

Cit Vs. Panna Knitting Industries

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Court : Gujarat

Decided On : Feb-12-2002

Reported in : (2002)175CTR(Guj)616

Appeal No. : IT Ref. Nos. 28 of 1987 & 164 of 1988 A.Y. 1980-81 to 1982-83 12 February 2002

Appellant : Cit

Respondent : Panna Knitting Industries

Advocate for Pet/Ap. : B.B. Naik, *for the Revenue* B.D. Karia and R.K. Patel, *for the Assessee*

Judgement :

In the Gujarat High Court R.K. Abichandani & K.A. Puj, JJ.

JUDGMENT

K.A. PUJ, J.

The Tribunal, in IT Ref. No. 28 of 1987, for the assessment years 1980-81 and 1981-82, has referred the following question of law for the opinion of this court :

'Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in coming to the conclusion that the relief under section 80J of the Income Tax Act should be allowed from the total income which is not confined

to the income of the (new) units ?'

2. Similarly, in IT Ref. No. 164 of 1988 for the assessment year 1982-83, the following question of law was raised by the Tribunal for the opinion of this court :

'Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in coming to the conclusion that the relief under section 80J of the Income Tax Act should be allowed from the total income (which is not confined to the income) of the new units ?'

3. Since a common issue is involved in both the references, the same are disposed of by this common judgment. The facts, giving rise to the present controversy, as narrated by the Tribunal in the statement of case, are that the assessee had made a claim under section 80J in respect of certain units of machinery and the said claim was denied by the Income Tax Officer on the ground that the first assessment was for the assessment year 1975-76 and, hence, the relief under section 80J of the Income Tax Act, 1961, was availed of by the assessee up to 1979-80 and that no separate books of account were maintained by the assessee for the units which were started and that the new units were merely for extension of the existing units.

4. Being aggrieved by the order of the Income Tax Officer, the assessee had preferred an appeal before the Commissioner (Appeals), Surat, who, while disposing of the said appeal, granted the relief in favour of the assessee only in respect of profits from the new units.

5. Being aggrieved by this order, both the revenue as well as the assessee preferred separate appeals before the Tribunal. While disposing of the said appeals, the Tribunal rejected the appeal filed by the department by holding that the revenue had not disputed the issue regarding cost of the new units and the profits thereof were separately shown by the assessee in the books of account. As far as the assessee's appeal is concerned, the assessee has relied on the Bombay Tribunal's decision in the case of Indo French Time Industries Ltd. and following the said decision, the Tribunal has taken the view that the assessee was entitled to the benefit under section 80J from the total income which was not

confined to the income from the new units only.

6. It is pertinent to note that the revenue has not challenged the finding given by the Tribunal in its appeal before the Tribunal. No dispute now, therefore, remains with regard to the fact that the units started by the assessee were the new units as the cost as well as the profits of the new units were separately shown by the assessee. The revenue has come in the reference before us only on the issue as to whether the relief under section 80J should be allowed from the total income of the assessee or it is confined to the income from the new units ?

7. We have heard Mr. B.B. Naik, the learned standing counsel for the revenue as well as Mr. B.D. Karia, the learned advocate for the assessee. Looking to the plain reading of section 80J, it is clear that the assessee is entitled to the relief under section 80J on the basis of the total income of the assessee and it could not be confined to the income from the new units. Section 80J reads as under :

'80J. Deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases.(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 the 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 or section 80HHA) 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 manner specified in sub-section (1A)] 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).'

From the above section, it is clear that where the total gross income 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 of so much of the amount thereof as does not exceed the amount calculated at the rate of 6 per cent per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, in respect of the previous year relevant to the assessment year.

8. Looking to the provisions contained in section 80J(1), we are of the view that the Tribunal has not committed any error while holding that the assessee was entitled to the relief under section 80J from the total income of the assessee. We, therefore, answer the question referred to us in both the references in the affirmative, i.e., in favour of the assessee and against the revenue. Both the references are disposed of, accordingly, with no order as to costs.

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