

(1994) 11 BOM CK 0069

Bombay High Court

Case No: Income-tax Reference No. 238 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Phoenix Scrap Processors

RESPONDENT

Date of Decision: Nov. 10, 1994

Acts Referred:

- Income Tax Act, 1961 - Section 80HH, 80J, 80J(1), 80J(4)

Citation: (1995) 123 CTR 329 : (1995) 217 ITR 341 : (1995) 211 ITR 341 : (1995) 79 TAXMAN 251

Hon'ble Judges: S.M. Jhunjhunwala, J; B.P. Saraf, J

Bench: Division Bench

Advocate: Dr. V. Balasubramaniam, for the Appellant; B.V. Jhaveri, for the Respondent

Judgement

DR. B.P. Saraf, J.

The following question of law has been referred by the Income Tax Appellate Tribunal to this court u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to deduction u/s 80J of the Income Tax Act, 1961, in respect of profits derived from labour charges from Messrs. Nathani Steel Pvt. Ltd. for the business of processing of scrap materials in the assessment year 1977-78?"

The assessee is a registered firm. It used to carry on the business of processing scrap material. During the previous year relevant to the assessment year 1977-78, by an agreement in writing, the assessee agreed to allow one Nathani Steel Pvt. Ltd. to get its own raw material processed in the factory of the assessee by its own labour. The assessee was to be paid the remuneration specified therein which was termed "labour charges". The undisputed factual position is that no other work was done in the factory of the assessee. The factory was used exclusively by Messrs. Nathani Steel Pvt. Ltd. The workers were also engaged by the said company and the

work was done under the direct supervision and control of the officers of the said company. The raw material consumed in the manufacturing process also belonged to the said company. During the relevant accounting year, the only work carried out in the factory was the processing of the scrap material of Messrs. Nathani Steel Pvt. Ltd. for which the assessee received a sum of Rs. 48,071. The said amount was described as "labour charges".

2. In its assessment for the assessment year 1977-78, the assessee claimed deduction u/s 80J in respect of the above amount claiming it to be profits and gains of the newly established industrial undertaking. The Income Tax Officer rejected the claim of the assessee on the ground that section 80J was not attracted to the case of the assessee. The assessee appealed to the Commissioner of Income Tax (Appeals) who accepted the claim of the assessee and held that section 80J was applicable as processing and manufacturing work was done in the factory of the petitioner wherein more than ten persons were employed. The Commissioner (Appeals) also observed that it was immaterial whether the workers were paid and employed by the assessee or the company whose scrap material was processed therein.

3. Against the order of the Commissioner (Appeals), the Revenue appealed to the Tribunal. The Tribunal affirmed the order of the Commissioner of Income Tax (Appeals) and confirmed the allowance of deduction u/s 80J holding that section 80J(4)(iv) did not require that the workers should be employed by the assessee itself. According to the Tribunal, it would be sufficient compliance with section 80J(4)(iv) if ten or more workers were employed, no matter who employed them.

4. Counsel for the Revenue submits that the Tribunal committed a manifest error of law not only in interpreting section 80J(4)(iv) but also in interpreting the same out of context. According to learned counsel, section 80J(4)(iv) has to be read along with section 80J(1) and if so read, the assessee will not be entitled to any deduction u/s 80J.

5. Counsel for the assessee, on the other hand, submits that the assessee is entitled to deduction u/s 80J of the Act inasmuch as the industrial undertaking owned by him was used and ten or more workers were employed in the manufacturing process carried on therein. According to learned counsel, it is immaterial as to who employs the workers or who carries on the manufacturing activity. It is enough for the purpose of section 80J if the manufacturing activity is carried on in the industrial undertaking concerned by the assessee or by somebody.

6. We have carefully considered the rival submissions. Section 80J of the Act provides for allowance of a deduction in respect of profits and gains from a newly established industrial undertaking where the total gross income of the assessee includes any profits and gains derived from an industrial undertaking to which this section applies. Sub-section (4) lays down some conditions which must be fulfilled by the industrial undertaking for the applicability of section 80J. Clause (iv) thereof provides

that in a case where an industrial undertaking manufactures or produces articles, it should employ ten or more workers in the manufacturing process carried on with the aid of power or twenty or more workers in the manufacturing process carried on without the aid of power. Section 80J, so far as relevant, at the material time stood as under :

"80J. Deduction in respect of profits and gains from. newly established industrial undertakings or ships or hotel business in certain cases. - (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking. . . . to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains (reduced by the deduction, if any, admissible to the assessee u/s 80HH) of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent. per annum on the capital employed in the industrial undertaking. . . ., computed in the prescribed manner in respect of the previous year relevant to the assessment year. . . .

(4) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-

(iii) it manufactures or produces articles,. . .

(iv) in a case where the industrial undertaking manufactures or produces articles, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power."

7. The basic question in all cases, therefore, will be whether the assessee falls within the provisions of sub-section (1) of section 80J of the Act or not. For this purpose, it must be established that the gross total income of the assessee includes any profits and gains derived from an industrial undertaking which fulfils the conditions set-out in sub-section (4). The assessee will thus be not entitled to deduction under this section unless its gross total income includes "profits and gains derived from such industrial undertaking". In a case where the industrial undertaking is not operated or run by the assessee but is let out to somebody else and some income is derived from letting out the undertaking; the income so derived cannot ordinarily be held to be income derived from the industrial undertaking within the meaning of section 80J of the Act. For the purpose of ascertaining whether the income was derived from the industrial undertaking or not, one has to look at the real nature of the activities carried on by the assessee. If the assessee does not itself run the industrial undertaking but allows it to be run by somebody else and gets some income on that count, it would be difficult to term such income as income derived from such undertaking.

8. In the instant case, though in the agreement the amount paid to the assessee by the company, which was allowed the user of factory and the premises for the

purpose of processing of its scrap material into finished products through its own workmen and employees is termed "labour charges", in reality, it is payment made for the user of the factory building and the premises. Such payment cannot be held to be "profits and gains derived from an industrial undertaking" in the hands of the assessee. The assessee would, therefore, not be entitled to deduction u/s 80J of the Act.

9. In the premises, the question referred to us is answered in the negative, that is, in favour of the Revenue and against the assessee.

10. Under the facts and circumstances of the case, there shall be no order as to costs.