

(1999) 10 AHC CK 0143

Allahabad High Court

Case No: Income-tax Reference No. 86 of 1981

Commissioner of Income Tax

APPELLANT

Vs

M.P. Sugar Mills Co. Pvt. Ltd.

RESPONDENT

Date of Decision: Oct. 12, 1999**Acts Referred:**

- Income Tax Act, 1961 - Section 80J
- Income Tax Rules, 1962 - Rule 19A

Citation: (2000) 246 ITR 60**Hon'ble Judges:** S. Rafat Alam, J; M.C. Agarwal, J**Bench:** Division Bench**Advocate:** A.N. Mahajan, for the Appellant; R.S. Agarwal, for the Respondent**Final Decision:** Disposed Of

Judgement

M.C. Agarwal, J.

The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, u/s 256(1) of the Income Tax Act, 1961, has referred the following question for the opinion of this court :

"Whether the Tribunal was correct in holding that the relief u/s 80J of the Act. is allowable for the relevant year without any reduction with reference to the actual period of working of the factory during the relevant year ?"

2. The aforesaid question is stated to arise out of the Tribunal's order passed in ITA No. 1434(All) of 1976-77 for the assessment year 1971-72.

3. We have heard Sri A. N. Mahajan, learned standing counsel for the Commissioner, and Sri. R. S, Agarwal, learned counsel for the respondent.

4. From the statement of the case We find that the Commissioner through his application u/s 256(1) of the Act had required the Tribunal to refer the following

three questions for the opinion of this court :

"1. Whether the Tribunal was correct in directing that the borrowed capital should be included in the capital employed for the purpose of relief u/s 80J of the Act ?

2. Whether the Tribunal was correct in holding that the relief u/s 80J of the Act is allowable for the entire year ?

3. Whether the Tribunal was correct in interpreting the words "per annum" in Section 80J to mean for the entire year ?"

5. The Tribunal, however, thought that questions Nos. 2 and 3 may be clubbed together and may be referred for the opinion of the High Court in the form as stated above. Thus, in fact, the Tribunal has referred two questions as under :

"1. Whether, the Tribunal was correct in directing that the borrowed capital should be included in the capital employed for the purpose of relief u/s 80J of the Act ?

2. Whether the Tribunal was correct in holding that the relief u/s 80J of the Act is allowable for the relevant year without any reduction with reference to the actual period of working of the factory during the relevant year ?"

6. As regards the first question, the dispute was about certain liabilities amounting to Rs. 40,17,654 and Rs. 73,82,136 relating to the steel and vanaspati units, respectively, of the assessee. The Tribunal disposed of the issue as under :

"21. With regard to the claim of the assessee u/s 80J it was claimed that the authorities below are not justified in excluding the borrowings and liabilities for the purpose of computing the relevant amount of capital employed in the new industrial undertaking. This issue has since been decided in favour of the assessee by their Lordships of the Allahabad High Court in the case of [Kota Box Mfg. Co. Vs. Income Tax Officer and Others](#), , and accordingly we reverse the order of the Appellate Assistant Commissioner and direct that the capital employed may be worked out in accordance with the principles enunciated by their Lordships of the Allahabad High Court in the abovementioned case."

7. Thus, the Tribunal based its decision on a judgment of this court in [Kota Box Mfg. Co. Vs. Income Tax Officer and Others](#), in which Sub-rules (1) and (3) of Rule 19A were held to be ultra vires. The aforesaid judgment of this court was reversed by the Supreme Court in [Lohia Machines Ltd. and Another Vs. Union of India \(UOI\) and Others](#), in which the aforesaid Rule which provided for exclusion of the borrowed capital was held to be valid. Therefore, the basis on which the learned Tribunal decided the case has vanished and its conclusion on that account cannot be sustained.

8. Learned counsel for the assessee, however, contended that the present case relates to the assessment year 1971-72 while Rule 19A was effective from April 1, 1972, and, therefore, according to him, Rule 19A was not applicable and according

to law as it stood for the assessment year 1971-72 any moneys borrowed from approved sources for creation of capital assets in India were to be included in the borrowed capital if the agreement under which such moneys are borrowed provides for the repayment thereof during a period not less than seven years. We express no opinion and it would be for the Tribunal to decide this controversy afresh since the basis of its decision no longer exists. We, therefore, answer the first question in the negative and set aside the Tribunal's order on this point. The Tribunal would decide this controversy afresh in accordance with law.

9. As regards the second part of the controversy as to whether the reduction is allowable for the whole year or only for a portion of a year during which the industrial undertaking work, we find the opinion of the Madras High Court in [Commissioner of Income Tax, Tamil Nadu-I Vs. Simpson and Company](#), in which it was held that the words "per annum" used in Section 80J should be given their natural and liberal meaning and even though the industrial undertaking worked for a part of the year, the relief u/s 80J was allowable for the whole year. We agree with this view and answer the second question in the affirmative, i.e., against the Commissioner and in favour of the assessee.