The Commissioner of Income Tax-3 Vs Shree Processors Pvt. Ltd.

I.T.T.A. No. 266 of 2003

Court: Andhra Pradesh High Court

Date of Decision: Nov. 5, 2014

Acts Referred:
Income Tax Act, 1961 â€" Section 260A, 80HH, 80I

Citation: (2015) 370 ITR 511

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: S.R. Ashok, Advocate for the Appellant; B.S. Shivaji, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.
The respondent is an Industrial Undertaking, established in an area notified as "Backward", under the Income Tax

Act, 1961 (for short "the Act"). It undertakes the activity of converting cotton pieces, known as "cops" into yarn. Depending upon the customer

requirement, sometimes single yarn is made into double or multiple yarn threads. In its returns submitted for the assessment year 1992-1993, the

respondent claimed certain deductions, referable to Sections 80HH and 80I of the Act. The Assessing Officer took the view that no process of

manufacture whatever is undertaken by the respondent, and thereby, it is not entitled to claim deductions under Sections 80HH and 80I of the Act.

Aggrieved by the order of the Assessing Officer, the respondent carried the matter in appeal to the Commissioner of Income Tax (Appeals). The

Commissioner allowed the appeal, through order, dated 27.03.1996. Challenging the same, the department filed I.T.A. No. 1309/Hyd/1996,

before the Hyderabad Bench "A" of the Income Tax Appellate Tribunal (for short "the Tribunal"). The appeal was dismissed, through order, dated

30.08.2002. Hence, this further appeal under Section 260A of the Act.

2. Sri S.R. Ashok, learned Senior Counsel for the appellant, submits that, it is only when an activity of manufacture is undertaken that an assessee

would qualify for deductions under Sections 80HH and 80I of the Act, and that in the instant case, the assessee did not undertake any activity,

except the one of making a single thread into double or multiple thread products. He contends that an activity of that nature cannot be treated as

manufacture and the Assessing Officer has correctly denied the deductions. He has placed reliance upon the judgments of the Supreme Court in

Collector of Central Excise, Jaipur Vs. Banswara Syntex Ltd., and J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India

(UOI) and Ors, .

3. Sri B.S. Shivaji, learned counsel for the respondent, on the other hand, submits that the process undertaken by his client is a compendious one,

involving the manufacture of yarn from cops and that there was no basis for the Assessing Officer to deny the deductions. He contends that any

industrial undertaking not only manufacturing, but also producing articles, is entitled for deduction under Section 80HH of the Act, and the

appellant is making an effort to place a restricted interpretation on such a provision, which he intended to encourage the establishment of industries

in backward areas.

4. The Parliament provided certain incentives to encourage the establishment of industries and hotels in backward areas. Section 80HH of the Act

is one such provision. Bereft of the other details, sub-section (1) thereof reads as under:

Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to

which this section applies, thee shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of

the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof.

5. In addition to that, an industrial undertaking or a hotel, is extended the benefit of deduction under Section 80I of the Act, independently,

irrespective of the place of its location. The nature of activity undertaken by the respondent herein is mentioned in its written statement as under:

A brief process of manufacturing is that the yarn is obtained in the form of cops weighing about to 50 gms, each. These cops are fed to the

winding machine and about 250 such cops forms, a cone after winding. These cones are then fed to cheese winding machine and then to doubling

machine for twisting and brings a molecular change in the fibre content of the yarn. Consequently, it brings about total change in parameters of

quality such as single yarn strength count, inch, and end use, thereby bring in a totally different and a new product.

6. The respondent was claiming the benefit of deduction under Section 80HH of the Act, year after year. For the assessment years, 1989-90 and

1990-91, the Assessing Officer allowed deductions. However, for the assessment year 1992-1993, the deduction was denied, on the ground that

no process of manufacturing is involved. The Commissioner of appeals reversed the finding of the Assessing Officer and granted the relief. The

same was upheld by the Tribunal.

7. Basically, the concept of manufacture is specific to the regime under the Central Excise Act. Any product notified under the relevant provisions

is leviable excise duty. It is not uncommon that a particular product passes through various stages, in semi-finished form or in a totally different form

altogether. More often the question arises as to whether a particular activity can be treated as an independent activity of manufacture, so that the

product coming out of it, becomes liable for excise duty.

8. Before undertaking any further discussion on this aspect, a semblance of caveat needs to be added to the effect that the parameters for

manufacture that become applicable under the Central Excise Act, are totally different from those under the Income Tax Act, wherever the

occasion arises. While the Central Excise Act is primarily concerned with the activity of manufacture, as it has to depend upon only that activity for

levy of excise duty, the occurrence of the word "manufacture", is rare and incidental under the Income Tax Act. Further, the verification of the

actual activity of the Act may not be the primary concern. It is in the context of identifying an assessee and the taxability of the income that, a

verification, in this regard, is made.

9. The purport of the manufacture was explained by the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes),

Ernakulam Vs. Pio Food Packers, as under:

There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether

the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved, in its manufacture.

Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent

of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing

at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes take

the commodity to the point where commercially it can no longer be regarded as the original commodity, but instead is recognised as a new and

distinct article, that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and

the processed article, it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a

degree of processing, it must be recognised as still retaining its original identity.

10. In fact, this was taken note of by the Commissioner himself.

11. In the context of Section 80HH of the Act, the Parliament guardedly used the expression ""manufacturing process"", or ""manufacture"", or

produce articles"" in sub-section (4) and other parts thereof.

12. What becomes entitled to claim exemption under Section 80HH of the Act, is an industrial undertaking, as is evident from the very heading of

the Section, than the nature of activity taken up by it. Once the assessee answers the description of an industrial undertaking, it is immaterial

whether it is manufacturing, or producing or processing. The amount that qualifies for deductions is the profits and gains of such an undertaking to

the extent of 20%. Things would have been different altogether, had the deduction been restricted only to the activity of manufacturing.

13. In Banswara Syntex Limited''s case (supra), the Supreme Court has dealt with a matter that arose under the Central Excise Act. The question

involved there was whether the activity of multiplying a single yarn, which was already produced, can be treated as an independent activity of

manufacture. It was held that once the single yarn was treated as an activity of manufacture, and excise duty was levied thereon, the one of twisting

the single yarn into 2 or 3 stands, cannot be treated as an independent activity of manufacture. It is difficult to derive any support from that

judgment, while dealing with a case pertaining to deduction under Section 80HH of the Act. Even otherwise, the activity of the respondent was not

restricted to the one of multiplying the yarns that were already produced by someone else. It has already been mentioned that the respondent has

been manufacturing yarn, from cops, and then, multiplying the yarns, depending upon the customer demand.

14. Similarly, in M/s. J.K. Cotton Spinning and Weaving Mills Limited''s case (supra), the subject-matter was leviability of the excise duty on a

product under the Central Excise Act. Their Lordships held that if a manufactured product has been subjected to further process, and an

independent product has emerged half way through, even that can be levied, the excise duty, subject, of course to the benefit of MODVAT credit.

That is not the situation in the instant case.

15. The Bombay High Court in The Commissioner of Income Tax Vs. Emptee Poly-Yarn Pvt. Ltd., examined the matter from the purview of the

Act and held that the product involved therein was independent of its raw material, and thereby, the questions were answered in favour of the

assessee. The same was affirmed by the Supreme Court in Commissioner of Income Tax, Mumbai Vs. Emptee Poly-Yarn Pvt. Ltd., .

16. We do not find any ground to interfere with the order passed by the Tribunal.

17. The appeal is accordingly dismissed. There shall be no order as to costs. The miscellaneous petitions filed in this appeal shall also stand

disposed of.