(1993) 08 MAD CK 0037

Madras High Court

Case No: Tax Case No. 620 of 1980 (Reference No. 240 of 1980)

Commissioner of Income Tax		APPELLANT
	Vs	
Seshasayee Paper and Board Ltd.		RESPONDENT

Date of Decision: Aug. 19, 1993

Acts Referred:

- Income Tax Act, 1961 - Section 41(2), 80, 80E, 80E(1)

Citation: (1994) 207 ITR 80

Hon'ble Judges: K.A. Swami, C.J; T. Somasundaram, J

Bench: Division Bench

Advocate: C.V. Rajan, for the Appellant; T.A. Perumal, for the Respondent

Judgement

K.A. Swami, C.J.
The Income Tax Appellate Tribunal was directed to make a reference u/s 256(2) of the Income Tax Act, 1961, in T.

C. P. No. 285 of 1978, the following question for a decision of this court :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the interest received on the

deposits kept with the Electricity Board should not be deducted from the gross total income while computing the relief admissible u/s 80I of the

Income Tax Act, 196 ?

2. The facts necessary for deciding the aforesaid question are as follows :

The assessee is a limited company carrying on the business of manufacturing and selling paper products. The Income Tax Officer while computing

the relief u/s 80-I of the Act in the assessment for the year 1971-72 took the gross total income after setting off the depreciation of the current year

and the unabsorbed depreciation of the earlier year. The income coming under ""interest on securities"" was excluded from the ""gross total income

so computed for the purpose of determining section 80-I relief. The Appellate Assistant Commissioner upheld the computation made by the

Income Tax Officer for the purpose of the relief u/s 80-I of the Act. The order of the Appellate Tribunal also consists of the computation of the

relief u/s 80J but in this case, we are not concerned with that portion of the order. The Income Tax Appellate Tribunal held that the interest

received on the deposits made by the assessee with the Electricity Board should not be deducted from the gross total income while computing the

relief admissible u/s 80-I. The assessee has received certain sums by way of interest on the deposits made with the Electricity Board. The assessee

is a priority industry engaged in manufacture, and is classified as a priority industry.

3. It is contended on behalf of the Revenue that section 80-I does not take in its fold the income derived from sources other than the one directly

derived from or attributable to the priority industry. Therefore, the amount received by the assessee as interest on the deposit made with the

Electricity Board, even though such deposit was made for the purpose of supply of electrical energy necessary for running the industry was not

eligible to be included in the gross total income while computing the relief admissible u/s 80-I of the Act. On the contrary, it is the contention of the

assessee that for the purpose of running the industry in question, electrical energy is necessary and uninterrupted supply of the same cannot be

ensured to the assessee without depositing a certain sum as per the regulations framed by the Tamil Nadu Electricity Board. Therefore, the deposit

and the interest accrued on such deposit are directly connected with the industry. Hence, the income by way of interest on deposit is attributable to

the industry in question. In support of his contention, learned counsel for the Revenue has placed reliance on the following decisions :

(1) ADDITIONAL COMMISSIONER OF Income Tax, MADRAS-I Vs. VELLORE ELECTRIC CORPORATION LTD., ; (2)

Commissioner of Income Tax, Tamil Nadu-V Vs. Universal Radiators P. Ltd., ; (3) Commissioner of Income Tax Vs. Cochin Refineries Ltd., .

4. On the contrary learned counsel for the assessee has placed reliance on the following decisions :

(1) Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, ; and (2) English Electric Co. of

India Ltd. Vs. Commissioner of Income Tax, .

5. It may also be pointed out that learned counsel for the Revenue also brought to our notice the aforesaid two decisions on which reliance was

placed by learned counsel for the assessee and contended that even according to the aforesaid decisions of the Supreme Court the income derived

by way of deposit cannot be held to be attributable, as for that purpose such an income must have connection with the production of the industry.

In other words, it must be generated from the industry itself.

6. In order to consider the rival contentions it is necessary to notice section 80-I(1) of the Act, which is as follows :

Deduction in respect of profits and gains from priority industries in the case of certain companies. - (1) In the case of a company to which this

section applies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed, in

accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent. thereof,

in computing the total income of the company.

7. The sub-sections (2) and (3) of section 80-I are not necessary for our purpose, hence they are not reproduced. The topic covered by the

present section 80-I(1) was covered by section 80E(1) which was inserted by the Finance Act, 1966, with effect from April 1, 1966. Section 80E

was deleted by Finance (No. 2) Act, 1967, with effect from April 1, 1968, and in its place section 80-I was introduced. Section 80E also

contained the words ""where the total income (.....) includes any profits and gains attributable to the business of generation of distribution of

electricity....."" The present section 80-I(1) also contains the words ""profits and gains attributable to any priority industry"". Here it is relevant to

refer to the dictionary meaning of the word ""attribute"" as contained in The Concise Oxford Dictionary, the new edition for the 1990s. One of the

meanings of the word ""attribute"" is ""regard as belonging or appropriate to"". The key words in section 80-I(1) are, ""where the gross total income

includes any profits and gains attributable to any priority industry"". These very words came up for consideration in Cambay Electric Supply

Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, . That was a case in which Cambay Electric Supply Industrial

Company Limited carried on the business of generation and distribution of electricity at Cambay and, as such, it was covered by the provisions of

section 80E(1) and was entitled to claim the deduction contemplated by the provisions contained in section 80E(1) of the Act. During the

accounting period which ended on March 31, 1967, the assessee-company earned an income of Rs. 46,319 from its said business. During that

period it had also sold some of its old machinery and buildings resulting in balancing charges contemplated by section 41(2) which the Income Tax

Officer worked out at Rs. 7,55,807. There was also an unabsorbed depreciation of Rs. 1,42,955 and unabsorbed development rebate of the

earlier years of Rs. 1,11,658 aggregating to Rs. 2,54,613 which was required to be set off against the profits of that period. The Income Tax

Officer, while completing the assessment, determinated the deduction admissible to the assessee u/s 80E(1) of the Act. The Income Tax Officer

treated the item of Rs. 7,55,807 as profits attributable to the business of generation and distribution of electricity and allowed deduction at eight

per cent, thereon u/s 80E(1). The Income Tax Officer also computed the relief/deduction admissible to the assessee u/s 80E(1) at eight per cent.

On the amount of Rs. 8,02,126, that it to say, on the income before adjusting or setting off the unabsorbed depreciation and development rebate

carried forward from the earlier year. The Additional Commissioner of Income Tax examined the record and proceeded in exercise of his powers

u/s 263 of the Act and after giving an opportunity to the assessee-company to show cause, took the view that the manner of computing the

deduction admissible to the assessee u/s 80E(1) was erroneous and held that the deduction of eight per cent. on the item of profit of Rs. 7,55,807

arising u/s 41(2) had been wrongly allowed and that for the purpose of calculating the deduction of eight per cent. The items in respect of the

unabsorbed depreciation and development rebate should not have been excluded, and that if proper calculations as suggested by him were made,

the assessee was not entitled to any deduction. In the appeal, the Income Tax Tribunal, regarding the item of Rs. 7,55,807 held that the said item

of profits could not be treated in isolation of divorced from the profits and gains of the business of generation and distribution of electricity done by

the assessee-company and that the said item will have to be regarded as profits ""attributable to"" though not ""derived from"" the business of

generation and distribution of electricity and, as such, the said item was exigible to the deduction of eight per cent. u/s 80E(1) of the Act. At this

stage itself we may point out that section 80E(1) of the Act considered in the Supreme Court case as already pointed out is the present section 80-

I, with which we are concerned. The High Court (see Commissioner of Income Tax, Gujarat II Vs. Cambay Electric Supply Industrial Co. Ltd.,)

also took the same view. Ultimately, when the matter was carried to the Supreme Court while interpreting the words contained in section 80E(1)

as to the phrase ""profit and gains attributable to the business of generation or distribution of electricity"" the Supreme Court held as follows (at page

93) :

As regards the aspect emerging from the expression ''attributable to'' occurring in the phrase ''profits and gains attributable to the business of'' the

specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that

the Legislature has deliberately used the expression ''attributable to'' and not the expression ''derived from''. It cannot be disputed that the

expression ''attributable to'' is certainly wider in import than the expression ''derived from''. Had the expression ''derived from'' been used, it could

have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits

and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that

whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression

''derived from'', as, for instance, in section 80J. In our view, since the expression of wider import, namely, ''attributable to'', has been used, the

Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.

For the aforesaid reasons and particularly on the true construction of the provision itself, we are of the view that both the Tribunal and the High

Court were right in taking the view that the item of Rs. 7,55,807 was required to be taken into account while computing the deduction of eight per

cent. contemplated by section 80E(1) of the Act. The Revenue''s appeal, therefore, fails and is dismissed.

8. Thus, after the aforesaid decision of the Supreme Court interpreting the very same provisions, it is not at all permissible for the Revenue to

contend that the income to be eligible for deduction u/s 80-I of the Act must be one directly derived from the business of the assessee, i.e., the

priority industry. It could even be from another source as long as that other source is in one form or the other connected with the business of the

priority industry. We have in the beginning itself pointed out that the assessee-industry is a priority industry and it cannot run its industry without the

power supply by the Electricity Board and that power supply cannot be made without the deposit being made with the Electricity Board. No

doubt, on the deposit the Electricity Board gives interest and that interest is taken as an income from the priority industry. As such, it is not possible

to hold that the income drawn on the deposit made by the priority industry is totally unconnected with the business of the priority industry. As long

as the deposit is necessary for the purpose of running the priority industry, such deposit cannot be held to be unconnected with the business of the

priority industry. Consequently, the income by way of interest drawn on such deposit cannot also be held to be not attributable to or not connected

with the priority industry. Because also of the fact that it can very well be regarded as belonging or appropriate to the priority industry.

9. However, it is contended by learned counsel for the Revenue that the decision in Cambay Electric Supply Industrial Co. Ltd. Vs. The

Commissioner of Income Tax, Gujarat-II, Ahmedabad, has been considered by a Division Bench of this court in Commissioner of Income Tax,

Tamil Nadu-V Vs. Universal Radiators P. Ltd., . It is held therein that the view taken by a Division Bench of this Court in ADDITIONAL

COMMISSIONER OF Income Tax, MADRAS-I Vs. VELLORE ELECTRIC CORPORATION LTD., is unexceptionable. Therefore, the

decision of the Supreme Court has been understood by a Division Bench of this Court that the profits and gains must arise from the specific

activities or business of priority industry and in the instant case, it cannot be said, according to learned counsel for the Revenue, that the income

derived from the deposit made with the Electricity Board is a profit or gain directly arising from the activity or business of the priority industry. As

such it is submitted that in the instant case also, it must be held that the income derived on the deposits by way of interest does not qualify itself for

the purpose of deduction u/s 80-I of the Act. In this regard, it is relevant to notice that, firstly, the decision in ADDITIONAL COMMISSIONER

OF Income Tax, MADRAS-I Vs. VELLORE ELECTRIC CORPORATION LTD., was rendered without reference to the decision of the

Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, . Secondly, the

Division Bench of this Court in Commissioner of Income Tax, Tamil Nadu-V Vs. Universal Radiators P. Ltd., , doubted the very proposition laid

down in ADDITIONAL COMMISSIONER OF Income Tax, MADRAS-I Vs. VELLORE ELECTRIC CORPORATION LTD., . The relevant

portion of the judgment in Commissioner of Income Tax, Tamil Nadu-V Vs. Universal Radiators P. Ltd., is as follows (at page 539) :

During the course of the argument there was some debate as to whether this particular passage would have validity after the judgment of the

Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, . In the context of

the pronouncement of the Supreme Court, the view taken by this court that the profits and gains must arise from the specific activities or business

of generation of electricity may have to be reconsidered. As ''attributable to'' is wider than ''derived from'', the relief is not confined only to the

profits of the priority industry strictly so called. It would have a wider ambit. However, the conclusion arrived at in that case is unexceptionable

because the character of the interest is different from the character of the income attributable to the priority industry. The result is that in so far as

the interest income was concerned, the Tribunal acted erroneously in granting the relief. The questions are answered accordingly. There will be no

order as to costs.

10. In addition to this in Commissioner of Income Tax, Tamil Nadu-V Vs. Universal Radiators P. Ltd., , it was also held after referring to the

decision in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, :

It is clear from the passage given above that the term ''attributable to'' is wider than the term ''derived from''. We have thus to find out whether the

profit is ascribable to the running of the priority industry. There is nothing in the provision which requires that the assessee alone should run the

priority industry. It may be that on account of business exigencies the assessee, instead of directly running the factory, may lease it to another and

purchase the end product. So long as the end product is manufactured in the factory, the manner in which the business is carried on is not really

material. The assessee may run the industry himself or may have it run by another. He may appoint a manager, for instance, and run the business.

He may lease it out. So long as the factory manufactures the products coming within the list of articles and things in the Sixth Schedule, the

assessee would be eligible for the relief u/s 80-I of the Act, as the profits derived from the factory either by lease or otherwise would be

attributable to the priority industry. The assessee must have something to do with the factory and the income earned must have nexus with the

priority industry. If these attributes are satisfied, then the assessee would be eligible for the concession u/s 80-I of the Act.

11. As far as the decision in Commissioner of Income Tax Vs. Cochin Refineries Ltd., is concerned it related to a case where the interest was

received from bank deposits and investments as well as the income derived by the hire of machines and cars and certain other miscellaneous

receipts. It was not a case where, such bank deposits, were for the purpose of running the priority industry required to be made. After referring to

the decision of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad,

, it was observed thus (at page 352) :

The decision of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II,

Ahmedabad, , does not, in our view, support the contention of the assessee to the contrary. The amounts received as interest as we see them, are

only receipts from ''other sources'' and not ''profits and gains'' attributable to the business of the assessee as a priority industry. Accordingly, we

are of the view that the tribunal was in error in holding to the contrary.

12. Thus, the income concerned in Commissioner of Income Tax Vs. Cochin Refineries Ltd., was an income from other sources which was not

attributable to the priority industry. Therefore, the decision in that case turned upon the facts of that case. At any rate, it may be pointed out that in

that decision also, the decision in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, was

not understood in a different manner than the one we have understood as stated above. We may also refer to another Division Bench decision of

this Court in English Electric Co. of India Ltd. Vs. Commissioner of Income Tax, . In this case, the company claimed relief at eight per cent. on Rs.

60,43,669, while the Income Tax Officer allowed a deduction of eight per cent. only on Rs. 50,02,346. The items held impermissible for the

purpose of deduction at eight per cent., were (1) profit on sale of assets Rs. 1,09,492 ; and (2) interest on deposits Rs. 92,550. This court held

that the profit on sale of assets amounting to Rs. 1,09,492. This court held that the profit on sale of assets amounting to Rs. 1,09,492 and interest

received by the assessee excluding interest received on bank deposits were entitled to be included for computing the deduction u/s 80-I of the

Income Tax Act, 1961, on the basis of the decision of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of

Income Tax, Gujarat-II, Ahmedabad, . Therefore, we are of the view that the income derived by way of interest on the deposit made by the

assessee with the Electricity Board for the purpose of supply of electricity without which the priority industry of the assessee in question could not

have been run, was an income connected with the business and production of the priority industry and as such it cannot be said that it was totally

unconnected with the business income ineligible for inclusion in the income for deduction u/s 80-I of the Act. The Income Tax Appellate Tribunal

was right in holding that the interest received on the deposit kept with the Electricity Board should not be deducted from the gross total income

while computing the relief admissible u/s 80-I of the Income Tax Act, 1961. The question is answered in the affirmative and against the Revenue.

There will be no order as to costs.