

**(1994) 11 BOM CK 0072****Bombay High Court****Case No:** Income-tax Reference No. 417 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Echjay Industries Pvt. Ltd.

RESPONDENT

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**Date of Decision:** Nov. 24, 1994**Acts Referred:**

- Companies (Profits) Surtax Act, 1964 - Rule 1
- Income Tax Act, 1961 - Section 10, 80G, 80G(1), 80G(2), 80G(3)

**Citation:** (1995) 128 CTR 276 : (1995) 214 ITR 27**Hon'ble Judges:** S.M. Jhunjhunwala, J; B.P. Saraf, J**Bench:** Division Bench**Advocate:** Dr. V. Balasubramaniam, for the Appellant; K.B. Bhujle, for the Respondent

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**Judgement**

Dr. B.P. Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, read with section 18 of the Companies (Profits) Surtax Act made at the instance of the Commissioner of Surtax, the Income Tax Appellate Tribunal, Bombay, Bench "D", Bombay ("the Tribunal"), has referred the following two questions of law to us for opinion :

"1. Whether, on the facts and in the circumstances of the case, the capital base has to be proportionately reduced in relation to the deduction allowed under Chapter VIA of the Income Tax Act, 1961, in computing the capital under rule 4 of the Second Schedule to the Companies (Profits) Surtax Act, 1964 ?

2. Whether, on the facts and in the circumstances of the case, the total amount of donation should be taken as the basis for computing the profits under rule (1) of the First Schedule to the Companies (Profits) Surtax Act, 1964, or whether only the maximum amount allowable u/s 80G of the Income Tax Act, 1961, should be taken as the basis ?"

2. The first question is covered by the decision of the Supreme Court in the case of [Second Income Tax Officer and Another Vs. Stumpp Schuele and Somappa \(P\) Ltd.,](#) . Following the same, it is answered in the affirmative and in favour of the assessee.

3. To decide the controversy in the second question, we may refer to clause (vii) of rule 1 of the First Schedule to the Companies (Profits) Surtax Act, 1964, which read as follows :

"Rules for computing the chargeable profits. - In computing the chargeable profits of a previous year, the total income computed for that year under the Income Tax Act shall be adjusted as follows :

1. Income, profits and gains and other sums falling within the following clauses shall be excluded from such total income, namely : -

(vii) an amount equal to fifty per cent. of the sum with reference to which a deduction is allowable to the company under the provisions of section 80G of the Income Tax Act. . . ."

4. u/s 80G of the Income Tax Act, 1961, deduction is allowable to an assessee with reference to the aggregate of the sums specified in sub-section (2) thereof subject, however, to the restrictions and conditions specified in sub-sections (3) and (4). Sub-section (4) puts certain restrictions on the aggregate of the amounts falling under clauses (iv), (v), (vi) and (vii) of clause (a) and in clause (b) of sub-section (2) thereof. It is the amount specified in sub-section (2) read with sub-sections (3) and (4) with reference to which deduction is allowed to an assessee under sub-section (1) at the rates specified therein. Section 80G, at the material time, read as under :

80G. (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section. -

(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum specified in sub-clause (vii) of clause (a) thereof, an amount equal to the whole of such sum plus fifty per cent. of the balance of such aggregate; and

(ii) in any other case, an amount equal to fifty per cent. of the aggregate of the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely : -

(a) any sums paid by the assessee in the previous year as donations to -

(i) the National Defence Fund set up by the Central Government; or

(ii) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 12th day of August, 1964; or

(iii) the Prime Minister's Drought Relief Fund; or

(iia) the Prime Minister's National Relief Fund; or

(iv) any other fund or any institution to which this section applies; or

(v) the Government or any local authority, to be utilised for any charitable purpose other than the purpose of promoting family planning; or

(vi) any authority referred to in clause (20A) of section 10; or

(vii) the Government or any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purpose of promoting family planning;

(b) any sums paid by the assessee in the previous year as donations for the renovation or repair of any such temple, mosque, gurudwara, church or other place as is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.

(3) No deduction shall be allowed under sub-section (1) if the aggregate of the sums referred to in sub-section (2) is less than two hundred and fifty rupees.

(4) The deduction under sub-section (1) shall not be allowed in respect of such paid of the aggregate of the sums referred to in sub-clauses (iv), (v), (vi) and (vii) of clause (a) and in clause (b) of sub-section (2) as exceeds ten per cent. of the gross total income (as reduced by any portion thereof on which Income Tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter, or two hundred thousand rupees, whichever is less :

Provided that where such aggregate includes any donations referred to in clause (b) of sub-section (2) and such aggregate exceeds the limit of two hundred thousand rupees specified in this sub-section, then such limit shall be raised to cover that portion of the donations aforesaid which is equal to the difference between such aggregate and the said limit, so, however, that the limit so raised shall not exceed ten per cent. of the assessee's gross total income as reduced as aforesaid, or five hundred thousand rupees, whichever is less....."

5. On a conjoint reading of clause (vii) of rule 1 of the First Schedule to the Companies (Profits) Surtax Act and section 80G of the Income Tax Act, it is abundantly clear that the amount specified in clause (vii) of rule 1 is an amount equal to fifty per cent. of the sum "with reference to which a deduction is allowable to the company under the provisions of section 80G of the Income Tax Act." There can be no controversy about the fact that deduction is allowable under sub-section (1) of section 80G of the Act, of a sum equal to fifty per cent. of the sums specified in sub-section (2) which again is subject to the restrictions contained in sub-section (4) thereof.

6. Learned counsel for the Revenue stated before us that it is not clear from the statement of the case whether all the donations comprised in the amount in question were covered by the various clauses of section 80G(2) of the Income Tax Act or not. We are not called upon in this reference to examine any such controversy. We however, make it clear that for the purpose of computing the sums to be excluded in computation of income under rule 1 of the First Schedule, only such donations which are eligible for deduction u/s 80G(1) may be considered subject to the ceiling specified in sub-section (2) read with sub-section (4) of section 80G of the Act.

7. In view of the foregoing discussion, we are of the clear opinion that the amount eligible for deduction under clause (vii) of rule 1 of the First Schedule to the Companies (Profits) Surtax Act, 1964, has to be computed not with reference to the total amount of donations but with reference to the sums specified in sub-section (2) of section 80G of the Act subject to the conditions and restrictions contained in sub-sections (3) and (4) thereof. We answer question No. 2 accordingly in favour of the Revenue.

8. Under the facts and circumstances of the case, we make no order as to costs.