

AHMEDABAD MANUFACTURING AND
CALICO PRINTING CO. LTD. AND ANR.

v.

A.V. JOSHI

MARCH 1, 1996

[J.S. VERMA, N.P. SINGH AND B.N. KIRPAL. JJ.]

Income Tax Act, 1961.

Ss. 80J, 80K, 197(3)—New Industrial Undertakings—Deduction in respect of dividends—Losses and depreciation of earlier year carried forward—Company declared dividend during subsequent year in which no tax was payable by it—Entitlement of company to certificate under S.80K—Held, even if new industrial undertaking had no profit and gains assessable in relevant assessment year—Company would be entitled to benefit under S.80K.

The assessee-Company established new industrial undertakings, namely, a Polyester Fibre Plant in the accounting year 1975-76 and a Sulzer Plant in the subsequent accounting year 1976-77. The assessee applied for and was issued certificates under s.80K of the Income Tax Act, 1961 in respect of the assessment years 1975-76 and 1977-78. During the accounting year relevant to the assessment year 1978-79, the assessee declared a total dividend of Rs. 1,11,86,231 to its share holders, and made an application under s. 197(3) read with s.80K for a certificate under s.80K claiming relief to an extent of Rs. 1,00,35,434 for Polyester Fibre Plant and Rs. 24,07,536 for Sulzer Plant. It was stated that total income of the assessee for the said assessment year was nil and there were carried forward losses, depreciation etc. in respect of the preceding year; and that the profits of Polyester Fibre Plant were Rs. 4,66,73,159 and in respect of Sulzer Plant there was no profit. The Revenue held that only Rs. 77,42,921 referable to 6% of the capital employed in the Polyester Fibre Plant, was entitled to exemption under s.80K, and issued a certificate accordingly. However, relief in respect of the Sulzer Plant was refused on the ground that it showed a business loss.

The assessee filed a writ petition before the High Court contending that the Revenue should be directed to issue a certificate for Rs. 95,50,889 in respect of the Polyester Fibre Plant and the Sulzer Plant. The High Court

though observed that *Coromandel Fertilizer's case** did support the contention of the assessee, but relying upon two other decisions of this Court** declined to grant the relief. Aggrieved, the assessee filed the appeal.

Allowing the appeal, this Court

HELD : 1.1. The High Court erred in dismissing the writ petition filed by the assessee. It is not disputed that there was an entitlement to the assessee under s.80J of the Income Tax Act, 1961, and as per the decision in *Coromandel Fertilizer's case** the assessee would be entitled to the benefit of s.80K. [155-C; 154-G; 155-A]

1.2. Even if the new industrial undertaking had no profits or gains assessable to income tax during the relevant assessment year, the assessee was entitled to the relief under Section 80K. The High Court was not justified in not following the decision in *Coromandel Fertilizer's case**, and it should not have applied the ratio of the other decisions** which related to the interpretation of different sections of the Act. [154-C, G; 155-A-B]

**Union of India v. Coromandel Fertilizer Ltd., 102 I.T.R. 533, explained and held applicable.*

Rajapalavam Mills Ltd. v. Commissioner of Income Tax Madras, 115 I.T.R. 777 and Commissioner of Income Tax v. Patiala Flour Mills Co. P. Ltd., 115 I.T.R. 640, held in applicable.

2. The Revenue is directed to issue a certificate to the appellant in accordance with law, showing therein the portion of exempted dividend in respect of Polyester Fibre Plant and Sulzer Plant. [155-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1044 of 1979.

From the Judgment and Order dated 29-1-79 of the Gujarat High Court in S.C.A. No. 2401 of 1978.

E.R. Kumar and Ms. Bina Madhavan, for P.H. Parekh for the appellants.

B.S. Ahuja for S.N. Terdol, for the Respondents.

The Judgment of the Court was delivered by

KIRPAL, J. In this appeal the only question which arises for consideration is with regard to the scope and interpretation of Section 80K of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

The appellant is a public limited company and is engaged in manufacturing of textiles, chemicals etc. It established a new industrial undertaking by installing a Polyester Fibre Plant at Baroda in the accounting year of 1974-75, relevant to the assessment year 1975-76. In the subsequent accounting year 1975-76, the appellant also installed a new Sulzer plant at Ahmedabad.

Both the aforesaid plants fulfilled all the conditions for the grant of necessary relief under Section 80 J of the Act. Accordingly, in the course assessment of the company for the assessment years commencing from the assessment year 1975-76, the relief to which the appellant was entitled under Section 80J of the Act, was worked out and, to the extent that the profit in respect of the said plant was not sufficient to absorb the said relief, the amounts of the said relief were carried forward to subsequent years as provided by Section 80 J(3) of the Act. For the said assessment years commencing from 1975-76, the company applied for requisite certificate under Section 80K read with Section 197 (3) of the Act for the purpose of enabling its shareholders to claim exemption out of the dividends received by them because the company was entitled to relief under Section 80J for those years. The Income Tax Officer, in respect of the assessment years 1975-76 and 1977-78, issued a certificate under Section 80K of the Act and in this certificate, for the purpose of determining the exempted portion of the dividend out of the total dividend amount declared by the appellant company, the relief allowable to the appellant under Section 80J of the Act was taken as the total relief allowable under the said provision being 6% of the capital employed in the said new undertaking.

During the accounting year relevant to the assessment year 1978-79, the appellant company declared a total dividend of Rs. 1,11,86,231 to its shareholders. An application was made to the Income Tax Officer under Section 197(3) read with Section 80K of the Act requesting for certificate under the said Section 80K. According to the appellant, the relief claimed was Rs. 1,00,35,434 for Baroda Plant and Rs. 24,07,556 for Sulzer Plant. The respondent, thereupon called for certain information from the appellant with regard to the total income of the appellant for the assessment

year 1978-79 as well as the profits of the Polyester Fibre Plant and the Sulzer Plant for the accounting year relevant to the assessment years 1977-78 and 1978-79. The appellants company replied that the total income of the company for the assessment year 1978-79 was nil and there were carried forward losses, depreciation etc. in respect of the preceding years. It also stated that the profits of the Polyester Fibre Plant for the assessment year 1978-79 were Rs. 4,66,73,159. In respect of Sulzer plant it was pointed out that there was no profit.

The respondent worked out the relief allowable to the appellants in respect of the said plants at 6% of the capital employed at Rs. 77,42,921 in respect of the Polyester Fibre Plant and Rs. 18,07,968 in respect of the Sulzer Plant. On that basis the exempted percentage of the dividend according to the respondent worked out at Rs. 85.38% as against 100% which had been indicated by the appellants. The respondent further held that the appellants was not entitled to have the certificate on that footing of 85.38% because the working of the Sulzer Plant shows a business loss of Rs. 7,20,260 as computed under the Act and, therefore, there could not be any claim for exemption under Section 80K in respect of the said plant. It further observed that only Rs. 77,42,921 referable to 6% of the capital employed in the Polyester Fibre Plant, as computed by the respondent, was entitled to exemption under Section 80K out of the total dividends of Rs. 1,11,86,231. On that basis, the respondent issued a certificate under Section 80-K dated 24.8.1978 which was designated as a provisional certificate. On the appellants's company request for reconsideration being turned down, a writ petition was filed in the High Court of Gujarat, contending that the respondent should be directed to issue a certificate for Rs. 95,50,889 in respect of the Polyester Fibre Plant and the Sulzer Plant.

The High Court of Gujarat, by the impugned judgment dated 29.1.1979, came to the conclusion that in respect of the previous year relevant to the assessment year 1978-79 the Sulzer Plant, which was a new undertaking, had no assessable profits and gains and, therefore, the benefit under Section 80-K could not be granted in respect of the relevant amount of capital employed in that plant during that particular previous year. In arriving at the aforesaid conclusion the High Court observed that the decision of this Court in the case of *Union of India v. Coromandel Fertilizer Ltd.*, 102 I.T.R. 533 did support the contention of the appellants to the effect that the benefit under Section 80K would be available but the High Court

doubted the correctness of this judgment in view of the decisions of this Court in the cases of *Rajapalayam Mills Ltd. v. Commissioner of Income Tax Madras*, 115 I.T.R. 777 and *Commissioner of Income Tax v. Patiala Flour Mills Co. P. Ltd.*, 115 I.T.R. 640.

The decision of the this Court in Coromandel Fertilizer's case (supra) related to the interpretation of Section 80K of the Act. The material portion of the section was there shall be allowed in computing his total income a deduction from such income by way of dividends an amount equal to such part thereof as is attributable to profits and gains derived by the company from an industrial undertaking or ship or the business of a hotel in respect of which the company is entitled to deduction under Section 80J. It was held that even if the new industrial undertaking had no profits or gains assessable to the income tax during the assessment years in question the assessee was entitled to the relief under Section 80K. Emphasis was laid on the words "as is attributable to profits and gains derived by the company....." in respect of which the company is entitled to deduction under Section 80J and it was held that even if deduction under Section 80J was not actually allowed but the entitlement was there, then the provision of Section 80K would be attracted.

The High Court, by an involved reasoning, came to the conclusion that in the light of the interpretation placed on the scheme of Section 80J by the three Judges Bench in Patiala Flour Mills Co.'s case & Rajapalayam Mills' case (supra) which interpretation was not present when this Court decided Coromandel Fertilizer's case (supra), the provisions of Section 80K were not applicable when the profits and gains derived by the company from a new industrial undertaking when computed under the provisions of Income Tax Act are nil or show a loss.

In our opinion there is no justification for the High Court not to have followed the decision of this Court in Coromandel Fertilizer's case (supra). It is not in disputed that there was an entitlement to the appellant in the present case under Section 80J and this being so the decision in Coromandel Fertilizer's case (supra) was clearly applicable. Patiala Flour Mills case (supra) was concerned with Section 80J of the Act and Rajapalayam Mills' case (supra) was essentially concerned with Section 15(C) of the Act, 1922 and Section 84 of the Act, 1961. In neither of these two cases was any reference made to Coromandel Fertilizer's case (supra) for the simple

reason that it was not necessary. When the assessee is entitled to the benefit under Section 80K, on the plain reading of the said section as interpreted by this Court, there should have been no occasion for the High Court to have referred to or applied the ratio of the decisions of Patiala Flour Mills case (supra) and Rajapalayam Mills Case (supra) which related to the interpretation of different sections of the Act. The latter decisions are essential only for determining whether the company was entitled to the benefit under Section 80J or not. On this aspect, there is no dispute in the present case. The entitlement was there. Once this is not disputed, then automatically as per the decision in Coromandel Fertilizer's case (supra), the appellant would be entitled to the benefit of Section 80K and, therefore, the High Court was clearly in error in dismissing the writ petition.

For the aforesaid reasons, this appeal is allowed, the impugned judgment of the High Court is set aside and the respondent is directed to issue a certificate to the appellants, in accordance with law, showing therein the portion of exempted dividend in respect of Polyester Fibre Plant and Sulzer Plant. The appellants are also entitled to costs.

Appeal allowed.