

(1996) 08 CAL CK 0013

Calcutta High Court

Case No: IT Ref. No. 187 of 1992 (IT Ref. No. 44 of 1993)

NAV BHARAT VANIJYA LTD.

APPELLANT

Vs

COMMISSIONER OF Income Tax.
(Commissioner of Income Tax v.
JUGGILAL KAMLAPAT UDYOG
LTD.).

RESPONDENT

Date of Decision: Aug. 27, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 197(3), 80K

Citation: (1998) 144 CTR 400

Hon'ble Judges: Visheshwar Nath Khare, C.J; Vindo Kumar Gupta, J

Bench: Full Bench

Judgement

VISHESHWAR NATH KHARE, C.J. :

These two references under S. 256(1) of the IT Act, 1961, one at the instance of Nav Bharat Vanijya Limited, the assessee, being IT Ref. No. 187 of 1992, and the other at the instance of the CIT, Central-I, Calcutta, being IT Ref. No. 44 of 1993, raise a common question of law and as such we propose to decide both the references together.

2. In Reference No. 187 of 1992, the assessment year involved is the asst. yr. 1980-81. For the said assessment year, the assessee claims Rs. 3,87,464 as deduction under S. 80K of the IT Act being 100 per cent. of the dividend received from Straw Products Ltd. The claim has been made by the assessee on the basis of the provisional certificate granted by the AO under S. 197(3) dt. 14th July, 1978, for the year ending 31st December, 1977. Since the assessment in the case of Straw Products Ltd. was completed, the AO ignored the provisional certificate granted by the AO and proceeded to assess the assessee in the light of the assessment order and worked out the allowable deduction under S. 80K r/w r. 20 on the basis of the

completed assessment.

On appeal by the assessee, the CIT(A) upheld the order of the AO.

On further appeal, the Tribunal upheld the order of the CIT(A). The Tribunal was of the view that since the Income Tax assessment of Straw Products Ltd. has been completed, it is right and proper that such figures as indicated in the assessment order should be adopted for giving benefit to the assessee under S. 80K of the Act. In such circumstances, the assessee sought a reference and the Tribunal referred the following question of law to this Court for answer :

"Whether, on the facts and in the circumstances of the case, and on a proper interpretation of law, the Tribunal was justified in holding that the AO was correct in taking into consideration the percentage of dividend issued out of exempt income as per final assessment in the case of Straw Products Ltd., ignoring the provisional certificate under S. 197(3) for the purpose of exemption under S. 80K ?"

3. In Ref. No. 44 of 1993 the assessment year involved is 1979-80. In the course of the assessment proceedings, the AO found that the assessee claimed 100 per cent. exemption under S. 80K on the dividend of Rs. 4,36,648, received from Straw Products Ltd. on the basis of a provisional certificate issued by the said officer under S. 197(3) dt. 14th July, 1978. On a scrutiny of the assessment records of Straw Products Ltd. it appeared that the company declared dividend of Rs. 60,47,632 on 29th June, 1978. The AO, therefore, viewed that the said dividend was declared out of the profit of the company earned during the period relevant to the asst. yr. 1978-79, the assessment for which was completed on 25th September, 1981. Therefore, the question of allowing relief under S. 80K with reference to the provisional certificate under S. 197(3) of the Act did not arise at that stage. The AO was of the view that whatever relief allowable under S. 80K of the Act was to be determined from the facts and figures of the completed assessment for the asst. yr. 1978-79 of the Straw Products Ltd. Since the assessment for the said assessment year of the Straw Products Ltd. was completed at Nil income, therefore, in the normal course, the provision for exemption under S. 80K was not applicable in the hands of the shareholders. However, the AO worked out the figure for allowance of relief under S. 80K with reference to r. 20 of the IT Rules, 1962, and allowed the exemption under S. 80K at the rate of 11.95 per cent. on the dividend received from Straw Products Ltd. for the asst. yr. 1979-80.

On appeal, the contention of the assessee that the allowance of deduction under S. 80K should be considered on the basis of the provisional certificate issued under S. 197(3) of the Act was rejected and the order of the AO was upheld.

On further appeal, the Tribunal allowed the assessee's appeal and, on such facts and circumstances, the Tribunal has referred the following question to this Court for answer :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to relief under S. 80K of the IT Act, 1961 ?"

4. We have heard counsel for the parties. The contention advanced on behalf of the Revenue is that technically it may be correct that the AO has to give deduction under S. 80K of the Act on the basis of the provisional certificate issued under S. 197(3) of the Act. But as the certificate suggests it is a provisional certificate subject to rectification, the AO is justified in ignoring the provisional certificate if the assessment of the company is completed and the assessee-shareholder has to be assessed in terms of the figure arrived at in such assessment of the company. On the other hand, the contention advanced on behalf of the assessee is that since the assessment of the shareholders involves cumbersome and time-consuming complicated procedure, such assessment of the shareholders has to be done in accordance with the scheme enshrined in the IT Act and the rules framed thereunder. In fact, the argument is that even if the assessment of the company which issued the dividend is completed, the AO has to assess the shareholders in terms of the provisional certificate till such provisional certificate is rectified after the assessment of the company which issued dividend is completed.

5. Sec. 80K of the Act provides for deduction in respect of dividends attributable to profits and gains from new industrial undertakings or ships or hotel business. Sec. 194 of the Act provides for deduction of Income Tax from the dividend issued by the company. Sub-s. (1) of S. 197 of the Act provides that the ITO after being satisfied that the total income of the recipient justifies the deduction of Income Tax at any lower rates or no deduction of the Income Tax, as the case may be, he on an application made by the assessee in that behalf shall give him such certificate as may be appropriate. Sub-s. (2) of S. 197 further provides that where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the ITO, deduct Income Tax at the rates specified in such certificate or deduct no tax, as the case may be.

Sub-s. (3) of S. 197 further provides where the principal officer of a company considers that, by reason of the provisions of S. 80K, the whole or any portion of the dividend referred to in s. 194 will be deductible in computing the total income of the recipient, he may, before paying the dividend to the shareholders or issuing any cheque or warrant in respect thereof, make an application to the ITO to determine the appropriate proportion of the dividend to be deducted under the provisions of S. 80K, and on such determination by the ITO, no tax shall be deducted on such proportionate amount.

6. Rule 20 framed under the Act provides for the computation of the portion of dividend attributable to profits and gains from new industrial undertakings or ships or hotel business. Rule 20 in fact provides the method and manner of computation of portion of dividend attributable to profits and gains for which deduction is

allowable under S. 80K of the Act. The provisions extracted above would show that the provisions of S. 194 and S. 197(3) of the Act operate in different fields. Sec. 194 is applicable where Income Tax is deductible from the amount of dividend given to the shareholders whereas S. 197(3) of the Act is applicable when no tax is proposed to be deducted at source. Thus, this provision is an exception to the general rule of deduction of tax provided in S. 194 of the IT Act. In cases of tax already paid or already deducted, a certificate in Form No. 19 prescribed by r. 31(4) of the IT Rules is required from the principal officer of the company. Whereas in a case where no tax is proposed to be deducted at source, the assessment of shareholders poses an enormous difficulty. In a company there may be hundreds and thousands of shareholders and not necessarily all the shareholders are located within the jurisdiction of the AO who had also the jurisdiction to assess the company and, further, uncertainty of time in finalisation of assessment of the company, the procedure as contemplated in S. 197(3) of the Act r/w r. 20 has been laid down providing for the method of assessment of the shareholders in terms of the provisional certificate. This has been done in the background of the scheme of the Act which is to delink the assessment of the company under S. 80J from the assessment of the shareholders under S. 80K of the Act. The assessment of the company under S. 80J and the assessment of the shareholders under S. 80K of the Act are dependent on each other by methodology provided in r. 20 of the rules framed under the Act. The certificate issued under S. 197(3) of the Act is the only valid document on the basis of which the claim for deduction under S. 80K is required to be made. So long as the certificate is not rectified, modified or changed, the said certificate holds the field and the AO is required to assess the shareholders in terms of the provision of the provisional certificate. The AO cannot change the ratio as determined in the certificate merely on the ground that the assessment of the company who happened to fall within his jurisdiction is completed. It may be noted that all the shareholders are not located within the jurisdiction of one AO. They may be in different parts of the country though after the assessment of the company is completed, the provisional certificate issued to the company is required to be rectified or modified and after such rectification, if some more benefit is given in one year it has to be compensated in some other years and if some lesser benefit is given in one year, some additional exemption is to be given in the following year.

It is because shareholder is taxed first and this is what r. 20 provides.

7. The provisions of the Act make it clear that a company is granted an exemption from paying tax on its profits under S. 80J of the Act. Since the final assessment is not completed, a provisional figure is given to the company in the shape of provisional certificate and the shareholder on the basis of such certificate is able to get the portion of dividend as declared by the certificate as free from tax in his own assessment. Subsequently, when the assessment of the company is completed, the exempted portion may be varied. If varied, the provisional certificate is required to be rectified and thereafter the shareholder is to be assessed in the subsequent year

in terms of the subsequent certificate. This has been done in order to avoid heavy workload in the IT Department. If such a procedure is not adopted, every time when the assessment of the company is varied, the assessment order of the shareholders is also required to be modified. So in order to avoid multiplicity of the proceedings, the provisions of r. 20 of the IT Rules have been engrafted so as to allow exemption given to the shareholders at a later date than enjoyed by the company. In the present case, the shareholders of the company happen to be located within the jurisdiction of a particular AO. This may be an exception and it may not be a case in general. No doubt if the assessment of the profit of the company has been worked out under S. 80J, the shareholders can be assessed in the subsequent year in terms of such assessment order but since there are thousands and lakhs of shareholders falling in the jurisdiction of different AOs, as such it is more practical to assess the shareholders on the basis of the provisional certificate and after the final figure is arrived at and the provisional certificate is varied in terms of the assessment order of the company, the shareholders are to be assessed in that light in the subsequent year.

In view of the above, we answer the question in the case of Ref. No. 187 of 1992, in the negative and in favour of the assessee and against the Revenue. Similarly, we answer the question in the case of Ref. No. 44 of 1993 in the affirmative and against the assessee.

8. Let our opinion along with our answers to the questions referred to this Court be transmitted to the Tribunal. In view of the facts and circumstances of the case, we order that there shall be no order as to costs.

VINDO KUMAR GUPTA, J. :

I agree.