Calcutta High Court
Commissioner Of Income-Tax vs Dunlop Rubber Co. (I) Ltd. on 3 October, 1975
Equivalent citations: 1977 107 ITR 182 Cal
Author: Hazra
Bench: S Deb, S Hazra
JUDGMENT Hazra, J.

1. This is a reference by the Income-tax Appellate Tribunal under Section 256(1) of the Income-tax Act, 1961, to this court on the application of the Commissioner of Income-tax, West Bengal-I, Calcutta, made on June 13, 1969.

2. The assessee, Dunlop Rubber Co. (India) Ltd., is a well-known manufacturer of rubber tyres, tubes, etc., in this country with its factory at Shahganj in West Bengal. It set up another factory, a completely new unit at Ambattur, near Madras, during the accounting years 1957 and 1958.

3. For the assessment year 1963-64, the calendar year 1962 being the previous year, the assessee for the first time claimed exemption or relief under Sections 84 and 101 of the Income-tax Act, 1961, hereinafter called the Act. The assessee wrote to the Income-tax Officer on May 24, 1966, as follows:

"We file herewith our revised returns for the assessment year 1963-64, in terms of the provisions of Sub-section (5) of Section 139 of the Income-tax Act, 1961. This is as a result of discovering our omission to include claim for relief under Sections 84 and 101 of the Income-tax Act, 1961, in respect of our industrial undertaking at Ambattur, Madras. Our industrial undertaking at Ambattur, Madras, began to manufacture or produce articles in the previous year relevant to the assessment year 1960-61.

We hereby declare that this undertaking was not formed by splitting up or reconstruction of a business already in existence. The buildings, machinery, plant, etc., of the new undertaking were not used for any purpose before. The new industrial undertaking has begun manufacture of articles in India within the prescribed number of years with reference to 1st April, 1948. It employs more than ten workers in a manufacturing process carried on with the aid of power. Computation of profits of the new industrial undertaking has been made in accordance with the provisions of Chapter IV-D of the Income-tax Act, 1961.

Due to oversight the claim for relief under Sections 84 and 101 of the Act was not made for the assessment years 1960-61, 1961-62 and 1962-63 at the time of the assessment. However, we lodge herewith our claim for 1963-64, for which assessment is pending, and will be grateful if you will please admit our claim for this year."

4. The assessee did not maintain any separate account for the new unit but only a record of fixed assets employed therein. In respect of the current assets and liabilities, a common and consolidated account for both the new unit and the old unit at Shahganj was maintained. In order to claim relief under Sections 84 and 101, the capital employed in the new unit had to be ascertained so that to the extent of 6% of the capital employed the assessee would get the relief or exemption under those

provisions. Since the company did not maintain any separate account for the new unit, it computed the capital employed in the new unit by taking the fixed assets as per the separate accounts and current assets and current liabilities apportioned on the basis of the turnover of the new unit and the old unit. The fixed assets in Ambattur were taken at their written down value of Rs. 1,38,687. The other current assets and liabilities were taken at 17.15% of their totals in the common and consolidated account. On this basis the capital employed was arrived at Rs. 2,11,66,885 and 6% thereon worked out to Rs. 12,70,013 on which tax exemption was claimed.

5. In the correspondence between the Income-tax Officer and the assessee, it was explained by the assessee that since both the factories at Shahganj and at Ambattur were run under the same company, the current assets and current liabilities were merged in the balance-sheet. As the items manufactured in Ambattur were similar to the ones manufactured at Shahganj and the products were sold uniformly throughout the country, it was explained by the assessee that the adoption of the ratio of sales between the two units was the proper basis for arriving at the profits relatable to Ambattur.

6. The Income-tax Officer considered that the relevant claim on this basis by taking the capital and profits of the new industrial undertaking as a proportion of the total sales was not admissible. He took the view that the assessee should have maintained separate accounts for this purpose.

7. The assessee appealed to the Appellate Assistant Commissioner and contended that there was no requirement to maintain separate account for any new unit for claiming exemption under Section 84 and Section 101; that the failure to claim exemption of the earlier years was due to inadvertence arid that the assets and liabilities were so inextricably mixed up that it was not possible to furnish the information which the Income-tax Officer required and about which he has mentioned in the assessment order. It was also submitted that the gestation period was over and that there was no development rebate or unabsorbed depreciation to be carried forward (which would affect the profits of the year under reference from the new unit).

8. The Appellate Assistant Commissioner held, agreeing with the contentions put forward by the assessee, that it was entitled to the relief claimed. He also held that the failure of the assessee to claim in this year (sic) that there was no necessity to maintain separate account books, and that this being the fourth year of production the period of gestation was already over, so that the new unit went into full production. According, to him, profits were available to justify the claim of the exemption. He directed the Income-tax Officer to examine the arithmetical accuracy of the computation furnished by the assessee and then allow the appropriate relief.

9. The department filed an appeal against that order. It was contended for the department that the Appellate Assistant Commissioner was wrong in granting relief; that the mistake of not claiming the relief due in the earlier years must be regarded as disentitling the assessee to claim the relief; that the assets employed must be distinct and separate and the cost thereof identifiable, and that the proportionate basis adopted by the assessee for the purpose of arriving at its current assets and liabilities was wholly inapplicable. According to the departmental representative, the onus of showing that the new unit had sufficient profits and was entitled to the claim was on the assessee

which it had failed to discharge. He finally submitted that if the development rebate and unabsorbed depreciation were carried forward and set off against the profits this year, there were no profits and the relief granted by the Appellate Assistant Commissioner should be withdrawn.

10. It was contended for the assessee that all the conditions laid down by the statute in this regard had been satisfied and the relief granted by the Appellate Assistant Commissioner should not be withdrawn. It was urged that the apportionment of current assets and current liabilities on turnover basis was a correct one as it indicated the rotation of the current assets and current liabilities vis-a-vis the end product. It was submitted that the section placed only a ceiling on the exemption to be granted and within the ceiling the exemption had got to be given if other conditions were satisfied.

11. The Tribunal held as follows :

"(1) it is for the assessee to claim the benefit of the exemption (in any year) and the principle of res judicata had no application in these matters;

(2) the current assets and liabilities have a direct relation to the turnover and since the items produced are the same and are sold at the same price, apportioning them on turnover basis is correct ;

(3) the assessee has discharged the onus by submitting before the Income-tax Officer the computation of capital and profits ; and (4) on a consideration of all the facts, the assessee is entitled to the relief claimed." On the above facts, the following question of law has been referred :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to the relief claimed under Sections 84 and 101 of the Income-tax Act, 1961, in respect of the profits of its Ambattur unit ?"

12. On behalf of the revenue, Mr. Suhas Sen submitted before us that the meaning of the question is whether relief can be given to the assessee under Sections 84 and 101 on estimated figure. He developed his point thus :

The onus of proving facts entitling the assessee to claim exemption under Sections 84 and 101 lies on the assessee. In order to get relief under Section 84 capital will have to be computed in the manner laid down in Rule 19 of the Income-tax Rules, 1962, and profits and gains must be computed in the manner laid down in Sub-section (5) of Section 84. If the profit so computed exceeds 6% of the capital in the prescribed manner, then the assessee becomes entitled to exemption up to 6%. Mr. Sen contended that relief cannot be given on an estimated figure, but the assessee must prove that there are profits and gains derived from the new industrial undertaking in the relevant assessment year. He submitted that the profits and gains as do not exceed 6% of the capital employed in the new undertaking is entitled to exemption and for this purpose computation must be done in the manner prescribed under Section 84. The particulars necessary for such computation of capital and profit must be furnished by the assessee. If this is not done then the assessee cannot

avail of the benefit of Section 84. According to Mr. Sen, the assessee cannot make different basis of computation than what is provided under Rule 19.

13. On behalf of the assessee, Mr. K. Ray appearing with Mr. A.S. Chari submitted that the meaning of the question is not what Mr. Sen contended. According to Mr. Ray in this reference the question is whether the assessee was entitled to the relief claimed under Sections 84 and 101 of the Act in respect of the profits of its Ambattur unit. Profits made by the assessee in its Ambattur unit is admitted. It is also admitted that Section 84, Sub-section (2), applies and the Ambattur unit of the assessee is a newly established undertaking and conditions laid down under Sub-section (2) have been fulfilled.

14. According to Mr. Ray the question referred to this court is in a very limited form. It appears from the question that the assessee made profits in its Ambattur unit. So the question raised is whether, under the facts and circumstances of the case, the assessee is entitled to avail of the relief provided under Sections 84 and 101.

15. Mr. Ray submitted that under Section 84, income-tax shall not be payable by the assessee on the profits and gains of a newly established industrial undertaking to which this section applies to the extent allowable under the section; and, therefore, if it can be shown that this section applies to a particular industrial undertaking it follows as a corollary that income-tax should not be payable by the assessee on its profits to the extent as provided under Section 84. Mr. Ray then contended that the first question is whether the assessee has a right to get the relief. If the assessee has a right to get the relief then the question of how much and to what extent relief could be granted would arise, or, in other words, the question of computation of relief would arise. To what extent the assessee will get relief is not a question which has been referred to this court as once the assessee has established its right to get relief, the question of extent of such relief would arise.

16. In view of the arguments of the learned counsel for the respective parties I will consider the scope and effect of Section 84 of the Act and the meaning of the question referred to this court. I will first read the relevant portion of Section 84.

" CHAPTER VII INCOMES FORMING PART OF TOTAL INCOME ON WHICH NO INCOME-TAX IS PAYABLE.

* * * *

84. Income of newly established industrial undertakings or hotels.-

(1) Save as otherwise hereinafter provided, income-tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking or hotel to which this section applies as do not exceed six per cent. per annum on the capital employed in the undertaking or hotel, computed in the prescribed manner.

(2) This section applies to any industrial Undertaking which fulfils all the following conditions, namely :.....

(5) The profits or gains of an industrial undertaking or hotel to which this section applies shall be computed in accordance with the provisions contained in Chapter IV-D....."

17. It is not necessary to read Section 101 of the Income-tax Act, 1961. Under that section the assessee shall be entitled to deduction of the amount of super-tax to which he is chargeable on his total income on profits and gains derived from industrial undertaking to the extent to which income-tax is not payable on such profits and gains under Section 84.

18. Section 84 of the Income-tax Act, 1961, corresponds to Section 15C of the Indian Income-tax Act, 1922. The Madras High Court considered the scope of Section 15C in Ashok Motors Ltd. v. Commissioner of Income-tax [1961] 41 ITR 397 (Mad). Delivering the judgment of the court, Srinivasan J. said at page 402 :

"It would be desirable at the outset to determine exactly the scope of the exemption section provided under Section 15C before dealing with the contentions of the asscssee. Under Section 15C of the Act, which is headed "Exemption from tax of newly established industrial undertakings", the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent. per annum on the capital employed in the undertaking. Sub-section (2) defines the nature of the industrial undertaking to which the section will apply."

19. Then the learned judge further observed:

"The scope of the exemption appears to be perfectly clear ; the section states that where any profits or gains are derived from any industrial undertaking, that portion of it to the extent of six per cent. on the capital employed in the undertaking shall be exempt from tax. Firstly, the profit in question must be derived from the industrial undertaking, and, secondly, the maximum limit of the exemption is also provided. It is clear that before an assessee can be eligible for any exemption, there should be profits. If there are no profits, no question of granting the exemption arises. It is equally clear that the profit in respect of which any exemption is available should be derived from the undertaking. The exemption cannot operate in respect of any profit derived by the assessee from any trade or business other than the industrial undertaking,"

20. The scope of exemption under Section 84 of the 1961 Act is similar to that of Section 15C of the 1922 Act and similar construction should be put as in Ashok Motor's case [1961] 41 ITR 397 (Mad) regarding Section 15C.

21. Under Section 84, the legislature intends to put an incentive for expansion of industrial progress and setting up of new industry by allowing tax relief to a certain extent. Sub-section (1) of Section 84 provides that income-tax shall not be payable on profits and gains from any industrial undertaking as do not exceed six per cent. per annum on the capital employed in the undertaking or hotel to

which this section applies. In order to attract Section 84, the industrial undertaking must fulfil the conditions laid down in Sub-section (2) and must make profit. As to the extent of six per cent. per annum up to which the assessee will get exemption, Sub-section (1) of Section 84 says that computation of capital should be made in the prescribed manner. Rule 19 of the Income-tax Rules relates to the manner of computation of capital employed in the industrial undertaking. Rule 19 has nothing to do with the profits or gains derived from any industrial undertaking. The profits or gains of the industrial undertaking should be computed in accordance with the provisions of Chapter IV-D of the Act as provided in Sub-section (5) of Section 84. The words "as do not exceed six per cent. per annum on the capital employed" in Section 84, Sub-section (1), refer to the quantification of the relief.

22. Now, what is the meaning of the question ? As I read the question it seems to me that it means whether the assessee is entitled to the relief under Sections 84 and 101 in respect of the profits of its Ambattur unit. In this respect I accept the contention made by Mr. Ray as to the meaning of the question. In this view of the matter the answer to the question must be in favour of the assessee, because there is no doubt or dispute that conditions in Section 84(2) are fully satisfied under the facts of the instant case. Further, it is clear from the question that the new industrial undertaking of the assessee has made profits. The assessee has also made assessable profits. Therefore, the assessee must get relief under Section 84. The words in the section are that "no income-tax shall be payable". The extent to which the income-tax shall not be payable is a question of computation.

23. In the instant case, computation of profits of the new industrial undertaking has been made by the assessee in accordance with Chapter IV-D of the Income-tax Act, 1961, and the assessee claimed relief up to 6% on computation of capital of the new undertaking on certain basis of apportionment. The Income-tax Officer took the view that the relief claimed by the assessee on the basis by taking capital and profits of the new industrial undertaking at the proportion of the total profits and capital employed in the whole business on the basis of sales of the Ambattur unit and the total sales is not admissible. On this view of the matter, the Income-tax Officer rejected the claim of the assessee.

24. Here, the question is whether the Income-tax Officer could reject the claim for relief under Section 84 when the right to get such relief is established by the assessee? In my view, he cannot.

25. Section 143 of the Income-tax Act says that the Income-tax Officer shall assess the total income of the assessee and shall determine the sum payable by him. Therefore, what sum is payable by the assessee shall be determined by the Income-tax Officer. In a case where Section 84, Sub-section (2), applies and the new industrial undertaking has made profits, the assessee must get relief. To what extent the assessee will get relief is a question of determination or computation of the amount of such relief.

26. It is clear from Section 144 of the Act that the Income-tax Officer is not absolved from his duty to make computation. Again, in Section 145 of the Act with regard to method of accounting the Income-tax Officer "shall compute in accordance with the method of accounting regularly employed by the assessee". But the proviso to this section says that where the method employed is such that in the opinion of the Income-tax Officer, the income cannot be properly deduced therefrom then the

computation shall be made on such basis and in such manner as the Income-tax Officer may determine. Therefore, denial of the relief to the assessee by the Income-tax Officer was clearly wrong.

27. With regard to this aspect of the matter, the Appellate Tribunal said:

"If the method adopted by the assessee is found to be wrong or did not commend itself to the Income-tax Officer, the Income-tax Officer should have suggested a more rational and more appropriate method. But he cannot deny the exemption altogether on that account."

28. I agree with the view of the Appellate Tribunal in this respect.

29. I look back to the question again. I have to. In view of the further submission of the counsel for the assessee that the question may be read : "Whether the assessee was entitled to the relief claimed under Sections 84 and 101 of the Income-tax Act, 1961, in respect of the profits of its Ambattur unit ?", meaning thereby whether the assessee was entitled to the particular relief claimed by it, I will consider what should be the answer,

30. It appears that the assessee arrived at Rs. 2,11,66,885 as capital employed in the new undertaking on the, basis of apportionment of turnover of the new and old unit and claimed relief of Rs. 12,70,013 being 6% of the capital employed. With regard to the method adopted by the assessee, the Tribunal said : "The method adopted by the assessee cannot be said to be wrong." The Tribunal also held :

"The assessee has discharged the onus by submitting before the Income-tax Officer the computation of capital and profits. The Income-tax Officer ought to have examined it. If he found it to be wrong, he could have corrected it. Instead, he chose to reject the method wholesale. He had not suggested any other method. In these circumstances we accept the assessee's statement of the profits of the new undertaking."

31. On the above findings of the Appellate Tribunal and in view of the meaning of the question referred to this court as I have understood them, it seems to me that the points urged by the learned counsel for the revenue do not arise in this reference.

32. With regard to the principle of apportionment, the Supreme Court observed in Commissioner of Income-tax v. Best and Co. (Private) Ltd. :

"The difficulty in apportionment cannot be a ground for rejecting the claim either of the revenue or of the assessee."

33. Again, in Madras Co-operative Central Land Mortgage Bank Ltd. v. Commissioner of Income-tax the Supreme Court said :

"A rule of apportionment consistent with commercial accounting must be evolved for determining the income from Government securities attributable to business activity of the society."

34. The assessee in the instant case has kept a composite account and has made apportionment on certain basis on the principle of commercial accounting. Under Section 84 tax shall not be payable by the assessee on 6 per cent. per annum on the capital employed in the undertaking. So the Income-tax Officer cannot refuse the claim for exemption.

35. On this view of the matter also the assessee is entitled to the relief under Section 84. The answer to the question must, therefore, be in favour of the assessee.

36. I will now refer to some of the cases cited before us. The learned counsel for the parties admitted that there is no case exactly on the point. I shall mention some of the cases relied on by the learned counsel.

37. Mr. Sen relied on Pr. Al. M. Muthuhamppan Chettiar v. Commissioner of Income-tax [1939] 7 ITR 76 (Mad) [FB]. In that case one of the questions referred to the Madras High Court was whether the assessee was entitled in law to a deduction of Rs. 1,875 in respect of depreciation of machinery in a particular mill, he having leased the mill. It was held by Leach C.J, at pages 89-90 of the report :

"When claiming a deduction an assessee must give the particulars required by proviso (a) of Section 10(2). This he admittedly failed to do and, therefore, he was not in a position to claim the deduction. The answer to the second question is that in the circumstances the assessee is not entitled in law to the deduction."

38. The decision of the court was made on construction of proviso (a) to Section 10(2) of the Indian Income-tax Act, 1922, which reads as follows:

Section 10(2)(vi):

"Such profits or gains shall be computed after making the following allowances, namely :--.....

Provided that-

(a) the prescribed particulars have been duly furnished ;....."

39. The section clearly provides that unless the particulars are duly furnished the assessee will not get the exemption. But Section 84 of the Act which we are considering is entirely different. In my view the principles laid down in that case cannot apply under the facts and in the circumstances of the instant case.

40. Mr. Son referred to Dharampur Leather Cloth Co. Ltd. v. Commissioner of Income-tax [1965] 55 ITR 329, 336 (Bom), where the learned judges held :

" It is further clear that if the assessee desired to claim depreciation, he must suppl

41. The Bombay High Court in that case was considering Section 10(2)(vi) of the Indian I

42. Mr. Sen then cited the decision of the Madras High Court in the case of Rajapalayam Mills Ltd. v. Commissioner of Income-tax and a decision of the Calcutta High Court in the case of Industrial Gases Ltd. v. Commissioner of Income-tax [1965] 58 ITR 317 (Cal) and submitted that the exemption under Section 15C should be strictly construedaa

43. Mr. Ray in this connection cited the decision of the Punjab High Court, (Delhi Bench) in the case of Webbing and Belting Factory Private Ltd. v. Commissioner of Income-tax [1961] 43 ITR 234, 238 (Punj) and submitted that a provision of this kind which is intended to encourage the setting up of new industrial enterprises must be construed liberally.

44. In my view, the general observations made by the learned judges in the above mentioned cases as to whether Section 84 should be construed liberally or strictly have no bearing in answering the question which arises for consideration in the facts and under the circumstances of this case. The assessee in the instant case has established its entitlement for the relief under Section 84 and discharged the onus to prove all the essential ingredients of the section for getting the benefit of exemption under it. So the section should be construed in order to give benefit to the assessee to the extent the Section intended to give. In Commissioner of Income-tax v. Mahaliram Ramjidas [1940] 8 ITR 442 (PC) the Privy Council laid down that in interpreting a section of a taxing Act which deals merely with the machinery of assessment and does not impose a charge on the subject that construction should be preferred which makes the machinery workable, ut res magis valeat potius quam pereat.

45. Section 84 is an exemption) section. The section says that an assessee will get benefit under this section and to what extent the benefit will be given. The right to get benefit is distinguished from the amount or quantum of the benefit that the assessee will get under the section. In order to get benefit of exemption under this section the assessee must establish its right to get the benefit or its entitlement of the benefit. The law is well-settled that an assessee who claims exemption has to establish it.

46. In Commissioner of Income-tax v. Ramakrishna Deo the Supreme Court, while considering certain observations of Lord Somervell L.J. in Australian Mutual Provident Society v. Inland Revenue Commissioners [1946] 1 All ER 528 (CA) quoted by the Supreme Court in that judgment laid down at page 316 of the report:

"These observations have, in our opinion, no bearing on the question of burden of proof. They merely lay down a rule of construction that in determining the scope of a rule, regard must be had to the exemptions engrafted thereon, and that the rule must be so construed as not to nullify those exemptions."

47. Mr. Sen relied on Commissioner of Income-tax v. National Electrical Industries Ltd. [1959] 37 ITR 131 (Bom). In that case the assessee was a newly established industrial undertaking and was entitled to exemption from payment of tax to the extent prescribed by Section 15C of the Indian Income-tax Act, 1922. In the year of account (1951-52) the assessee made a profit of Rs. 8,65,000 but after making allowance of unabsorbed depreciation of previous years and also the losses carried forward from the previous years there remained no taxable income and accordingly no demand for tax was made for the assessment year 1952-53. In assessing the total income the Income-tax Officer did not give benefit of exemption from payment of tax under Section 15C of the Income-tax Act to the assessee. The question referred to the Bombay High Court was : "Whether, on the facts and circumstances of the case, the loss brought forward from the preceding year amounting to Rs. 1,15,220 should be set off against the profits of the year of account without allowing the assessee the benefit of Section 15C of the Income-tax Act ?" Shah J., delivering the judgment of the Bombay High Court, said : (page 134) "It is true that in order to give a fillip to new industrial undertakings and to secure speedy industrialization the legislature has provided for exemption from payment of tax on a percentage of capital employed in the undertaking, but thereby the true nature of the exemption is not altered. The exemption is in terms from payment of tax and it is not exclusion of income in the computation of the total income."

48. The Bombay High Court answered the question in the affirmative after substituting the word "before" for the word "without" in the question.

49. 'The Bombay case has no application under the facts and in the circumstances of this, case as the assessee has made assessable profits for the accounting year and the claim for relief is fully covered by the profit available.

50. Mr. Sen cited the case of Commissioner of Income-tax v. S. S. Sivan Pillai ., It appears from this report (page 357) :

"Exemption under Section 15C(1) of the Indian Income-tax Act, 1922, from payment of income-tax on part of the profits of a new industrial undertaking is not related to the business profits ; .....the profits or gains of an industrial undertaking have to be determined under Section 10 of the Act."

51. This case does not help the contentions made by Mr. Sen. In any event, I will quote here the observation at page 358 of the report which is as follows--See :

"Where the company has 'nil' profits under its final assessment, the non-application of Section 15C is not due to the fact that it made no profits and it was not entitled to the benefit of Section 15C(1). But in view of the overall result of the assessment there is no need for the company to claim exemption under that provision, as there is no tax liability at all. "

52. It is obvious that if there is no assessable profit there cannot be any claim for deduction under Section 84, but the facts and the circumstances of the case are otherwise here as the assessee has made assessable profits.

53. Mr. Sen then cited the case of Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer . This is a sales tax matter and the Supreme Court considered Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act (6 of 1941) and Bengal Sales Tax Rules, 1941, Rule 27A. The question before the Supreme Court was when a dealer is entitled to claim exemption from sales tax ? I do not think that the decision of the Supreme Court is applicable on the question referred to us as an entirely different section of a different Act has to be construed by us.

54. In that view of the matter which I have expressed, the question referred to this court must be answered in the affirmative and against the revenue. We return our answer accordingly.

55. Parties will bear their own costs of the reference.

Deb, J.

56. I agree.