

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Advani Oerlikon Private Limited

(Bharucha, C.J. Kania, J.)

11.09.1985

JUDGMENT

Kania, J.

1. Only one question has been referred to us in this reference under section 256(1) of the Income-tax Act, 1961 (referred to hereinafter as "the said Act"), and that question is as follows :

"Whether, on the facts and in the circumstances of the case, the amount of Rs. 6,73,500 being 'unallocated capital expenditure' was includible in the computation of the capital employed for the purpose of working out the relief admissible to the assessee company under section 80J of the Income-tax Act, 1961, read with rule 19A of the Income-tax Rules, 1962, for the assessment year 1969-70 ?"

2. The relevant facts are that the assessee is a company incorporated under the Companies Act, 1956. The year of assessment, which is relevant for our purposes, is 1969-70 for which the relevant previous year is the one ended on March 31, 1969. During that year, the assessee was manufacturing and selling welding electrodes. In connection with the setting up of the Madras unit of the assessee, the assessee in working out the capital employed for setting up that unit at Rs. 43,15,085 had included an amount of Rs. 6,73,500 described as "unallocated capital expenditure". It was an admitted position before the Tribunal that the said amount was included in the value of the plant and machinery which had been purchased by the assessee and was in the process of installation, but by the end of the year under consideration had not been allocated to plant and machinery and building. The Income-tax Officer concerned refused to include the said amount for the purposes of computing the capital employed for calculation of the deductions permissible under section 80J of the said Act on the ground that the said amount did not represent fixed assets used in the business of the assessee as on March 31, 1968. The assessee preferred an appeal to the Appellate Assistant Commissioner. Relying upon the decision of the Calcutta High Court in *CIT v. Standard Vacuum Refining Co. of India Limited*¹ and the decision

of this court in *Habib Hussein v. CIT*² the Appellate Assistant Commissioner took the view that the capital employed by the assessee in the setting up of its Madras unit included all assets fixed and current and, as such, the amounts spent by the assessee during the construction period of the said project formed part of the capital employed. He further held that the said amount of Rs. 6,73,500 represented expenditure incurred on the capital assets which had to be allocated partly against building and partly against plant and machinery in the ratio of the total investment and the mere fact that the said ratio was not fixed during the year under consideration would not alter the character of the expenditure. On an appeal preferred by the Revenue to the Tribunal, it was argued by the departmental representative that under rule 19A of the Income-tax Rules, 1962, for the said amount to be included in the capital computation, it was necessary that it should have represented fixed assets used in the assessee's business as on March 31, 1968. Following its earlier decision, the Tribunal took the view that the said sum of Rs. 6,73,500 which had not been allocated during the year against building and machinery and plant was includible for the purposes of calculation of capital for computing the deduction under section 80J of the said Act. It is to test the correctness of this decision that the aforesaid question has been referred to us.

3. We find that there is a decision of a Division Bench of this court which largely concludes the question raised before us, namely, the decision in *CIT v. Alcock Ashdown & Co. Ltd*³. In that case, in the relevant accounting year, the assessee company started a new industrial undertaking and also started business operations therein. There was a profit of rupees five lakhs odd earned by the assessee. A considerable part of the plant and machinery had been installed, but some of the plant which had been paid for remained to be installed. Similarly, some of the workshops were still under construction. The value of the plant and machinery not installed was Rs. 11,95,167 and the cost of the workshop under construction was over rupees five lakhs. The assessee claimed that it was entitled to relief under section 84 (now section 80J) of the said Act by reference to the capital employed in the new business undertaking inclusive of the aforesaid amounts. It was held by the Division Bench, following certain decisions, that the moment capital is utilised for the purpose of acquiring any assets for a business, such capital becomes employed in the business. Whether the asset itself is actually used in the business or not, so far as the capital is concerned, it continues to be employed in the business. The Division Bench concluded that the Tribunal was right and the assessee company was entitled to include the amount of Rs. 21,17,178 being the aggregate of the two amounts referred to by us earlier for determining the capital employed in its new industrial undertaking for the purpose of granting relief under section 84 of the said Act. In view of this decision, it appears to us that the assessee is entitled to the benefit of the inclusion of the said amount of Rs. 6,73,000 in the computation of the capital employed for the purposes of section 80J of the said Act.

4. Mr. Jetly, learned counsel for the Commissioner, advanced only one short argument, and that

was that as the said amount had not been allocated between plant and machinery and building, to that extent it was difficult to work out the depreciated written down value and hence the amount should not be included in the computation of the capital employed for the purposes of section 80J of the said Act.

5. In our view, there is no substance whatever in the argument of the learned counsel for the Commissioner. Section 80J of the said Act deals with the deductions allowable in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases. It is not necessary to set out the provisions of that section. In our view, it would be enough to state that under sub-section (1) of section 80J, a deduction is allowed at a certain percentage of the capital employed in the industrial undertaking in question, namely, the newly established industrial undertaking. Sub-rule (1) of rule 19A of the Income-tax Rules, 1962, as it stood at the relevant time, provided that the capital employed in an industrial undertaking shall be computed in accordance with sub-rules (2) to (4). The relevant provision in this regard, to which Mr. Jetly drew our attention, was clause (i) of sub-rule (2). Sub-rule (2) provides that the aggregate of the amounts representing the values of the assets as on the first day of the computation period of the undertaking shall be ascertained in the manner laid down in the five clauses of that sub-rule. Clause (i) provides that in the case of assets entitled to depreciation, it would be their written down value. On reading these provisions together, it is clear that in computing the value of an asset for the purpose of calculation of the capital employed in an industrial undertaking, it would be the written down value of the asset which would be taken into account in the case of assets entitled to depreciation. As we have pointed out, the submission of Mr. Jetly is that, in the case of an unallocated amount like this, it would be difficult to calculate the value of the asset or assets to which the said amount might be allocated and hence that amount should not be included in the computation of the capital employed. This argument has to be rejected at once. In the first place, the consideration that it might be difficult to calculate the written down value of an asset could be no ground for not including its value in the computation of the capital, if such value is entitled to be included in the computation of the capital under the relevant provisions of the said rule. In the second place, we fail to see as to what difficulty there would be in calculating the written down value in a case like this. The facts found show that the plant and machinery for which the entire amount of Rs. 43,15,085 had been earmarked by the assessee was in the process of installation during the relevant period and had not been used. Hence, there was no question of claiming any depreciation or depreciation being granted on assets forming part of that plant and machinery and the question of difficulty in ascertaining the written down value does not arise.

6. In our view, the Tribunal was right in coming to the conclusion to which it has arrived.

7. In the result, the question referred to us is answered in the affirmative and in favour of the assessee. The Revenue to pay to the assessee the costs of this reference.

Cases Referred.

1[1966] 61 ITR 799

2[1963] 48 ITR 859

3[1979] 119 ITR 164