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Bombay High Court

Case No: Income-tax Reference No. 249 of 1976

Commissioner of Income Tax		APPELLANT
	Vs	
United Carbon India Ltd		RESPONDENT

Date of Decision: Dec. 12, 1988

Acts Referred:

- Income Tax Act, 1922 - Section 15C
- Income Tax Act, 1961 - Section 80J, 80J(3), 84
- Income Tax Rules, 1962 - Rule 19, 19A

Citation: (1989) 178 ITR 444

Hon'ble Judges: T.D. Sugla, J; S.P. Bharucha, J

Bench: Division Bench

Judgement

S.P. Bharucha, J.
Two questions arise in this reference at the instance of the Revenue. They read thus :

Assessment years 1967-68 and 1968-69 : "(1) Whether, on the facts and circumstances of the case, the assessee was entitled to depreciation and development rebate in respect of the interest capitalised of Rs. 7,82,379 for each of the assessment year under consideration ?"

2. Assessment year 1967-68 : "(2) Whether, on the facts and in the circumstances of the case, the assessee was entitled to compute the ''deficiency'' u/s 80J(3) as per rule 19A of the Income Tax Rules, 1962, instead of rule 19 ?"

3. Counsel are agreed that the first question must be answered in the affirmative and in favour of the assessee in the light of the Supreme Court judgment in Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, , and this court''s judgment in Commissioner of Income Tax Vs. Borosil Glass Works Ltd., . The question is so answered.

4. In regard to the second question, Mr. Bhatia, learned counsel for the Revenue, stated, to begin with, that it was covered by the judgment of this court in CIT v. Hindustan Polymers Ltd. (1986) 156 ITR 860 , and that the question should be answered in the affirmative and in favour of the assessee. Mr. Dastur, learned counsel for the assessee, fairly pointed out that the Commissioner of Income Tax, Bombay City-IV, Bombay Vs. Hindustan Polymers Ltd., , did not seem to be applicable. What he said applicable was the judgment in Kirloskar Asea Ltd. Vs. Commissioner of Income Tax, Karnataka, . Mr. Bhatia then stated that Kirloskar Asea Ltd.''s was the covering judgment. Since we found this was a judgment of the Karnataka High Court, we invited Mr. Bhatia to develop the argument. We told him that it could be said to us that a judgment covered a question if it was a judgment of the Supreme Court or of this court. Mr. Bhatia then stated that since this court had taken the view that, in tax matters, the judgment of any High Court would be treated as binding, Kirloskar Asea Ltd.''s judgment Kirloskar Asea Ltd. Vs. Commissioner of Income Tax, Karnataka, was binding.

5. No opportunity having been given to us by the Revenue to determine how the question should be answered, we had to turn to the assessee for assistance.

6. Mr. Dastur, learned counsel for the assessee, took us through the provisions of section 84 which was deleted with effect from April 1, 1968, and the provisions of section 80J then came into operation. He also took us through the provisions of rule 19, applicable for calculation u/s 84 and rule 19A applicable for calculation u/s 80J. We then went through Kirloskar Asea Ltd.''s judgment Kirloskar Asea Ltd. Vs. Commissioner of Income Tax, Karnataka, and respectfully agree therewith.

7. Accordingly, we answer the second question in the affirmative and in favour of the assessee. No order as to costs.