

(1991) 02 KAR CK 0074

Karnataka High Court

Case No: Income-tax Referred Case No. 174 of 1986

Kodiyal Foods and Fats Pvt. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Feb. 27, 1991

Acts Referred:

- Income Tax Act, 1961 - Section 263, 32
- Income Tax Rules, 1962 - Rule 5

Citation: (1991) 97 CTR 31 : (1992) 193 ITR 411

Hon'ble Judges: R. Ramakrishna, J; K. Shivashankar Bhat, J

Bench: Division Bench

Advocate: S.P. Bhat, for the Appellant; G. Chanderkumar and S.R. Shivaprakash, for the Respondent

Judgement

K. Shivashankar Bhat, J.

The question referred to us reads thus :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the view of the commissioner that the assessee-company was not entitled to a higher rate of depreciation of 15% under item No. III (A) (3) of the depreciation table on the machinery employed in this business ?"

2. The assessment year in question is 1979-80. The business of the assessee is processing of fish, fish meal and fish oil. The assessee claimed depreciation at 15% on the machinery used in its business on the ground that the machinery comes into contact with corrosive chemicals. The Income Tax Officer allowed the claim of the assessee. However, the Commissioner opined differently and initiated proceedings u/s 263 of the Income Tax Act ("the Act" for short). Before the Commissioner, the assessee produced certificates in support of his claim that the machinery came into contact with corrosive chemicals resulting in corrosion of machinery. However, the Commissioner did not accept the claim of the assessee. The commissioner opined

that, in the manufacture of fish meal and fish oil, no corrosive chemical is used and, therefore, the machinery does not come into contact with corrosive chemicals. The Appellate Tribunal affirmed this order but applied a different reasoning. The Appellate Tribunal held that salt is corrosive substance to some extent but all the substances are not corroded by it. It stated further :

"For example, it is well known that the salt stored in porcelain containers has no corrosive effect. Therefore, unless the assessee demonstrates that the common salt which is present to some extent in the fish is of such concentration as to actually corrode the machinery, we cannot side with it. The human body also contains salt but for that reason it cannot be considered corrosive. The material out of which the assessee's plant & machinery is constructed should be of such type as to be eaten away by salt. The temperature of 95 degree C at and 150 degree C at which the cooking takes place cannot also be said to be so high as to cause corrosion. The assessee has not demonstrated that the process results in electrolytic dissociation of the salt solution which alone can release corrosive chlorine ions in sufficient quantities."

3. Earlier the Appellate Tribunal rejected the certificate/report of the Assistant Professor of Chemical Engineering, Karnataka Regional Engineering college, who certified that the machinery in question came into contact with a corrosive chemical, viz., sodium chloride, and further that the factory is situated in a sea shore causing severe atmospheric corrosion of the entire plant and machinery. This certificate was not accepted by the Appellate Tribunal. When discussing the details given in the certificate, in fact the reference to the report by the Appellate Tribunal assumes that the certificate confined itself to the environmental conditions only.

4. The said report is produced before us. There is a detailed description of the process involved in the extraction of the fish products. The materials for construction of the plant and machinery also are stated. Thereafter, the report gives the observations of the Assistant Processor. It is stated that the fish catch has sea water adhering to it, chloride (Cl) is present in the charge taken into the cooking plant. "Presence of chloride makes the cooking environment inside the cooking plant highly corrosive, as the same is carried out at a temperature of 95 degree C and under steam pressure, due to high rates of corrosion. Added to this, the fatty acids that are formed due to fat splitting, would give an acidic medium inside the cooking vessel. Under these operating conditions, the mild steel equipment is highly susceptible to severe corrosion due to crevice corrosion and pitting, etc.

5. The wet mass (residue) after pressing out the fish oil, etc., has still the chloride which causes severe corrosion in the fish meal drier which is operated at an elevated temperature of 150 degree C. Added to this, there is the formation of amino acids as a result of decomposition of fish protein. All these conditions accelerate the rate of corrosion of the equipment used.

6. As the factory is located on the sea shore itself, the saline environment causes severe atmospheric corrosion of the entire plant and machinery. The salt spray carried by the air gets deposited on the plant and machinery. The build up of chloride content in the water condensed on the plant and machinery causes aggressive metal corrosion. The situation is further aggravated by the presence of sulphur-bearing gases and carbon dioxide formed by the decomposition of the fish in the (environment) vicinity."

7. The aforesaid details were not considered by the Appellate Tribunal at all. The clarification of the professor who issued the certificate is also not doubted. The Income Tax Officer in fact has accepted the claim of the assessee that the machinery came into contact with corrosive chemicals.

8. Mr. G. Chanderkumar, learned counsel for the Revenue, contended that the finding of the Appellate Tribunal is one of fact and the Tribunal has considered all relevant materials before rejecting the aforesaid report of the expert. This we cannot agree to. No doubt the Appellate Tribunal has referred to the report but has not discussed the details furnished in the report. The question involved is a technological one and, normally, the Appellate Tribunal should have accepted the report in the absence of any other material to contradict the contents of the report. The Appellate Tribunal has ventured on its own to apply different tests which cannot be considered as scientific on the face of it.

9. Learned counsel for the Revenue cited a few decisions in support of his contention that the chemical referred to in the relevant schedule is to be a "free chemical" and the presence of the chemicals in fish by itself cannot be a relevant factor to give the benefit claimed by the assessee. According to learned counsel, there should be a direct use of machinery in the manufacture of fish meal so that the machinery would directly come into contact with the chemical used as such, which is capable of corroding the machinery. The earliest of the decisions is reported in [Commissioner of Income Tax Vs. Saraswati Industrial Syndicate Ltd.](#), It was held that the fact that the lime and acid were mixed with the sugarcane juice to filter and purify the juice, was held as not sufficient to convert the juice into a chemical. The Bench referred to the dictionary meaning of "chemical" and stated that the word "chemical", when used as noun means a substance, as an acid, alkali, salt, synthetic, organic compound, obtained by a chemical process prepared for use in a chemical manufacture or used for producing a chemical effect." In these circumstances, sugarcane juice was held as not covered by the term "chemical". At page 760, the Bench based its finding on the following observation :

"It is obvious from the dictionary meaning of the word "chemical" that the sugarcane juice cannot be covered by this term simply because some acid has been mixed with it for its filtration."

10. "It is clear that this decision is based on the peculiar facts of the said case. The question was whether the sugarcane juice mixed with acid becomes a corrosive chemical which, on basis of the material available, the Bench held, was not a corrosive chemical. In the decision of the Andhra Pradesh High Court in the case of [K.C.P. Ltd. Vs. Commissioner of Income Tax](#), the aforesaid decision of the Punjab and Haryana High Court was referred to but, on facts, the Bench found that there was no material at all to uphold the claim of the assessee. On facts the Bench found as follows at page 228 :

"Unless the assessee initially furnishes the relevant information for the purpose of appreciating the claim that the plant and machinery came into contact with corrosive chemicals, the further question whether the assessee's plant and machinery is entitled to depreciation at 15% does not arise. In the present case, we have waded through the entire record to find out whether at any stage the assessee informed the tax authorities below as to how its plant and machinery came into contact with corrosive chemicals. The nature of corrosive chemicals involved and how in the process of manufacture, the plant and machinery came into contact with corrosive chemicals should be explained precisely by the assessee."

11. In view of these facts, the Andhra Pradesh High Court had no occasion to discuss the question of law at all. Repeatedly, the Bench pointed out that there was no factual foundation for the claim of the assessee that sulphuric acid mixed with sugarcane juice was coming into contact with the plant and machinery in manufacture of sugar. In the case of [Gwalior Sugar Co. \(P.\) Ltd. Vs. Commissioner of Income Tax](#), there is no discussion on facts but the Bench followed the decision of the Punjab and Haryana High Court in [Commissioner of Income Tax Vs. Saraswati Industrial Syndicate Ltd.](#), The question seems to be concerning iron, lead and copper in the composition of molasses and whether this makes the molasses a corrosive chemical. In another decision of Punjab and Haryana High Court in [Commissioner of Income Tax Vs. Saraswati Industrial Syndicate Ltd. \(No. 1\)](#), the same assessee was involved and the earlier decision was naturally applied. The same assessee again was a party to the decision in *Saraswati Industrial Syndicate Ltd. v. CIT* [1990] 183 ITR 120 before the Punjab and Haryana High Court. Once again the earlier decision was followed.

12. The decision is [Commissioner of Income Tax Vs. Saraswati Industrial Syndicate Ltd. \(No. 1\)](#), was also relied upon by learned counsel for the Revenue to contend that the term "corrosive chemical" is confined to "free chemical" and not "non-free chemical".

13. The question pertains to the interpretation of the machinery provision. Depreciation is claimed u/s 32 of the Act which is effectuated by rule 5 read with the relevant appendix to the rule. As per item No. III of Appendix I, Part I, Part ii (B), item No. VII, the depreciation allowance is granted at the rate of 15% on machinery and plant "coming into contact" with corrosive chemicals. Otherwise, the depreciation

allowance is only 10%. A literal reading of item No. VII would show that the machinery and plant, if it comes into contact into corrosive chemicals, will be eligible to this higher rate of depreciation. Nowhere do these items state that corrosive chemical will have to be directly used in any process involved while using the machinery. The "contact" contemplated by this item may be external or internal; the effect of the contact is to accelerate the wear and tear of the machinery and that is why a higher rate of depreciation is granted. We are interpreting a machinery section in a taxation statute and there is no need to be unduly harsh against the assessee and in fact any benefit of the language, if available, should go to assessee rather than to the Revenue. The purpose of higher rate of depreciation is a result of recognition given to certain machinery having a shorter life, having regard to the nature of the situation or the nature of the process involved in utilising the machinery. In the instant case, the expert's certificate conclusively establishes that the process involved is such that the substance which undergoes the processing in the machinery as well as the situation and the environmental conditions result in the machinery coming into contact with the corrosive chemicals affecting the life of the machinery.

14. In these circumstances, we are of the view that the Income Tax Officer was justified in upholding the claim of the assessee. The question referred to us is answered in the negative and against the Revenue.

15. Reference is answered accordingly.