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(1992) 11 BOM CK 0111

Bombay High Court

Case No: IT Ref. No. 534 of 1977

Commissioner of Income Tax	APPELLANT
Vs	
Precision Fastners Ltd.	RESPONDENT

Date of Decision: Nov. 12, 1992

Acts Referred:
Income Tax Act, 1961 â€" Section 28, 80J, 80J(3), 84

Citation: (1992) 11 BOM CK 0111

Hon'ble Judges: U.T. Shah, J; Sujata V. Manohar, J

Bench: Division Bench

Advocate: Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Smt. Sujata Manohar, J.
The following two questions are referred to us under s. 256(1) of the IT Act, 1961, at the instance of Revenue

while question No. 3. is referred to us at the instant of the assessee. Now, these questions are at page No. 6 and 7 as under :

1. ""Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the ITO should apply r. 19A and not r.

19 of the IT Rules for the purpose of determining the quantum of deficiency as is referred so in s. 80J(3) of the IT Act, which was the deficiency in

the profits of the assessee company"s industrial undertaking with regard to asst. yr. 1967-68, in relation to which s. 84 of the said Act was

applicable ?

2. ""Whether, on the facts and in the circumstances of the case and on a proper interpretation of the relevant IT Rules, the Tribunal was justified in

holding that only debts and borrowed money which were due for repayment on the first day of the computation period and not those not due for

repayment by that date, should be deducted by the ITO in computing the capital employed in the assessee''s industrial undertaking ?

3. ""Whether, the Tribunal erred in rejecting the assessee''s claim that for computing the capital employed for the purpose of s. 80J of the IT Act,

1961, only the assets should be taken into account without deducting any liabilities ?

2. As far as the question No. 1 is concerned, it is agreed by the sides that in view of the decision in the case of Commissioner of Income Tax Vs.

United Carbon India Ltd, , the question must be answered in the affirmative and in favour of the assessee.

3. Question No. 2 pertains to asst. yr. 1968-69 when r. 19A was applicable. In view of the Judgment of the Division Bench of this Court to which

one of us was party (Smt. Sujata Manohar and B. N. Srikrishna, JJ.), dt. 21st December, 1992 in IT Ref. No. 164/77, CIT vs. Boots Pure Drug

Company (I) Ltd. Bombay, which has considered the decision of the Supreme Court in Lohia Machines Ltd. and Another Vs. Union of India

(UOI) and Others, , as also the decision in the case of Commissioner of Income Tax, Bombay City-VI Vs. National Organic Chemical Industries

Ltd., and Commissioner of Income Tax Vs. Gynamij India Ltd., , the question No. 2 is answered as follows.

4. As far as the debts due, other than borrowed moneys are concerned, the question is answered in the affirmative and in favour of the assessee.

As far as borrowed moneys are concerned, all borrowed moneys irrespective of whether they were due for repayment on the first day of the

computation period, or not are required to be deducted, save and except for such borrowed moneys as fallen with in r. 19A(3)(b). The Tribunal

should compute the deductions accordingly.

5. As far as the question No. 3 is concerned, it is agreed that in view of the decision in the case of Lohia Machines Ltd. vs. Union of India (supra),

the question must be answered in the negative and in favour of the Revenue. The questions are answered accordingly.

6. No order as to costs.