

# **MYSORE HIGH COURT**

Commissioner of Income Tax

Vs

Balasoar Tea and Rubber Co., Ltd

ITRC. 8 of 1970

(Govinda Bhat and Jagannatha Shetty, JJ.)

31.05.1972

## **ORDER**

### **Jagannatha Shetty, J.**

1. This is a reference under Section 256(l) of the Income Tax Act, 1951, here inafter called 'the Act. It relates to the assessment year 1966-67. The assessee is a limited company which owns tea, coffee and rubber plantations from which it derived income during the relevant accounting year. It also carries on the business of manufacture of plastic bags and polythene pipes used for spraying etc. The assessee derived an income of Rs.1,18,214 from the tea plantation industry which is a 'priority industry" entitled to the benefits of Section 80E, as it stood during the relevant assessment year. The assessee incurred a loss of R.48,105 from its business of manufacture of plastic bags and polythene pipes, Section 80E of the Act as it stood at the relevant period allowed to an assessee a deduction of 8 per cent of the profits and gains attributable to the priority industry. Accordingly, the assessee claimed a deduction of Rs.9,457 computing the deduction at 8 percent on the aforesaid profit of Rs.1,18,214. According to the Income Tax Officer, the loss of Rs.48,105 has to be deducted from the profit of Rs.1,18,214 and that the deduction at 8 per cent has to be computed on the balance sum of Rs.70,109 only which works at Rs.5,608-00. Appeal preferred by the assessee to the Appellate Assistant Commissioner was unsuccessful. Then a second appeal was taken before the Income tax Appellate Tribunal, Bangalore Bench in ITA. No.15079 of 1967- 68. The Tribunal agreed with the contention of the Assessee and allowed the deduction of Rs.9,457 under Section 80E of the Act. Then the Department obtained a reference to this Court of the following question of law:

" Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that for the purpose of allowing a deduction under Section 80E of the Income Tax Act, 1961, the words 'such profits' occurring in that section mean 'the profits and gains attributable to an activity as specified in the 5th

Schedule' before deducting any loss incurred in any business activity? "

Sri S. R. Rajasekhara Murthy learned Counsel for the Department conceded, and in our opinion, rightly that the decision of the Bombay High Court in *Commr. of I. T., Bombay City v. National Electric Industries Ltd'*, on which strong reliance was placed by the Department before the Tribunal, has no relevance to the facts of the present case. The learned Counsel on both sides submitted that there is no decision of any Court on the question before us. The answer to the question rests on the interpretation of sub-sec. (1) of Section 80E which was introduced by the Finance Act of 1966. The said section has now been replaced by Section 80-I. Sub-section(1) of Section 80E reads thus:

" 80E. Deduction in respect of profits and gains from specified industries in the case of certain companies.-(1) In the case of a company to which this section applies, where the total income (as computed in accordance with the other provisions of this Act) includes any profits and gains attributable to 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 Fifth Schedule, there shall be allowed a deduction from such profits and gains of an amount equal to eight per cent thereof, in computing the total income of the company."

(Underlining italics is ours) .

Briefly stated, the argument of Sri Rajasekhara Murthy was that the effect of this provision is that the deduction under Section 80E will be allowed from the profits from the specified priority industries as computed after allowing all the deductions admissible in computing the business income under Ss.30 to 43 of the Act, and also after giving effect to the relevant provisions for set off or carry forward of loss contained in Chapter VI of the Act. According to him, the first stage is the computation of the 'total income' in accordance with the provisions of the Act. 'Total income' has been defined in Section 2(45). Section 4 which is the charging section levies tax on the 'total income' of the previous year of every person. Section 5 states the scope of total income. Section 14 classifies all income under six heads. 'Profits and gains of business or profession' come under one head. Section 28 states what Fill income falls under the head 'profits and gains of business or profession'. S.29 states that the income referred to in Section 28 shall be computed in accordance with the provisions contained in Ss.30 to 43A. Ss.70 to 72 provide for set off of loss or carry forward of loss. Section 80E is found in Chapter VIA under the head 'other deductions' to be made in computing the 'total income'. Sri Rajasekhara Murthy invited our attention to paragraph 27 of Circular No. 4-P (LXXVI-61) of 1966 dt.21-7-1966 issued by the Central Board of Direct Taxes. It reads:

" 27. It will be observed that the deduction under Section 80E referred to above is allowable in computing the profits and gains from the specified priority industries included in the total income 'as computed in accordance with the other provisions' of the

Income tax Act. The effect of this provision is that the deduction under Section 80E will be allowed from the profits from the specified priority industries, as computed after allowing all the deductions admissible in computing the business income under Ss.30 to 43 of the Income Tax Act, and also after giving effect to the relevant provisions for set off or carry forward of loss, contained in Chapter VI of that Act. The business

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income of a company may consist of profits from the specified profits from the specified priority industries as well as profits from other business activities, and the company may also have a loss in the same previous year under a head of income other than 'profits and gains of business or profession' or a business loss carried forward from earlier years and eligible for set off against the business profits of that previous year. In such case, a question may arise as to whether the loss of the relevant previous year under a head other than 'profits and gains of business or profession', or the business loss carried forward from earlier years should be set off on a proportionate basis, both, against the profits from the specified priority industries and the profits from other business activities. If the loss is set off on a proportionate basis, the quantum of the deduction available in respect of the former profits under Section 80E of the Income Tax Act may be reduced, to the disadvantage of the company. The Income Tax Act does not however, provide for the set off of loss on a proportionate basis against income from different types of categories of business activities. It will, therefore, be permissible for the company to claim that the loss should be set off, in the first instance, against its business profits other than profits from the specified priority industries and as to the balance, if any, against its profits from the specified priority industries."

We are unable to agree with the views of Central Board of Direct Taxes that the effect of the provision is that the deduction under 80E will be allowed from the profits from the specified priority industries, as computed after allowing all the deductions admissible in computing the business income under Ss.30 to 43 of the Act. If that was the intention of the Legislature sub-section (1) of 80E would have stated that the deduction shall be made after allowing all the deduction' admissible in computing the' business income under Ss.30 to 43 of the Act. On the contrary the sub-section states that the deduction shall be allowed from the profits and gains of the priority industry of an amount equal to 8 per cent thereof in computing the total income of the company. The first prerequisite condition in order to entitle the assessee to the benefits of Section 80E is that the total income as computed in accordance with, the provisions of the Act should include any profits and gains attributable to the business of a priority industry. The quantum of deduction is eight per cent of the profits and gains attributable to the business of a priority industry and that deduction has to be made in the process of computing the total income of the company. If the contentions of Sri Rajasekhara a Murthy' were to be accepted, in the illustration given in paragraph 27 of the Circular referred to above, it would be open to the assessing authority to deduct the whole of the loss from the profits and gains of the business from the specified priority industry and the assessee cannot insist that the loss should be set off in the first instance against

the business profits other than the profits from specified priority industries. The language of the provision is clear and the view taken tribunal, in our opinion, is right. Accordingly, we answer the question referred in the affirmative and against the Department. The assessee is entitled to the costs of this reference. Advocate's fee Rs. 250.

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