

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Boehringer Knoll Ltd

(Bharucha, C.J. Desai, J.)

30.09.1983

JUDGMENT

Desai, J.

1. Two questions stand referred to us :

"(1) Where, on the facts and in the circumstances of the case, the assessee was entitled to relief under section 80J of the Income-tax Act, 1961, on the basis of inclusion in the amount of capital employed, as understood within the meaning of rule 19A(2) of the Income-tax Rules, 1962, the amount of Rs. 6,98,057 representing payments made for certain capital assets ?

(2) Whether, on the facts and in the circumstances of the case, the assessee was entitled to relief under section 80J of the Income-tax Act, 1961, on the basis of exclusion of interest of Rs. 20,310 not due on the first day of the accounting year from the liabilities for computing the capital employed as understood within the meaning of rule 19A(3) of the Income-tax Rules, 1962 ?"

2. As far as question No. 1 is concerned, counsel are agreed that as far as this court is concerned, the answer to be given is concluded by its decision in *CIT v. Alcock Ashdown & Co. Ltd¹*, and that the said question may, therefore be answered in favour of the assessee without further elaboration, factual or legal. Accordingly, we answer the said question in the affirmative and in favour of the assessee.

3. As far as question No. 2 is concerned, a few facts may be set out. We are concerned in this reference with computation of capital under s. 80J for the assessment year 1968-69. An amount of Rs. 20,310 described as "interest on loan" was one of the items of liabilities and, therefore, deducted by the ITO from the value of the total assets. Aggrieved by this exclusion, the assessee carried the matter before the AAC. It was contended that although interest was accruing against

the assessee, the liability had not become due on the first day of the computation period and if that be so, it could not be excluded. This contention was accepted by the AAC, who reversed the ITO's decision in this behalf.

4. When the matter was carried to the Tribunal, the Tribunal concurred with the AAC, observing that it was common ground that although the interest was shown on the liabilities side of the balance-sheet, it had not fallen due on the first day. The Tribunal referred to sub-r. (3) of rule 19A of the I.T. Rules, 1962, and held that the AAC was justified in directing the ITO to exclude the same from the deductible liability.

5. In this connection, Mr. Dastur referred us to the observations in *CIT v. National Organic Chemical Industries Ltd.*², In the said judgment, it has been held that only debts that had become due for payment on the relevant date should be excluded while computing the capital for the purpose of s. 80J of the I.T. Act, 1961. In the said decision, a distinction was drawn between "debts owed" and "debts due". Since it is the admitted position that this amount of interest was not a debt due on the relevant date, the ITO was in error in considering it as a part of the liability which was required to be excluded from the capital computation. In our opinion, the AAC and the Tribunal were right in the view they took.

6. Accordingly, question No. 2 is also answered in the affirmative and in favour of the assessee. Parties, however, to bear their own costs of the reference.

Cases Referred

1[1979] 119 ITR 164 (Bom)

2[1978] 115 ITR 56 (Bom)