

**(1993) 11 BOM CK 0059**

**Bombay High Court**

**Case No:** Income-tax Reference No. 279 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Myul Chemicals Pvt. Ltd.

RESPONDENT

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**Date of Decision:** Nov. 11, 1993

**Acts Referred:**

- Income Tax Act, 1961 - Section 80J

**Citation:** (1994) 122 CTR 277 : (1994) 206 ITR 399

**Hon'ble Judges:** D.R. Dhanuka, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** Dr. V. Balasubramaniam, for the Appellant;

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### **Judgement**

DR. B.P. Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to challenge the computation of deficiency u/s 80J for the earlier years of set-off ?"

2. The assessee is a private limited company and the assessment year is 1977-78. In the assessment for the immediately preceding assessment year, i.e., 1976-77, the Income Tax Officer had computed the deficiency u/s 80J at a particular figure against which the assessee did not file any appeal. In the course of assessment proceedings for the year 1977-78, the assessee sought set-off of the deficiency for the assessment year 1976-77, not on the basis of the figure determined by the Income Tax Officer in the assessment for the assessment year 1976-77, but on some other basis. It was contended by the assessee that it was entitled to get redetermination of the deficiency for the assessment year 1976-77 even in the course of proceedings for the subsequent assessment year, viz., 1977-78, as the actual set-off was to be made in that assessment year only. The Income Tax Officer

did not accept the contention of the assessee and allowed the assessee the set-off of deficiency on the basis of the figure determined in the proceedings for the assessment year 1976-77. The assessee appealed to the Commissioner of Income Tax (Appeals) who upheld the order of the Income Tax Officer. On further appeal to the Tribunal, the Tribunal decided in favour of the assessee. It was held that the assessee was entitled to challenge the computation of the deficiency for the assessment year 1976-77 in the appeal for the subsequent year in which the set-off was sought for. Hence this reference at the instance of the Revenue.

3. We have perused the order of the Tribunal. We find it difficult to uphold the finding of the Tribunal. The deficiency related to the assessment year 1976-77 and was computed by the Income Tax Officer in the order of assessment for that assessment year. The amount of deficiency shown therein was the only amount which could be carried forward to be set off in the subsequent years in accordance with the law. If the assessee was in any way aggrieved with the computation or determination of the deficiency u/s 80J, it could have taken appropriate remedy by way of appeal, revision, etc., against the order of assessment for the year 1976-77. Having not done so, the assessment for that year became final and the amount determined by the Income Tax Officer cannot be challenged by the assessee in the course of assessment or appeal for the subsequent year. In the subsequent year, the assessee is only entitled to get set-off of the amount as determined by the Income Tax Officer for the earlier assessment year.

4. In view of the aforementioned position, we are of the clear opinion that the Tribunal was in error in holding that the assessee is entitled to challenge the computation of deficiency u/s 80J of the Income Tax Act, 1961, for the earlier years in a subsequent assessment year when set-off is given. The question referred to us is, therefore, answered in the negative, i.e., in favour of the Revenue and against the assessee.

5. No order as to costs.