

Premier Cable Co.

Vs

Commissioner of Income Tax

Civil Appeal Nos. 393-94 of 1992

(S.P. Barucha, R.C. Lahoti JJ)

23.03.1999

JUDGMENT

S.P. Barucha, J.

1. The basic questions with which we are concerned in these appeals, relating to the Assessment Year 1976-77, read thus :-

"(i) Whether on the facts and in the circumstances of the case, was the Tribunal right in holding that the Commissioner of Income Tax had jurisdiction u/s 263 of the Income Tax Act to revise the order of the Income Tax Officer passed after obtaining directions from the inspecting Assistant Commissioner under sec. 144B of the Act ?

(ii) Whether on the facts and in the circumstances of the case, was the Appellate Tribunal right in law in holding that assessment year 1975-76 is the 8th assessment year immediately succeeding the assessment year 1967-68 for the purpose of carry forward and set off of unabsorbed development rebate under section 32(2)(ii) of the Act and shall not the assessment year 1976-77 ?

(iii) Whether on the facts and in the circumstances of the case the Appellate Tribunal right in holding that for the purpose of carry forward of 80J relief the assessment year 1975-76 is the 4th assessment year immediately succeeding the assessment year 1971-72 and not the assessment year 1976-77 ?

(iv) Whether the Tribunal was right in holding that as far as the assessee was concerned it cannot be said that the assessment year 1975-76 did not exist or was not there ?

(v) Whether the Tribunal was right in holding that the applicant is not entitled to deduction of the provision for gratuity ?"

2. Learned counsel for the assessee has not pressed any argument in relation to questions 1 and 5 and, therefore, we do not deal therewith.

3. For the purposes of questions 2, 3 and 4, Sections 33 and 80J need to be quoted :

"33. *Development rebate* :- (1)(a) In respect of a new ship or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there

shall, *in accordance with and subject to the provisions of this section and of section 34, be allowed a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed* or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a sum by way of development rebate as specified in clause (b).

XX XX XX XX

2) In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be (the total income for this purpose being computed without making any allowance under sub-section (1) or sub-section (1A) of this section or sub-section (1) of Section 33A or any deduction under Chapter VI-A or section 280-O is nil or is less than the full amount of the development rebate calculated at the rate applicable thereto under sub-section (1) or sub-section (1A), as the case may be, -

i) the sum to be allowed by way of development rebate for that assessment year under sub-section (1) or sub-section (1A) shall be only such amount as is sufficient to reduce the said total income to nil; and

ii) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to nil, and *the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however, that no portion of the development rebate shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be.*"

"80J. *Deduction in respect of profits and gains from newly establishment 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 on a ship or the business of a hotel, 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 under section 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 or ship or business of the hotel, as the case may be computed in the prescribed manner in respect of the previous year relevant to the assessment year* (the amount calculated as aforesaid being hereinafter, in this section, referred to as the relevant amount of capital during the previous year).

Provided that in relation to the profits and gains derived by an assessee, being a

company from an industrial undertaking which begins to manufacture or produce articles or to operate its cold storage plant or plants after the 31st day of March, 1976, or from a ship which is first brought into use after that date, or from the business of a hotel which starts functioning after that date, the provisions of this sub-section shall have effect as if for the words 'six per cent', the words 'seven and a half per cent', had been substituted.

*2) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning (such assessment year being hereafter, in this section, referred to as the initial assessment year) and each of the four assessment years immediately succeeding the initial assessment year."*

(Emphasis supplied)

4. The assessee had installed machinery in the previous year relevant to the Assessment Year 1967-68. Under the terms of Section 33 it was entitled to carry forward the unabsorbed development rebate in this behalf for a period of "8 years immediately succeeding the assessment year relevant to the previous year". Ordinarily, therefore, it was entitled to carry forward the unabsorbed development rebate upto the Assessment Year 1975-76. Similarly, for the purpose of the deduction under Section 80-J, the assessee was entitled to carry forward the unabsorbed deduction, which it had earned in the previous year relevant to the Assessment Year 1971-72, upto the Assessment Year 1975-76.

5. Now, the assessee had by its letter dated 21st April, 1975, requested that its accounting year be changed from the year ending 31st March to the year ending 31st September. The Income-Tax Officer informed the assessee that its request was granted "subject to the condition that the profits for the 18 months from 1.4.74 to 30.9.75 will be assessed in the Assessment Year 1976-77". An assessment for the Assessment Year 1976-77, the previous year whereof commenced on 1st April, 1974 and ended on 30th September, 1975, was made after the procedure under Section 144B of the Income Tax Act, 1961, had been followed. The order of assessment was reopened by the Commissioner of Income Tax under Section 263(1). The Commissioner took the view that the assessment order was erroneous and prejudicial to the interest of the Revenue inasmuch as, among other things, the assessee had been allowed to carry forward the unabsorbed development rebate under Section 33 beyond the period of 8 Assessment Years to the Assessment Year 1976-77 and the unabsorbed deduction under Section 80J beyond the period of 4 Assessment Years also to the Assessment Year 1976-77. The assessee appealed against the order of the Commissioner and the Income Tax Appellate Tribunal dismissed the appeal. Arising out of the order of the Tribunal, the foregoing questions were referred to the High Court for consideration. The High Court answered the questions against the assessee.

6. The argument on behalf of the assessee is that, by reason of the change in its accounting year as aforesaid, the assessee had no previous year relevant to the Assessment Year 1975-76 and that, therefore, it had no Assessment Year 1975-76. Accordingly, it was entitled to carry forward the aforesaid unabsorbed development rebate and deduction for 8 and 4 Assessment Years respectively to the Assessment Year 1976-77.

7. Reference was made by learned counsel for the appellant to the provisions of Section 2(9) which defines 'Assessment Year' to mean the period of 12 months commencing on the first day of April every year, to the provisions of Section 3 whereunder a 'Previous Year' is defined to be the financial year immediately preceding the Assessment Year; and to the provisions of Section 4 which deals with the charge of income tax and reads thus :

*"Charge of Income-tax.*

4(1) Where any Central Act enacts the income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of previous year of every person :

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

8. Learned counsel's argument was that under the provisions of Section 4, the charge for the levy of income tax was imposed on a person in respect to his previous year and that, therefore, if an assessee had no particular previous year, there was no Assessment Year which could be related to it. In the instant case, according to learned counsel, the assessee had no previous year relevant to the Assessment Year 1975-76. It had therefore, no such Assessment Year and, accordingly, in calculating the period of 8 and 4 Assessment Years respectively for the carry-forward of the aforesaid unabsorbed development rebate and deduction the Assessment Year 1975-76 was not to be considered and these periods had to extend to the Assessment Year 1976-77.

9. We find it difficult to agree. Section 2(9) defines the Assessment Year to be the period of 12 months commencing on the first day of April every year. It is a standard period of 12 months commencing on 1st April of every year. It does not depend upon one or other assessee and whether or not he had a previous year relevant to a particular Assessment Year. It is as invariable as the calendar year. The "assessment years" mentioned in Sections 33 and 80J must be read in this light. The unabsorbed development rebate under Section 33 and the unabsorbed deduction under Section 80J may be carried forward only for the 8 and 4 Assessment Years respectively that follow the Assessment Year relevant to the previous year in which the said development rebate and deduction were first earned. The fact that, in the instant case, the assessee did not have a previous year relevant to a particular Assessment Year the fell within these spans of 8 and 4 Assessment Years respectively is of no consequence to the calculation of the periods for which the aforesaid development rebate and deduction can be carried forward.

10. We are in agreement with the High Court in the view that it took in answering questions 2, 3 and 4 against the assessee. The appeals are dismissed. No order as to costs.