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(2008) 09 P&H CK 0083

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax	APPELLANT
Vs	
Groz Beckert Saboo Ltd.	RESPONDENT

Date of Decision: Sept. 17, 2008

Acts Referred:

- Income Tax Act, 1961 - Section 154, 263, 32A

Citation: (2009) 222 CTR 427 : (2009) 308 ITR 397

Hon'ble Judges: Ajay Tewari, J; Adarsh Kumar Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Ajay Tewari, J.
This is a reference made by the Tribunal on the following questions of law:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the order of the Commissioner of Income Tax passed u/s 263 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the investment allowance of Rs. 4,06,822 and interest of Rs. 18,575.

2. The assessee claimed investment allowance u/s 32A(2) of the Income Tax Act, 1961 (for short "the Act") for the year 1977-78. The Assessing Officer came to the conclusion that the assessee was entitled to the said investment allowance. On March 12, 1979, the Inspecting Assistant Commissioner of Income Tax (Assessment) issued a notice u/s 154 of the Act stating that the aforesaid benefit of investment allowance being inadmissible, he was proposing to make a rectification. The response of the assessee was considered satisfactory since no rectification was made. Thereafter, the Commissioner of Income Tax, acting u/s 263 of the Act, issued

a notice again questioning the eligibility of the petitioner for grant of investment allowance. In consequent proceedings, the Commissioner of Income Tax held that the said benefit was wrongly allowed to the petitioner by recording the following:

... It is no doubt true that in the Fifth Schedule while referring to industrial machinery, there is reference to the First Schedule to the Industries (Development and Regulation) Act, 1951, but in the Ninth Schedule which is the relevant Schedule for investment allowance for the assessment year 1977-78, there is no reference to the Industries (Development and Regulation) Act, 1951. Thus, we are to consider whether the manufacture of needles can be considered as manufacture of industrial and agricultural machinery as referred to in the Ninth Schedule.

3. In second appeal, the Tribunal reversed the finding of the Commissioner as well as the assumption of jurisdiction for action u/s 263 of the Act. On a direction made by this Court, the above mentioned questions have been referred.

4. Learned Counsel for the assessee contended that Section 32A(b)(ii) of the Act speaks of investment allowance with regard to the business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Ninth Schedule to the Act. She submitted that item No. 8 in the Ninth Schedule is "industrial and agricultural machinery". She further contended that "industrial and agricultural machinery" has not been defined in the Act. Therefore, one has to take in aid the provisions in other relevant Acts and if that be done, the First Schedule to the Industries (Development and Regulation) Act, 1951, becomes relevant and of assistance. In item 8 the First Schedule to the Industries (Development and Regulation) Act, 1951, it is provided that textile machinery (such as spinning frames, carding machines, power-looms and the like) including textile accessories are major items of specialised equipment used in specific industries. In view of these provisions, she submitted that the decision arrived at by the Income Tax Officer at the time of original assessment after going into all aspects of the matter as stated in his order was correct on the facts of the case and relevant provisions of law. There was no mistake apparent from record or a mistake which can be said to be leading to an order which is erroneous or prejudicial to the interests of the Revenue so as to invest the Commissioner of Income Tax with the lawful jurisdiction to intermeddle with the assessment.

5. Learned counsel for the assessee further contended that investment allowance is allowable to the assessee-company under the provisions of Section 32A(2) and this section was amended by the Finance (No. 2) Act, 1977, with effect from April 1, 1978, relevant to the assessment year 1978-79 for enlarging the scope of the section by excluding only those articles or things as given in the Eleventh Schedule which was substituted in the place of the Ninth Schedule. She further argued that the assessee-company was manufacturing needles which are used in the textile machinery as its accessories and, therefore, taking into consideration the provisions referred to by it in its submissions made earlier, the assessee was entitled to

investment allowance and when on such facts the Income Tax Officer came to the conclusion that the allowance was properly claimed and allowed it, he was acting in accordance with law.

6. Learned counsel for the assessee also referred to the speech of the Finance Minister, dated March 15,1976, wherein he introduced the investment allowance in place of the "development rebate" in the following terms [1972] 102 ITR 93:

I have, therefore, decided to introduce a scheme of investment allowance for certain priority industries. The present scheme of initial depreciation allowance will be replaced by a system of investment allowance. The investment allowance will be allowed at the rate of 25 per cent, of the cost of acquisition of new machinery and plant installed after March 31, 1976, in industries currently qualifying for initial depreciation. I also propose to extend the list of qualifying industries by including eight other priority or export-oriented industries, namely, carbon and graphite products; inorganic heavy chemicals; organic heavy chemicals ; synthetic rubber and rubber chemicals, including carbon black; industrial explosives; basic drugs; industrial sewing machines and finished leather and leather goods, including footwear made wholly or substantially of leather.

7. In COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., the hon''ble Supreme Court quoted the following passage from the decision of the Privy Council in Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipality ILR [1922] Cal 190:

The word ''machinery'' when used in ordinary language prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result.

8. A Division Bench of the Gujarat High Court in Aruna Mills Ltd. Vs. Commissioner of Income Tax, Ahmedabad, , relying on the above quoted decision, held as follows:

The spindles in respect of which the aforesaid expenditure was incurred and for which the development rebate was claimed by the assessee are clearly machinery and, when installed in the ring-frames, would constitute a self-contained unit for spinning. Though, therefore, they by themselves may not be said to be a self-contained unit, they must be held to be ''machinery'' and the spindles must also be held to have been installed for the purposes of the second paragraph of Clause (vi) and Clause (via) and, consequently, the expenditure incurred in their purchase and in substituting them for the old spindles would be entitled to development rebate.

9. Learned Counsel for the Revenue relied on a Division Bench judgment of the Karnataka High Court in Assistant Commissioner of Commercial Taxes-cum-Entry Tax (Assessment-1) Bangalore v. Mysore Industrial Supplies reported as [1997] 106 STC 585 wherein it was held as follows (headnote):

Ball-bearings may be used as parts or accessories of industrial machinery also, but they are used in every type of machinery, toys and even in other contrivances. In common parlance, ball-bearings are not understood as parts or accessories of industrial machinery, though, no doubt, they may be a part or accessory of machinery. The mere use of ball-bearings in industrial machinery by itself cannot bring them within the ambit of entry 7 of the Schedule to the Act. Even by virtue of Explanation III to the entry it cannot be said that ball-bearings are industrial machinery nor can it be said that, they are accessories to industrial machinery.

10. In our view, the present reference has to be answered in favour of the assessee. The judgments in COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., and Aruna Mills Ltd. Vs. Commissioner of Income Tax, Ahmedabad, clearly cover the point. The judgment of the Karnataka High Court is distinguishable ; firstly, because there can be no dispute that ball-bearings as such can be used even for non-industrial machinery, for instance cycles; and, secondly, that the said judgment was rendered against the back drop of their exigibility to entry tax under a particular Schedule to the Karnataka Tax On Entry of Goods into local areas for consumption, use or sale therein Act, 1979.

11. Since we have answered the question in favour of the assessee by holding that the investment allowance was rightly allowed to the assessee, and since no question has been framed on the other findings of the Tribunal reversing those of the Commissioner, we also decide the first question in favour of the assessee and against the Revenue. The reference is answered accordingly.