(1982) 04 BOM CK 0005

Bombay High Court

Case No: Income-tax Reference No. 154 of 1973

Commissioner of Income Tax, Bombay City-I		APPELLANT
	Vs	
Industrial Perfumes Ltd.		RESPONDENT

Date of Decision: April 21, 1982

Acts Referred:

- Income Tax Act, 1922 - Section 15C
- Income Tax Act, 1961 - Section 154

Citation: (1982) 28 CTR 199 : (1982) 138 ITR 644 : (1982) 10 TAXMAN 194

Hon'ble Judges: Sujata V. Manohar, J; M. Jagannatha Rao, J

Bench: Division Bench

Judgement

Smt. Sujata V. Manohar, J.

The assessee is M/s. Industrial Perfumes Ltd., Bombay. For the assessment year year 1961-62, the ITO computed the capital employed in the new industrial undertaking of the assessee-company for the purpose of granting partial exemption from tax under s. 15C of the Indian I.T. Act, 1922, at Rs. 13,33,902. It included a sum of Rs. 1,39,113 being the average profit of the assessee-company for the previous year relevant to the assessment year 1961-62. The calculation of the capital employed in the new undertaking was made in accordance with the provisions of r. 3(6) of the Indian Income Tax (Computation of Capital of Industrial Undertakings) Rules, 1949.

2. On January 21, 1963, the ITO rectified the computation of the capital employed in the new undertaking of the assessee by holding that profits or losses during a given period would be automatically reflected in the assets of the business. Hence, there was no reason for adding separately the average amount of profit to the capital so calculated. He, accordingly, deleted the sum of Rs. 1,39,113 from the calculation of the capital and computed it at Rs. 11,29,789.

3. The order of the ITO passed under s. 154 was upheld by the AAC. The Tribunal, however, held that the question whether the average profits or losses have to be added or deducted for computing the capital employed under s. 15C was a question on which two views were possible. The view expressed by the assessee was not absurd on the face of it. It would not, therefore, be possible to say that there was a mistake apparent firm the record which could be rectified by the ITO in the exercise of his jurisdiction under s. 154 of the I.T. Act. The Tribunal accordingly cancelled the order passed by the ITO under s. 154. In coming to this conclusion, the Tribunal followed its decision in I.T.As. Nos. 6051 and 6052 of 1965-66, in the case of Tata Engineering & Locomotive Co. Ltd. v. ITO. The decision of the Tribunal in Tata Engineering & Locomotive Company''s case has been upheld by our High Court in Commissioner of Income Tax, Bombay City I Vs. Tata Engineering and Locomotive Co. Ltd., , CIT v. Tata Engg. and Locomotive Co. Ltd. In that case, an identical question arose relating to the computation of the capital employed in a new industrial undertaking under the provisions of s. 15C of the Indian I.T. Act, 1922, and r. 3, sub-r. (6) of the Indian I.T. (Computation of Capital of Industrial Undertakings) Rules, 1949. The ITO, though he initially accepted the computation as made by the assessee, had subsequently passed an order under s. 154 of the I.T. Act, 1961, taking the view that the inclusion of the amount of the average profit in the capital employed was not justified. The High Court held that the question on a proper interpretation of r. 3(6) was undoubtedly a debatable question and the rule could be interpreted in different ways. It, therefore, held that in such a case, it could not be said that there was any mistake apparent on the record in the original order passed by the ITO. It, therefore, held that the rectification order passed under s. 154 was not justified. In view of this judgment, the Tribunal was clearly right in cancelling the order of rectification under s. 154 in the present case.

4. The question referred to us, viz., whether, on the facts and circumstances of the case, the order passed under s. 154 of the I.T. Act, 1961, for the assessment year 1962-63 is valid in law is answered in the negative that is, in favour of the assessee and against the Commissioner. The application to pay to the respondents the cost of this reference.