Supreme Court of India
Mettur Chemical And Industrial ... vs Commissioner Of Income-Tex, ... on 16 November, 1995
Equivalent citations: 1995 SCC, Supl. (4) 732 1995 SCALE (6)468
Author: K B.N.
Bench: Kirpal B.N. (J)

PETITIONER:
METTUR CHEMICAL AND INDUSTRIAL CORPORATION LIMITED

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TEX, MADRAS-1

DATE OF JUDGMENT16/11/1995

BENCH:
KIRPAL B.N. (J)
BENCH:
KIRPAL B.N. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1995 SCC Supl. (4) 732 1995 SCALE (6)468

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T KIRPAL. J.

This is an appeal by way of special leave having been granted against the judgment of the Madras High Court which had answered the three questions of law referred to it by Income Tax Tribunal under Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as `the Act') in favour of the respondent.

The facts as found by the Tribunal are that the appellant was manufacturing coustic soda utilising billiter cells and up to the year 1956, its production capacity was 13.5 tons per day. The appellant felt the need to expand its capacity and obtained a licence which permitted it to manufacture 20 tons of caustic soda per day.

In order to increase the capacity, the appellant gradually replaced billiter cells with hooker cells. Thirty hooker cells were installed by 31.3.1957 and thirty more were installed in February, 1958. The

installation of the hooker cells required a change over in the power system and the installation of a rectifier was completed only in the year ended 31.3.1959. However, the hooker cells were utilised for the production as and when they were installed by a suitable adjustment in the power system even before the rectifier was installed. The position, thus, was that the production for the year 31.3.1957 included certain production attributable to the use of thirty hooker cells. All the sixty hookers cells were installed by the end of 1958 and the installation of the unit together with the rectifier was also completed in the year ended 31.3.1959. It was clear that the capacity of the unit gradually increased from the stage of the installation of the hooker cells, though full capacity was reached only with the installation of all the hooker cells.

Claim was made by the appellant before Income Tax Officer to the effect that it was entitled to the relief under Section 84 of the Act in respect of assessment year 1962-63 on the ground that such relief is admissible for five assessment years starting from the year in which the industrial undertaking begins to manufacture or produce articles. The contention of the appellant was that it had not claimed any relief in respect of assessment year 1957- 58, when thirty of the sixty hooker cells had been installed and, therefore, the period of five years should commence only with effect from the year 1958-59 by which time the installation of the sixty hooker cells, as well as the rectifier, had been completed. In the alternative, it was also contended that the appellant was entitled to relief atleast in relation to production of the thirty hooker cells which were installed for the first time in the assessment year 1958-59, as the fifth year for these hooker cells from the commencement of the production is the assessment year 1962-63.

The claim had been disallowed by the Income Tax Officer and in appeal by the Appellate Assistant Commissioner. The Income Tax Tribunal, on the further appeal, rejected the claim of the appellant by holding that though the industrial unit ultimately consisted of sixty hooker cells and the rectifier but it had commenced commercial production in the year ended 31.3.1957 and, therefore, the five years had to be reckoned from the year 1957-58 and not 1953-59.

Another contention which was raised before the Revenue Authorities and the Tribunal was with regard to the deduction of development rebate, which was allowable in respect of a new industrial undertaking in computing the profits and gains for the purpose of relief under Section 84 of the Act. In respect of assessment year 1962-63, the profits and gains from the new industrial unit had been computed at Rs. 1,08,282 before adjustment for development rebate. The total amount of development rebate had been determined at Rs.13,69,487/-. Adjusting the development rebate towards this profit of Rs. 1,08,282/-, the Income Tax Officer and the Appellate Assistant Commissioner held that there was no income from the new industrial undertaking on which relief was admissible under Section 84(1) of the said Act. The contention of appellant was that in arriving at the business income of industrial undertaking on which the relief under Section 84(1) of the Act was admissible, the development rebate was not to be deducted. This claim was not accepted by the Appellate Tribunal. It came to the conclusion that on the correct interpretation of Section 84 of the Act, the relief under the said provision was allowable only in case where there was a positive income of the industrial undertaking after the allowance of development rebate.

On an application being filed by the appellant, the Tribunal referred the following three questions of law to the High Court:

> "(1) Whether the first year in which the assessee was entitled to relief in respect of the new industrial undertaking was the assessment year 1957-58 and whether the assessee was entitled to relief in respect of the assessment for 1962-63 under Section 84 ?
>
> (2) "Even if the assessee is not entitled to the full relief in respect of 60 hooker cells claimed in respect of the assessment for 1962-63 whether it is entitled to relief in respect of the thirty hooker cells completed during the previous year for 1958-59 ?
>
> (3) "Whether development rebate in respect of the new industrial undertaking established during the previous year for 1962-63 should be deducted in computing the profits and gains for the purpose of section 84 and whether the assessee is entitled to any relief under the assessee is entitled to any relief under that section in respect of this undertaking ?"

The High Court agreeing with the Tribunal, answered the aforesaid questions of law in favour of the respondent. On leave to appeal being refused, this Court granted special leave to appeal. Hence, this appeal.

Taking the first two questions together, it was contended by Shri Ramachandran, learned counsel for the appellant, that the new industrial undertaking was entitled to the benefit of the provisions of Section 84 of the Act corresponding to Section 15(c) of the Income Tax Act, 1922 in the year 1962-63 because the new industrial undertaking consisted of sixty hooker cells and rectifier and the same were installed only in the year 1958-59. It was also contended that in respect of the year 1957-58, no claim was made under the said provision because the assessee had by then not completed the installation.

According to Section 84 of the Act, income tax is not payable by an assessee on so much of the profits and gains, inter alia, derived from any industrial undertaking to which the Section applies, as does not exceed 6% per annum on the capital employed in such undertaking. Sub-section (2) of Section 84 provides the conditions which should be specified so as to enable the assessee to enjoy the benefit of the said provision. It is not in dispute that these conditions are satisfied but what we are concerned in this case is with regard to the applicability of sub-section (7) of Section 84 of the Act which reads as follows:

> "The provisions of this section shall, in relation to an industrial undertaking, apply to the assessment--
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> (i) for the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or, as the case may be, operate the cold storage plant or plants, and

(ii) where the assesee is a co-operative society, for the six assessment years immediately succeeding, and where the assessee is any other person, for the four assessment years immediately succeeding."

It is found as a fact that the appellant had begun to manufacture or produce articles in the previous year ended on 31.3.1957 with the help of thirty hooker cells. It is true that rectifier had not been installed in the year 1957- 58 but it not in dispute that with suitable adjustment being made to the power system, the thirty hooker cells which had been installed were utilised. The use of these new hooker cells had resulted in the capacity of the unit gradually increasing and the production so made was not experimental but was commercial. This being so, the appellant's undertaking must be regarded as having been newly established when it had begun to manufacture or produce articles by 31.3.1957. As 1957-58 was the first assessment year in which the relief under Section 15(C) of the Income Tax Act, 1922 corresponding to Section 84 of the Act could have been claimed, the four succeeding years would end by 1961-62 with the result that the appellant would not be entitled to any relief in the year 1962-63 which was rightly regarded as the sixth assessment year. In answer to question No. 1, the High Court, therefore, rightly come to the conclusion that the first year in which the relief could be claimed was the assessment year 1957-58.

As regards question No. 2 is concerned, it was alternatively submitted that thirty hooker cells and the rectifier were installed in the year 1958-59 and, therefore, benefit under Section 84 of the Act with regard to these thirty hooker cells should be available in the year 1962-63.

This is a case where the manufacturing capacity of the appellant was increased on a licence being granted from 13.5 tons per day to 20 tons per day. In other words, these hooker cells were installed and the billiter cells were gradually replaced. The new industrial undertaking came into existence when the initial lot of thirty hooker cells were installed in the year 1957-58 which had resulted in enhanced commercial production. The Tribunal and the High Court, in our opinion, rightly came to the conclusion that the undertaking could function with thirty hooker cells in the year 1957-58 and further numbers were added in the subsequent year. The undertaking having, thus, started the commercial manufacture in the year 1957-58 could not claim the benefit of provisions of Section 84 of the Act because the unit as such had commenced in the year 1957-58 notwithstanding the fact that there had been an expansion thereto in the subsequent year. There was no scope for allowing a partial relief or splitting up of the relief as and when fresh cells came to the added. The question No. 2, therefore, was thus rightly answered in the negative and in favour of the revenue.

Coming to the third question, the relevant fact as already stated is that the profit with reference to the additional unit of sixty hooker cells which was called caustic soda plant No. 2 was worked out by the appellant at Rs. 1,08,282/- before allowing the allowing the development rebate. The development rebate pertaining to this second plant came to Rs. 12,15,055/-. If the development rebate was adjusted against the sum of Rs. 1,08,282/- then the net result would be a loss of Rs. 11,06,773/-. There would, thus be no profit which would be eligible for the relief under Section 84 of Act. In order to avail of this relief, the submission of the appellant is that the development rebate should not be deducted in arriving at the business income because it had no bearing on the business profits of the industrial undertaking.

In view of the decision of this Court in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. Commissioner of Income-tax, Gujarat-II, 113 ITR 84, this question is no longer res integra. Dealing with a similar provision i.e.80 E of the Act prior to its amendment by the Finance (No. 2) Act, 1967, this Court came to the conclusion that in computing the profits of the assessee for the purpose of the special deduction provided under Section 80 E, items of unabsorbed depreciation and unabsorbed development rebate, carried forward from earlier years, will have to be deducted before arriving at the figure from which the 8% contemplated by Section 80E is to be deducted.

In an effort to distinguish the aforesaid decision, it was submitted by Mr. Ramachandran that under Section 33(2) of the Act, development rebate is deducted from the total income of an assessee and it is not a component or a ingredient for determining profits and gains. In other words, in Computing the profits and gains under Section 84(5) of the Act, there must first be a deduction under Section 84(1) of the Act of 6% per annum an the capital employed on the caustic soda plant No. 2 and it is only thereafter the development rebate should be deducted from the total income. In support thereof, reliance was placed on the judgment of the Punjab & Haryana High Court in Commissioner of Income-tax, Patiala-I Vs. Patiala Flour Mills Co. P. Ltd., 127 ITR 301. As already observed in Cambay Electric Supply Industrial Company"s case (supra) while interpreting a provision similar to Section 84(5) of the Act, this Court has held that the profits and gains from an industrial undertaking to which Section applies, have to be computed in accordance with the provisions contained in Chapter IV(d) of the Act and development rebate has first to be deducted from the total income and it is only thereafter, if any profits and gains remain from this business, that the benefit under Section 84(1) of the Act would be applicable. It appears that the aforesaid decision of this Court in Cambay Electric Supply Industrial Company's case (supra) was not brought to the notice of Punjab & Haryana High Court in the aforesaid case of Patiala Flour Mills case (supra). It is clear that the decision of Patiala Flour Mills case (supra) is no longer a good law. We, accordingly, hold that the third question of law was also rightly answered in favour of the Revenue.

For the aforesaid reasons, this appeal is dismissed, but in the circumstances, parties are left to bear their won costs.