
(2008) 296 ITR 501
Allahabad High Court
Case No: None

Commissioner of
Income Tax

APPELLANT

Vs

J.K. Synthetics Ltd.

RESPONDENT

Date of Decision: Dec. 7, 2005

Citation: (2008) 296 ITR 501

Hon'ble Judges: Prakash Krishna, J; A.K. Yog, J

Bench: Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Delhi, has referred the following three questions of law for the opinion of this Court in pursuance of the

order passed by the Supreme Court in Civil Appeal No. 1172 of 1991.

1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that no case was made out by the

Revenue for rejecting the accounts and for making an addition of Rs. 64,92,710 in the trading account on account of excessive wastage in the

production of nylon yarn in the assessee factory?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in basing its conclusion with regard to wastages in

the production of nylon yarn on the later certificate dated March 21, 1975, in preference to the earlier certificate dated December 21, 1971, of

BASF produced before the Income Tax Officer?

3. Whether, on the facts and in the circumstances of the case, the Tribunal can be said to have permitted the assessee to make out an entirely new

case on ""invisible wastage"". If yes, was the Tribunal legally justified in permitting the same?

2. The dispute relates to the assessment year 1971-72. The assessee-company manufactures nylon-6 yarn from caprolactum. This evolves three

stages, i.e., conversion of caprolactum which is monomer into polymer chips, conversion of the chips to basic yarn and conversion of basic yarn to

packed yarn or nylon-6 yarn.

3. During the course of assessment proceedings, the Assessing Officer did not point out any defects in the maintenance of the account books.

However, he rejected the trading result on the basis that the assessee-company has claimed excessive wastage in the production of nylon yarn. On

this basis an addition of Rs. 64,92,710 was made in the income of the assessee-company. This order was confirmed in appeal. However, in further

appeal, the Tribunal, has deleted the aforesaid addition. Heard Sri Shambu Chopra, learned standing counsel for the Department and Sri R.S.

Agrawal, learned Counsel for the assessee. We find that the Tribunal, while deleting the addition, has given various reasons. They are as follows:

(i) It was not evident from the assessment order or from the Appellate Assistant Commissioner's order that there were any defects in the accounts

on the basis of which it could be said that the accounts were incorrect/incomplete or were unreliable.

(ii) The accounts had been rejected by the authorities on the sole ground that the waste claimed at the last stages of manufacture from basic yarn to

packed yarn was excessive.

(iii) Enough authority was cited by the assessee's Authorised Representative for the view that accounts could not be rejected only for the reason

noted in (ii) above. It had to be shown in addition that the accounts suffered from serious infirmities.

(iv) No defects had been pointed out before the Tribunal to justify the rejection of the accounts. A mere deviation in the percentage of waste from

year to year would not be sufficient to reject the accounts and to estimate the profits. Reliance by the Revenue on the decision of the Allahabad

High Court reported in Raza Textiles Ltd. Vs. Commissioner of Income Tax, in this regard was misplaced.

(v) The alleged discrepancies between the figures relating to opening stock and closing stock of waste regarding lactum issued from the godown,

etc., (relied on by the Revenue) proved in reality to be no discrepancy. The assessee had furnished full and complete reconciliation of the figures.

The alleged discrepancy arose only from a misreading of the statistics furnished by the assessee and by reading certain figures out of context. No

doubt objection was taken by the Revenue to the assessee's filing various statistical statements, before the Appellate Assistant

Commissioner/Tribunal, that were not before the Income Tax Officer. In fact, these statements contained no information which was not already

before the Income Tax Officer. These statements had been prepared wholly from the books of account and registers already seen by the Income

Tax Officer. Hence, this was not tantamount to putting in fresh evidence.

4. Learned Counsel for the Department could not point out any legal error in the reasoning given by the Tribunal except that the disclosed income

was not accepted by the Assessing Officer. It may be stated here that one of the reasons given by the Tribunal is the certificate given by the West

German company (referred to, for convenience as BASF) supplying technology and raw-materials to nylon manufacturing units all over the world.

The said certificate is reproduced below:

...We have checked all available information from various sources, and we are of the opinion that a minimum of 8 per cent, (eight per cent.) waste

will be generated during the conversion of caprolactum to nylon-6 polymer under normal operation conditions. On subsequent conversion of

nylon-6 yarn another approximately 5 per cent, (five per cent.) of waste will be generated under normal working conditions. We would like to

point that during irregular operating conditions (e.g., shut-down period caused by power failure, scheduled maintenance or unscheduled repair

work) a substantially larger percentages of waste will be generated....

5. A bare perusal of the aforesaid certificate would clearly show that the BASF opined that minimum 8 per cent, waste will be generated during the

conversion of caprolactum to nylon-6 polymer under normal conditions. This certificate has been given by an expert body and there is no material

on record to show that the said certificate was biased one as procured otherwise.

6. After hearing counsel for the parties, we are satisfied that the findings recorded by the Tribunal are all questions of fact based on the appraisal

on the material of the record. It may be stated here that the assessee has duly accounted for the wastage by weightage in its account books. The

unit of the assessee-company was also inspected by the officials of the excise department. Looking into the facts and circumstances of the case,

there is no material on record for rejecting the account books of the assessee-company. The percentage of wastage, has been found to be

reasonable by the Tribunal, which is essentially a finding of fact based on the material available on the record.

7. So far as the question of reliance as placed by the Tribunal upon certificate dated March 21, 1975, we find no illegality therein, as it was within

the domain of the power of the Tribunal to appreciate the evidence. Apart from above, learned standing counsel could not place any material to

take a different view of the matter.

8. We therefore, answer questions Nos. 1 and 2 in the affirmative, that is, against the Department and in favour of the assessee. In view of our

answer given to questions Nos. 1 and 2, question No. 3 does not require any answer. Question No. 3 is returned unanswered. No order as to

costs.