or of the amounts of deficiency for the past assessment years, but held that there was no profit from the business of cold storage plant in the assessment year 1970- 71 against which any part of the relevant amount of capital employed during the assessment year 1970-71 could be adjusted under sub-section (1) of section 80J or any part of the carried forward amounts of deficiency for the past assessment years, deducted under sub-section (3) of section 80J. It was not possible to disagree with the assessee that the business of the cold storage plant had resulted in a profit of Rs. 1,51,011/- in the assessment year 1970-71 and in fact it was conceded that this was the amount of profit liable to be taken into account in computing the total income of the assessee chargeable to tax, but the Income Tax officer took the view that in computing the profit of the cold storage business for the purpose of applying the provision contained in sub-sections (1) and (3) of section 80J, the losses as well as the depreciation allowance and development rebate in respect of that business for the past assessment years should be adjusted against the profit of Rs. 1,51,011/-, since there was no profit at all from that business in the past assessment years against which any part of such losses,

depreciation allowance or development rebate could be absorbed. The Income Tax officer ignored the fact that the loses as well as the depreciation allowance and development rebate in respect of the cold storage business for the past assessment years were already adjusted against the profit of the assessee from other businesses and no part of the losses, depreciation allowance or development rebate remained unabsorbed for being carried forward and set off against the profit of Rs, 1,51,011/- in the assessment year 1970-71 and proceeded on the assumption that for the purpose of subsection (1) and (3) of section 80J, the cold storage business was to be treated in isolation and its profit was to be computed as if the earlier years' lossess depreciation allowance and development rebate had not been set off against the profit from other businesses. The Income Tax officer accordingly declined to allow any deduction from the profit of Rs. 1,51,011/- in respect of the relevant amount of capital employed in the assessment year 1970-71 under sub-section (1) of section 80J and in respect of the. amounts of deficiency for the past assessment years under sub-section (3) of section 80J and made assessment on the assessee without permitting such deduction. The assessee challenged the decision of the Income Tax officer by preferring an appeal to the Appellate Assistant Commissioner but the Appellate Assistant Commissioner took the same view and rejected the appeal. The assessee thereupon carried the matter in further appeal and in the appeal, the assessee succeeded in persuading the Tribunal to hold that since the losses as well as depreciation allowance and development rebate in respect of the cold storage business for the past assessment years were already adjusted against the profit from other businesses, no part of such losses, depreciation allowance or development rebate remained unabsorbed so as to be carried forward and set off against the profit for the assessment year 1970-71 and hence the profit of Rs. 1,51,011/- from the cold storage business was not liable to be reduced by any such set off and the assessee was entitled to claim that from out of such profit there should be deducted, first, the amount of Rs. 83,891/- representing the relevant amount of capital employed during the previous year and then, the amounts of deficiency for the past assessment years. The Revenue being aggrieved by the order of the Tribunal made an application for a reference and on the application, the following question of law was referred for the opinion of the High Court:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the deduction under section 80J of the Income Tax Act, 1961?"

The High Court agreed with the view taken by the Tribunal and answered the question in favour of the assessee and against the Revenue. The Revenue thereupon preferred the present appeal with special leave obtained from this Court.

Now it is clear from the language of sub-section of section 80J that the profits or gains of a new industrial undertaking from which deduction of the relevant amount of capital employed during a particular assessment year is allowable under that provision, are the profits or gains includible in the computation of the total income chargeable to tax. Therefore, whatever be the profits or gains of the new industrial undertaking computed for the purpose of arriving at the total income chargeable to tax, would have to be taken to be the profits or gains for applying the provision contained in sub-section of section 80J. There are no two modes of computation of the profits or gains of the new industrial undertaking contemplated by sub-section of section 80J, one for determining the total

income chargeable to tax and the other for applying the provision contained in that sub-section. The language of sub-section (1) of section 80J is clear and explicit and leave no doubt that the profits or gains of the new industrial undertaking for the purpose of allowing the deduction provided in that sub-section, have to be computed in the same manner in which they would be in determining the total income chargeable to tax and a deduction has then to be made from such profits or gains, of the relevant amount of capital employed during the assessment year in question. It is impossible to see how, by any process of construction, even by turning, and twisting the language of sub-section (1) of section 80J, it can be held that for the purpose of allowing the deduction contemplated under that section the profits or gains of the new industrial undertaking must be computed in a manner different from that in which they would be computed in determining the total income chargeable to tax. Sub- section (1) of section 80J does not create a legal fiction that for the purpose of applying the provision contained in that sub-section, the profits or gains of the new industrial undertaking shall be computed as if the new industrial undertaking were the only business of the assessee right from the date of its establishment or the lossess, depreciation allowance or development rebate in respect of the new industrial undertaking for the past assessment years were not set off against the profit from other businesses. If the construction of sub-section (1) of section 80J contended for and on behalf of the Revenue were accepted, it would lead to the absurd result that there would be two species of profits or gains of the new industrial undertaking, one for inclusion in the total income chargeable to tax and the other for determining the availability of the deduction under sub-section (1) of section 80J. That would be plainly contrary to the express language of sub-section (1) of section 80J. The proper construction of sub-section (1) of section 80J must, therefore, be taken to be that the profits or gains of the new industrial undertaking must be computed in accordance with the provisions of the Act in the same manner as they would be in determining the total income chargeable to tax and it must follow a fortiori that if the losses, depreciation allowance and development rebate in respect of the new industrial undertaking for the past assessment years have been fully set off against the profit of the assessee from other businesses or for the matter of that, against the income of the assessee under any other head by reason of sections 70 and 71 read with sub-section (2) of section 32 and sub-section (2) of section 32A, no part of such losses, depreciation allowance or development rebate would be liable to be adjusted over again in computing the profits or gains of the new industrial undertaking for applying the provision contained in sub-section (1) of section 80J. The same mode of computation must prevail also in applying the provision contained in sub-section (3) of section 80J, because that subsection provides for setting off the carried-forward amount of deficiency of the past assessment years against "the profits and gains referred to in sub-section (1)" of section 80J, as computed after allowing inter alia the deduction admissible under that sub-section and, therefore, if, for the purpose of sub-section (1) of section 80J, the profits or gains of the new industrial undertaking are to be computed in accordance with the provisions of the Act and no part of the losses, depreciation allowance or development rebate for the past assessment years which has been fully set off against the profit from other businesses or income under any other head is liable to be ad-

justed over again in computing the profits or gains of the new industrial undertaking, no such adjustment would equally be permissible in applying the provision contained in sub- section (3) of section 80J.

Here, in the present case, it was common ground that the losses as well as deprecation allowance and development rebate in respect of the cold storage business for the past assessment years were fully adjusted against the profit of the assessee from other businesses and no part of such losses, depreciation allowance or development rebate remained unabsorbed so as to be carried forward to the assessment year 1970-71. The profit of Rs. 1,51,011/- derived from the cold storage business in the assessment year 1970-71 was, therefore, not liable to be wiped out or reduced by adjustment of any part of the losses, depreciation allowance or development rebate for the past assessment years. The profit of the assessee from the cold storage business in the assessment year 1970-71 thus came to Rs. 1,51,011/-and from out of that profit, a sum of Rs. 83,391/-representing the relevant amount of capital employed in the assessment year 1970-71 was liable to be deducted under sub-section (1) of section 80J and since that left a balance of Rs. 67,620/-, the amount of Rs. 11,155/- representing deficiency for the assessment year 1967-68 was liable to be deducted first and then, since a part of the profit, namely, Rs. 56,465/-still remained available for deduction, the amount of deficiency for the assessment year 1968-69 was liable to be deducted to the extent of Rs. 56,465/-, leaving the profits or gains of the new industrial undertaking includible in the total income chargeable to tax as nil. The High Court as well as the Tribunal were, therefore, right in adjusting the relevant amount of capital employed during the assessment year 1970-71 as also the amounts of deficiency for the assessment years 1967-68 and 1968-69 against the profit of Rs. 1,51,011/- derived by the assessee from the cold storage business and holding that the profit of the cold storage business was nil in computing the total income chargeable to tax.

We accordingly uphold the order of the High Court answering the question referred by the Tribunal in favour of the assessee and against the Revenue and dismiss the appeal with costs.

S.R. Appeal dismissed.