

# ANDHRA PRADESH HIGH COURT

Commissioner of Income-Tax

Vs.

Indian Detonators Ltd

C.R. No. 131 of 1977

(Punnayya and Jeevan Reddy, JJ.)

22.12.1982

## JUDGMENT

### **Jeevan Reddy, J.**

1. This referred case raises question as to the construction of r. 4 in Sch. II to the C.(P.) S.T. Act, 1964.

Rule 4 reads as follows :

"Where a part of the income, profits and gains of a company is not includible in its total income as computed under the Income-tax Act, its capital shall be the sum ascertained in accordance with rules 1, 2 and 3, diminished by an amount which bears to that sum the same proportion as the amount of the aforesaid income, profits and gains bears to the total amount of its income, profits and gains."

2. The question is whether the words "a part of the income, profits and gains of a company is not includible in its total income as computed under the Income-tax Act" refer to and take in the deduction granted under s. 89J of the I.T. Act.

3. The C. (P.) S.T. Act. 1964, is enacted to impose a special tax on the profits of certain companies. "Chargeable profits" is defined in clause (5) of s. 2 to mean the total income of an assessee computed under the I.T. Act, 1961, for any previous year or years, as the case may be, and adjusted in accordance with the provisions of Sch. I. "Statutory deduction" is defined in clause (8) of s. 2 to mean amount equal to ten per cent. of the capital of the company as computed in accordance with the provisions of the second schedule, or an amount of two hundred thousand rupees, whichever is greater. A look at the First Schedule to the Act shows that several types of income, profits and gains which are taxable under the I.T. Act. For example any

amount realised by sale of building, machinery or plant which has earned depreciation, is taxable under and in accordance with sub-s. (2) of s. 41, but, for the purpose of the Surtax Act, such an income is excluded. The Second Schedule to the Surtax Act similarly contains rules for computing the capital of a company for the purpose of surtax. Rule 1 provides that subject to the provisions contained in the Schedule, the capital of a company shall be the aggregate of the amounts, as on the first day of the previous year relevant to the assessment year, of its paid-up share capital, reserves and other items mentioned therein, Rule 4 provides that where a part of the income, profits and gains of a company is not includible in the total income of the assessee as computed under the I.T. Act, its capital shall be the sum ascertained in accordance with the rules in the Second Schedule diminished by an amount which bears to that sum the same proportion as the amount of the aforesaid income, profits and gains bears to the total amount of its income, profits and gains, The idea behind r. 4 obviously is that where a particular item of income, profits and gains of a company is not includible in the total income as computed under the I.T. Act. The capital asset which produces that income, profits or gains, should equally be excluded from out of the capital while determining the capital of the assessee for the purpose of this Act. Now the question is whether the words "a part of the income as computed under the Income-tax Act" refer only to those incomes which are referred to in s. 10 of the Act or whether they also refer to deductions mentioned in Chap. VI-A of the I.T. Act. To determine this question, it is necessary to look to the said provisions in the I.T. Act.

4. Chapter III in the I.T. Act is headed, "Incomes which do not form part of total income". Section 10 is the first section in this chapter and which carries the sub-heading "Incomes not included in the total income". Section 10 says that "in computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included" and then goes on to specify the several heads of income which ought not to be included in computing the total income of an assessee. Chapter VI-A of the I.T. Act carries the heading "Deductions to be made in computing the total computing the total income of an assessee. Chapter VI-A of the I.T. Act carries the heading "Deductions to be made in computing the total income" The word to be noted is "deductions". The several sections therein carry the word "deduction" in their sub-titles. Coming to s. 80J, which is the particular provision concerned herein, it carries the sub-heading "Deduction in respect of profits and gains from newly established industrial undertaking or ships or hotel business in certain cases". The section provides that where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business that where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel to which the section applies, there shall, in accordance with an subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains 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 the business of a hotel, as the case may be.

5. It is significant to note that while s. 10 specifies incomes which are not to be included in the total income, the several provisions in Chap. VI-A are called "deductions". In other words, these provisions provide for deductions to be made out of the total income. If we look at the language of rule 4 in Sch. II to the Surtax Act, keeping the above distinction in mind, it would be clear beyond any shadow of doubt that the words "not includible" in r. 4 clearly refer only to s. 10. But not to "deductions" mentioned in Chap. VI-A. This is the view taken unanimously by several High Courts in this country, namely, *Stumpp, Schedule & Somappa P. Ltd. v. Second ITO*<sup>1</sup>, affirmed in *Second ITO v. Stumpp, Schedule & Somappa P. Ltd.*<sup>2</sup>, *Addl. CIT v. Bimetal Bearings Ltd.*<sup>3</sup>, *Commissioner of Surtax v.*

<sup>1</sup>(1976) 102 ITR 320 (Karn)

<sup>3</sup>(1977) 110 ITR 131 (Mad)

<sup>2</sup>(1977) 106 ITR 399 (Karn)

*Ballarpur Industries Ltd.*<sup>4</sup>, *CIT v. Schrader Scovill Duncan Ltd.*<sup>5</sup>, *CIT v. Premier Cotton Spinning Mills Ltd.*<sup>6</sup>, and *CIT v. Alembic Chemical Works Co. Ltd.*<sup>7</sup>, It would be sufficient, if we refer to the last of the cases. It has been held by the Gujarat High Court that (pp, 585, 586) :

"The provisions of the Surtax Act are in pari materia with the provisions of the I.T. Act, and, therefore, when r. 4 speaks of income which is not includible, the words 'not includible', must be read in the light of the provisions of the I.T. Act. The dictionary meaning indicates that 'not includible' means not capable of being included. It is true that in computing total income for the purposes of the I.T. Act, certain items are specifically taken out and are excluded but it is because of the special provisions relating to such deductions, rebates, reliefs, etc., that they are taken out, not because of the inherent nature of the income. If by the very nature of the income read in the light of the provisions of the I.T. Act, a part of the income, profits or gains is not capable of being included in the total income of the assessee, it is only the portion of the income which can be processed under r. 4 for determining the proportionate capital attributable to that part of the income, profits or gains which is not includible in the total income for the purposes of the I.T. Act.... Therefore, ultimately so far as r. 4 is concerned, it is only the income of the assessee filing within s. 10 and that part of the income which is outside the sweep of ss. 4 and 5 of the I.T. Act, that can be said to be income not includible in the total income as computed under the provisions of the I.T. Act. Bearing these two categories, one dealing with the sweep of ss. 4 and 5 of the I.T. Act, and the other covered by the different clauses of s. 10, all other income is payable of being included in the total income as computed under the provisions of the I.T. Act, but by reason of one or the other section of the I.T. Act, though capable of being included, in fact it is excluded, that is, not included, in the total income as computed under the provisions of the I.T. Act."

6. On the above reasoning the learned judge held that any income falling under Chap. VI-A of the I.T. Act is includible, though allowed as deduction and, therefore, amounts allowed as deductions under Chap. VI-A are not covered by the words "part of the income, profits and gains of a company is not includible in its total income as computed under the Income-tax Act" in r. 4 of Sch. II to the Surtax Act, 1964. We respectfully agree with the said view. For the above

reasons we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Department. The Tribunal was right in holding that there should be no proportionate abatement or reduction in the capital base in respect of the amounts given as relief under s. 80J of the I.T. Act.

<sup>4</sup>(1979) 116 ITR 528 (Bom)

<sup>6</sup>(1982) 128 ITR 694 (Ker)

<sup>5</sup>(1980) 126 ITR 736 (Del)

<sup>7</sup>(1982) 133 ITR 578 (Guj)