

(1997) 09 KSTT CK 0001

Karnataka Sales Tax Tribunal

Case No: Sales Tax Appeal No. 233 of 1997

M/s. Sri Malleshwara Oil Mill,
Gangavathy, Raichur District

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: Sept. 19, 1997

Acts Referred:

- Karnataka Sales Tax Act, 1957 - Section 8A(1)(B)

Citation: (1999) 46 KarLJ 224

Hon'ble Judges: K. N. Nagendra Kumar, D.J.M.; M. E. Javeed, C.T.M.

Judgement

M.E. Javeed, CTM,-This appeal is directed against the order passed by the Joint Commissioner of Commercial Taxes (Administration), Gulbarga Division, Gulbarga (hereinafter referred to as "Revisional Authority") vide his Order No. KST/SMR-9 of 1996-97, dated 6-7-1996 for the period 1-4-1991 to 31-3-1992.

2. The appellant is a manufacturer of groundnut oil and oil-cake. Assessment during this period has been concluded by the Deputy Commissioner of Commercial Taxes (Assessment), Raichur (hereinafter referred to as "Assessing Authority") vide his assessment order dated 26-2-1993. While concluding the assessment, he has determined the gross turnover of Rs. 2,50,19,683/- and taxable turnover of Rs. 1,32,36,792/-. The tax liability of Rs. 7,55,680/- was determined out of which tax exemption was allowed as per G.O. dated 7/8-6-1989 to an extent of Rs. 5,99,068/-. This assessment order was the subject-matter of revision. The Joint Commissioner of Commercial Taxes (Administration), Gulbarga Division, Gulbarga has passed the order under Section 21(2) of the Karnataka Sales Tax Act, 1957 dated 6-7-1996 by restricting the tax benefit as per the G.O. to an extent of Rs. 2,83,000/- as against Rs. 5,99,068/- allowed by the Assessing Authority which is the 50% of Rs. 11,98,135/-being the total investment in plant and machinery as per the certificate issued by the Department of Industries and Commerce. This certificate indicates wrong totalling of the figures at Rs. 11,98,135/- instead of indicating the correct

figures at Rs. 11,18,135/-. The restriction of tax benefit ordered by the Revisional Authority is based on the view that the total investment made in land, plant and machinery mentioned in the G.O. dated 7/8-6-1989 does not include the investment in building and bore-well and therefore by deleting the investment so made in building, bore-well valued at Rs. 5,52,135/- out of the total investment of Rs. 11,18,135/- he arrived at the actual investment in plant and machinery at Rs. 5,66,000/- and 50% of this amount i.e. Rs. 2,83,000/- was allowed as tax benefit under the incentive scheme. It is against this revision order dated 6-7-1996, the appellant has filed the appeal in the Tribunal on the following grounds.

3. It is contended that sales tax exemption is limited to 50% of Rs. 11,98,135/- which has been rightly allowed by the Assessing Authority to an extent of Rs. 5,99,068/-. That the Revisional Authority has no jurisdiction to disturb the assessment order as there is no illegality and impropriety. It is a view of the appellant that the G.O. dated 7-6-1989 indicates the total investment in fixed asset in plant, machinery and land. The expression "land" also comprises of building and other allied property in real estate connected to the activity of the appellant. The word "land" mentioned in the G.O. is stated to signify everything in fixed assets classed as real estate or real property. In view of this position, the appellant is of the view that the investment in building valued at Rs. 5,37,135/- and bore-well valued at Rs. 15,000/- totalling to Rs. 5,52,135/- should also be considered for the purpose of arriving at the total investment, of which 50% should be given as the tax benefit.

4. The learned Advocate for the appellant argued the case reiterating the grounds of appeal and prayed to set aside revisional order and to restore the assessment order whereas, the learned State Representative argued the case stating that the value of building does not form part of land, plant and machinery for the purpose of calculating the total investment as per the G.O. dated 7/8-6-1989.

5. The issue for our consideration is whether the investment in building valued at Rs. 5,37,135/- and bore-well valued at Rs. 15,000/- totalling to Rs. 5,52,135/- could be considered along with the other investment in plant and machinery for the grant of 50% benefit in tax as per the G.O. dated 7/8-6-1989.

6. Our answer to this issue is in the affirmative.

7. In this regard, the recent judgment of the Hon"ble High Court of Karnataka in the case of M/s. Jayadev Oil Mill, Hubli, STA No. 23 of 1994, dated 20-2-1996, is very much relevant. The Hon"ble High Court has observed that the "building" is an apparatus or tool used by the assessee for carrying the business or manufacturing activity, then it would be a part of the "plant". If on the other hand, if a building or part of a building has no connection with the business or manufacturing activity that is being carried on, then obviously such a building or portion of the building will not be part of the plant. It is therefore been decided that the building if used for the business or manufacturing activity would be part of the plant. On this analogy even the

bore-well if used for the activity will be part of the plant.

8. In view of this position, it is therefore stated that investment in building and bore-well would form part of the total investment in plant and machinery for the purpose of quantifying the 50% tax incentive, if, the building and bore-well have been used for manufacturing activity. This aspect requires to be examined. The revision order dated 6-7-1996 is therefore not correct. The matter is remanded to the Assessing Authority to verify this aspect and to pass orders accordingly. As stated earlier, the total investment in land, building, plant, machinery and bore-well has been wrongly shown at Rs. 11,98,135/- in the certificate of fixed assets dated 19-5-1992 issued by the Industries and Commerce Department. There is a error in totalling, the correct figure would be Rs. 11,18,135/-.

9. In the result, the SMR order is set aside and the appeal is allowed in the light of observations made above.