

CONSOLIDATED PNEUMATIC TOOL CO. (INDIA) LTD. vs. COMMISSIONER OF INCOME TAX

HIGH COURT OF BOMBAY

Dr. B.P. Saraf & D.R. Dhanuka, JJ.

IT Ref. No. 422 of 1983

15th September, 1993

(1993) 61 CCH 0703 MumHC

(1994) 120 CTR 0022 : (1994) **209 ITR 0277** : (1995) 79 TAXMAN 0458

Legislation Referred to

Sections 80J, 154

Case pertains to

Asst. Year 1973-74

Decision in favour of:

Revenue

Rectification—Mistake apparent—Retrospective amendment of statute—Amendment of s. 80J and incorporation of r. 19A therein by Finance Act, 1980 with retrospective effect from 1st April, 1972—ITO, in 1977, allowing deduction under s. 80J for the asst. yr. 1973-74 by applying amended provisions—Justified—Effect of retrospective amendment is that amendment must be deemed to have been included in the principal Act as from that date for all purposes—Besides this, decision of Calcutta High Court holding r. 19A as ultra vires was not binding on IT authorities in Bombay and, therefore, following the same ITO could not rectify his order

Held :

*The effect of the provision that a particular amendment shall be deemed to come into force from a particular date with retrospective effect is that the amendment must be deemed to have been included in the principal Act as from that date for all purposes. That being so, s. 80J as amended by Finance Act, 1980 with retrospective effect from 1st April, 1972 must be deemed to be in existence on 30th March, 1977, the date of passing of the order of assessment by the ITO and applicable to the assessment under consideration. The order of the ITO being consistent with s. 80J as amended with retrospective effect, it cannot be said that there is any mistake therein. The Tribunal was, therefore, fully justified in relying on the subsequent retrospective amendment of s. 80J for upholding the rejection of the application of the assessee for rectification of the order by the ITO.—[M.K.Venkatachalam, ITO vs. Bombay Dyeing & Mfg. Co. Ltd.](#) (1958) 34 **ITR** 143 (SC) **applied***

(Para 5)

*The case of the assessee was that sub-rr. (2) and (3) of r. 19A had been declared ultra vires by the Calcutta High Court in the case of [Century Enka Ltd. vs. ITO](#) (1977) 107 **ITR** 123 (Cal) and the decision of the Calcutta High Court was binding on the IT authorities in Bombay and following the same the ITO was obliged to rectify this order under s. 154. This contention is not acceptable. The decision of the Calcutta High Court is not a binding precedent for Courts, authorities or tribunals outside its territorial jurisdiction and on that basis the ITO was right in refusing to modify its order in the light of the decision of the Calcutta High Court—[CIT vs. Thana Electricity Supply Ltd.](#) (1993) 112 CTR (Bom) 356 **followed***

(Paras 6 & 7)

Conclusion :

Order of ITO allowing deduction under s. 80J being consistent with s. 80J as amended with retrospective effect, it cannot be said that there is any mistake therein.

Precedents—High Court decision—Decision of High Court of another State is not binding precedent for Courts, authorities or tribunals outside its territorial jurisdiction.—[CIT vs. Thana Electricity Supply Ltd.](#) (1993) 112 CTR (Bom) 356 followed

(Para 7)

Conclusion :

Decision of High Court of another State is not binding on IT authorities outside its territorial jurisdiction.

Counsel appeared:

Aashish Panda i/b Crowford Beyley & Co., for the Applicant : Dr. V. Balasubramaniam, with J.P. Devadhar, for the Respondent

DR. B.P. SARAF, J.

By this reference under s. 256(1) of the IT Act, 1961, the Tribunal has referred the following question of law to this Court for opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in relying upon the subsequent retrospective amendment of s. 80J of the IT Act, 1961, for upholding the rejection by the ITO of the application by the assessee for rectification of the order of the ITO ?"

2. The controversy in this case pertains to asst. yr. 1973-74. The assessee-company filed its return of income on 14th Aug., 1973. Subsequently, on 29th Dec., 1973, it filed a revised return in which it also claimed a deduction under s. 80J of the IT Act, 1961 ("the Act"). The assessment was completed on 17th Aug., 1976 and in the same, relief under s. 80J was not allowed by the ITO. The assessee took up the matter in appeal. The AAC held that the assessee was entitled to relief under s. 80J and asked the ITO to work out the same. The appeal of the Revenue against the above order was dismissed by the

Tribunal. The ITO gave effect to the order of the AAC by an order dt. 30th March, 1977. While giving effect to the order, in working out the deduction under s. 80J the ITO applied r. 19A of the IT Rules and deducted the borrowed capital and some other liabilities for computation of capital of the assessee. He thus gave relief under s. 80J only on the net capital. The relief was confined to a period of 7 months in that year as production had commenced only on 1st June, 1972. As the particular unit had not made any profit for the relevant year, relief under s. 80J was allowed to be carried forward to the next year. The assessee did not file any appeal against this order of the ITO.

3. On 6th Nov., 1978, the assessee filed an application before the ITO under ss. 154 and 155 of the Act for rectification of the order dt. 30th March, 1977 referred to above. In the application for rectification, it was claimed by the assessee that sub-rr. (2) and (3) of r. 19A had been declared ultra vires by the Calcutta High Court in the case of Century Enka Ltd. vs. ITO (1977) 107 **ITR** 123 (Cal) and the said decision of the Calcutta High Court was binding on the ITO in Bombay in the light of the decision of the Bombay High Court in CIT vs. Smt. Godavaridevi Saraf (1978) 113 **ITR** 589 (Bom). It was, therefore, contended that in view of the above decision of the Calcutta High Court, which was also binding on the IT authorities in Bombay, relief under s. 80J should be computed on the gross capital without making any deduction on account of borrowed capital and liabilities. The ITO by his letter dt. 27th Nov., 1978 informed the assessee that the decision of High Court in another State was not binding on the executive authorities and the Calcutta view having not been accepted by the Department, there was no mistake apparent on the face of the record. The claim of the assessee for rectification was, therefore, rejected.

4. The assessee took up the matter in appeal. The CIT(A) pointed out that the Andhra Pradesh High Court in CIT vs. Warner Hindustan Ltd. (1979) 117 **ITR** 68 (AP) had taken a view different from the one taken by the Calcutta High Court and that the issue regarding deductibility of borrowed capital was highly debatable issue. He, therefore, held that in the light of the decision of the Supreme Court in T.S. Balaram, ITO vs. Volkart Bros. & Ors. (1971) 82 **ITR** 50 (SC), the ITO was fully justified in refusing to rectify his order as there was no mistake apparent from the record. Against the above order of the CIT(A), the assessee appealed to the Tribunal. The Tribunal took note of the amendment of section made by the Finance (No. 2) Act, 1980, with retrospective effect from 1st April, 1972 and observed that the provisions of r. 19A were incorporated in s. 80J retrospectively and the original order of the ITO which was sought to be rectified by the assessee was in consonance with the amended s. 80J of the Act. The Tribunal referred to the decision of the Supreme Court in M.K. Venkatachalam, ITO vs. Bombay Dyeing & Mfg. Co. Ltd. (1958) 34 **ITR** 143 (SC) and observed that s. 80J as amended w.e.f. 1st April, 1972 has to be deemed to be in the statute book in that form ever since 1st April, 1972. The Tribunal, therefore, held that in the light of amended s. 80J of the Act the order of the ITO rejecting the prayer of the assessee for rectification of its original order of assessment was correct. In that view of the matter the appeal of the assessee was dismissed by the Tribunal. Hence this reference.

5. We have considered the question referred to us. The controversy has to be looked into from two angles. Firstly, it may be seen in the light of s. 80J as amended. Admittedly, the amendment was made with retrospective effect from 1st April, 1972. The order of assessment pertains to the year 1973-74. The dispute is regarding the effect of the retrospective amendment. The question is whether the subsequent retrospective amendment of s. 80J could be relied upon by the Tribunal for upholding the order of the ITO. We find that the law is well-settled by the decision of the Supreme Court in M.K. Venkatachalan, ITO vs. Bombay Dyeing & Mfg. Co. Ltd. (supra) that the effect of the provision that a particular amendment shall be deemed to come into force from a particular date with retrospective effect is that the amendment must be deemed to have been included in the principal Act as from that date for all purposes. That being

so, s. 80J as amended must be deemed to be in existence on the date of passing of the order of assessment by the ITO and applicable to the assessment under consideration. The order of the ITO being consistent with s. 80J as amended with retrospective effect, it cannot be said that there is any mistake therein. The Tribunal was, therefore, fully justified in relying on the subsequent retrospective amendment of s. 80J of the Act for upholding the rejection of the application of the assessee for rectification of the order by the ITO.

6. Another angle from which the controversy has to be looked into is the effect of decision of Calcutta High Court on the IT authorities in Bombay. The case of the assessee was that the decision of the Calcutta High Court was binding on the IT authorities in Bombay and following the same the ITO was obliged to rectify this order under s. 154 of the Act. This aspect of the matter has been considered by this Court elaborately in its judgment dt. 22nd April, 1993 in IT Ref. No. 500 of 1978 [CIT vs. Thana Electricity Supply Ltd.] reported in (1993) 112 CTR (Bom) 356 wherein it has been held in clear terms (at page 366 of the Report) :

The decision of one High Court is neither binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories in which the Court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only a persuasive effect. By the amount of stretching of the doctrine of stare decisis judgments of one High Court can be given the status of a binding precedent so far as other High Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be the conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate Courts or tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all Courts in the country by virtue of Art. 141 of the Constitution."

7. In view of the above decision of this Court, we are of the clear opinion that the ITO was justified in holding that the decision of the Calcutta High Court is not a binding precedent for Courts, authorities or Tribunals outside its territorial jurisdiction and on that basis the ITO was right in refusing to modify its order in the light of the decision of the Calcutta High Court.

8. Having regard to the foregoing discussion, we answer the question referred to us in the affirmative, i.e., in favour of the Revenue and against the assessee.

9. Under the facts and circumstances of the case, we make no order as to costs.
