SUPREME COURT OF INDIA

Ashok Leyland Limited,Madras

Vs.

Commissioner of Income Tax,Madras

(B.P. Jeevan Reddy and K.S. Paripoornan JJ.)

19.12.1996

JUDGMENT

B.P. JEEVAN REDDY, J.

In these appeals preferred by the assessees against the decision of the Madras High Court, the words "attributable to" occurring in Section 80-E/80-I of the Income Tax Act fall for consideration. The following question was referred to the High Court under Section 256(1) of the Income Tax Act.

"Whether on the facts and in the circumstances of the case, it has been rightly held that the assessee would be entitled to relief under Section 80-E and 80-I of the Income-Tax Act, 1961 for the assessment years 1966-67 and 1967-68 respectively on the income earned by it, from import and sale of spare parts from abroad?"

The assessee is engaged in the business of manufacturing Ashok Leyland trucks and also spare parts of those vehicles. It was also importing the spare parts from abroad and selling the same to the persons who have purchased the trucks from it. As and when the manufacture of spare parts by the assessee increased, there was a corresponding reduction in the quantum of imports of spare parts. Some profit was earned by the assessee on the sale of vehicles. The volume of turnover and income relating to sale of spare parts is of course far smaller compared to the turnover and income arising from the sale of vehicles. The question is whether the assessee is entitled to relief under Section 80-E (for the assessment year 1966-67) and 80-I (for the assessment year 1967-68) on the income earned by it from import and sale of spare parts. The Income Tax Officer took the view that the import and sale of spare parts is not attributable to the industry carried on by the assessee and, therefore, the income arising therefrom does not qualify for the benefit of Sections 80-E/80-I. The Tribunal, however, held in favour of the assessee whereupon the aforesaid question was referred to the High Court at the instance of the Revenue. The High Court has disagreed with the view taken by the Tribunal and has answered the question in favour of the Revenue and against the assessee. It is brought to our notice by the learned counsel for the appellant-assessee that for subsequent assessment years 1968-69 and 1969-70, an identical reference was made under Section 256 and on this occasion the High Court has answered the very same question, between the very same parties, in favour of the assessee and against the Revenue following the decision of this Court in Cambay Electric Supply Industrial Company Limited v. The Commissioner of Income-tax, Gujarat- II, Ahmedabad (113 I.T.R. 84). The later decision of the High Court is reported in Commissioner of Income Tax, Tamil Nadu-III v. Ashok Leyland Limited (130 I.T.R. 900). The learned counsel for

the assessee commended the reasoning of the said decision for our acceptance. Sections 80-E and 80-I were couched in identical terms. They provided for certain deduction from the profits and gains of a company attributable to priority industry. Insofar as relevant Section 80-I(1) reads: "...(1) In the case of a company to which this section applies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed, in accordance with and subject to the provisions of this Section, a deduction from such profits and gains of an amount equal to eight per cent thereof in computing the total income of the company. .....".

The expression "priority industry" occurring in the said Section was defined in sub-section (7) of Section 80-B. It reads:

" `priority industry' means the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the (Sixth) Schedule or the business of any hotel where such business is carried on by an Indian company and the hotel is for the time being approved in this behalf by the Central Government;"

The industry being carried on by the assessee is admittedly a priority industry as defined in Section 80-B (7). The only question is whether the profits and gains arising from import and sale of spare parts can be said to be "attributable to..... priority industry" being carried on by the assessee. The Tribunal has found that the assessee commenced manufacturing Ashok Leyland trucks in collaboration with a foreign company Leyland from about 1966 onwards. There was a phased programme for the manufacture of necessary spare parts. It was found that some of the purchasers of the trucks from the assessee found it difficult during some years to get the requisite spare parts either because the spare parts manufactured by the assessee were not sufficient to meet the demand or because the assessee did not manufacture those particular spare parts. In the said circumstances and as a matter of Commercial expediency, the assessee imported such spare parts and sold them during the accounting years relevant to the assessment years concerned herein. It is on these facts that the question referred has to be answered. We are of the opinion that reading the relevant portion of sub-section (1) of Section 80-I alongwith the definition of "priority industry" in Section 80-B(7), it must be held that the profits and gains arising from import and sale of spare parts was attributable to the industry (priority industry) carried on by the assessee. On the facts found by the Tribunal it is difficult to disassociate the said activity from the main activity carried on by the assessee viz., manufacture and sale of the Ashok Leylands trucks. It was intimately connected with the priority industry set up and being run by the assessee. The decision of this Court in Cambay Electric Supply clearly supports the assessee's case. In that case the question was whether the balancing charge arising as a result of the sale of old machinery and buildings and worked out in accordance with Section 41(2) had to be taken in the account and included in the profits and gains of the business carried on by the assessee. The following observations are relevant for our purposes: "8. As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the Legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from" been used it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner

suggested by the learned Solicitor General it has used the expression "derived from", as for instance in Section 80-J. In our view, since the expression of wider import, namely, "attributable to" has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."
In our opinion the said observations conclude the issue, as has been rightly held in the later decision of the Madras High Court.

Accordingly these appeals are allowed, the judgment under appeal is set aside and the question referred to the High Court is answered in the affirmative i.e., in favour of the assessee and against the Revenue. No costs.