

# KERALA HIGH COURT

Commissioner of Income Tax

Vs

Cochin Refineries Limited

(G. Sivarajan, J.)

24.01.1996

## JUDGEMENT

### **G. Sivarajan, J.**

( 1. ) IN this income-tax referred case, three questions have been referred to this court for its opinion : " 1. Whether, on the facts and in the circumstances of the case, on an appeal filed by the Revenue before the Tribunal agitating an issue and without there being an appeal or cross-appeal by the assessee, the Tribunal is right and with jurisdiction in considering and pronouncing on an altogether different issue regarding the jurisdiction of the INcome-tax Officer in passing the order dated January 18, 1975, and the assessee's right to apply for rectification of that order ? 2. Whether, on the facts and in the circumstances of the case, the dollar loan could be treated as forming part of the capital employed by the assessee for the purpose of relief under Section 80J of the INcome-tax Act, 1961 ? 3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the INcome-tax Officer was not within his jurisdiction while he modified the computation of the capital in the order dated January 18, 1975, for giving effect to the order of the Appellate Assistant Commissioner for this assessment year ?"

( 2. ) THE assessee is a public limited company. THE assessment year concerned is 1968-69. THE original assessment of the assessee for the assessment year 1968-69 was completed on January 24, 1972. In the said assessment, the assessing authority did not consider the claim of the assessee for relief under Section 80J of the Act, as according to him, the assessment had resulted in a loss. But, it was specifically observed in the assessment order that the relief will be computed at the appropriate time in which Section 80J is to be actually allowed. Aggrieved by the assessment order, the assessee took up the matter in appeal before the Commissioner of Income-tax (Appeals), Ernakulam. While the appeal was pending before the Commissioner of Income-tax (Appeals), the assessing authority reopened the assessment of the assessee for the year 1968-69 under Section 147(b) of the Act for various reasons. THE assessing authority made the reassessment order on March 11, 1974. In the said reassessment order, the assessing authority considered the claim of the assessee for relief under Section 80J of the Act and the said relief was

computed in a separate statement referred to as the last page of the annexure and described as item 3 thereof. THE computation made by the assessing authority in the said order is follows : As there is no profit after adjustment of development rebate for this year, the unabsorbed relief under Section 80J will be carried forward to the next year." Subsequently, the Commissioner of Income-tax (Appeals) by order dated March 18, 1974, directed the assessing authority to consider the claim of the assessee for relief under Section 80J of the Act on the ground that the assessing authority has not given any reason for not computing the relief under Section 80J in his order. But, since the assessing authority in the reassessment proceedings had already computed the relief available to the assessee under Section 80J of the Act, the said direction in reality has become superfluous. The assessee filed appeals against the reassessment order dated March 11, 1974, before the Commissioner of Income-tax (Appeals), Ernakulam, against disallowances made in the assessment order. The question regarding the relief under Section 80J was not the subject-matter of the appeal.

( 3. ) THE Commissioner of Income-tax (Appeals) disposed of the appeal against the reassessment by his order dated December 30, 1974. Pursuant to the appellate orders dated March 18, 1974, and December 30, 1974, the assessing authority passed an order dated January 18, 1975, giving effect to the directions contained in the said appellate orders. In the consequential order dated January 18, 1975, passed by the assessing authority, besides giving effect to the directions contained in the appellate orders, he also recomputed the relief available to the assessee under Section 80J of the Act. In that process, he reduced the net cost of the fixed assets from the original figure of Rs. 11,86,52,528. In addition, he also reduced the total value of the assets by a sum of Rs. 4,50,00,000 being a short-term dollar loan, in addition to other deductions from the capital of the company. Being aggrieved by the recomputation of the relief under Section 80J of the Act made by the assessing authority in the order dated January 18, 1975, the assessee filed an application under Section 154 of the Act, inter alia, contending that the question regarding grant of relief under Section 80J has already been considered by the assessing authority in the reassessment order dated March 11, 1974, granting relief and that the assessing authority in such circumstance, has no jurisdiction suo motu to recompute the same and the said recomputation is beyond the jurisdiction of the assessing authority. The assessing authority by his order dated May 13, 1977, vide annexure-D produced along with the supplementary statement of case, held that there is no change in the Section 80J relief carried forward, namely, Rs. 1,20,39,699. Absolutely, no discussion is seen in the said order regarding the contentions raised by the assessee in the rectification application. ;