Indian Cine Agencies Vs Commissioner of Income Tax

Court: Madras High Court

Date of Decision: Oct. 1, 2002

Citation: (2002) 125 TAXMAN 1063

Hon'ble Judges: R. Jayasimha Babu, J; K. Raviraja Pandian, J

Bench: Full Bench

Advocate: P.P.S. Janardhanaraja, for the Assessee T.C.A. Ramanujam, for the Revenue, for the Appellant;

Judgement

K. Raviraja Pandian, J.

The common question of law referred to for the opinion of this court is as follows :

1. Whether on the facts and in the circumstances of the case, the Tribunal was correct in not granting deduction u/s 32A of the Income Tax Act for

the assessment year 1986-87 and deduction u/s 80-I for assessment year 1987-88?

2. The assessment years are 1986-87 and 1987-88. The assessee is a dealer in photographic colour papers. It imported photographic colour

papers in jumbo rolls. The width of the said paper is 1.511 metres and the length of the same ranges from 3100 metres to 3250 metres. After

importation in jumbo rolls, the assessee cut the same into photographic flats and rolls of the desired size in a dark air conditioned humidity

controlled dust proof room with the help of slitting machine. The assessee sells the photographic colour papers to the dealers in the form of small

rolls or cut sizes. The photographic paper wound as smaller rolls are of the size ranging from 3.5"" X 275''/575''/775" to 20"" X 275". Likewise, the

cut size are also of different measurements ranging from 34"" X 54"" to 30"" X 40"". The number of cut sheets ranges from 10 to 200 sheets per

packet.

3. The assessee''s case is that it is entitled to both investment allowance u/s 32A and deduction in respect of profit and gains u/s 80-I of the Income

Tax Act on the ground that the activities involved in reducing the size of the jumbo photographic papers into desired size with the help of slitting

machine would amount to manufacturing and processing. The assessing officer negatived assessee''s claim on the ground that cutting or slitting of

jumbo rolls into flat and small rolls did not amount to either manufacture or production of an article. On appeal, the Commissioner (Appeals)

accepted the assessee''s contention and found that the assessee is entitled to both investment allowance u/s 32A and also deduction u/s 80-I and

directed the Deputy Commissioner to allow investment allowance for the assessment year 1986-87 and the deduction u/s 80-I for the assessment

year 1987-88 since the same was claimed only for that year. Feeling aggrieved, the revenue carried the matter on appeal to the Tribunal. The

Tribunal on consideration held that the assessee is not entitled to either the investment allowance u/s 32A or the deduction u/s 80-I of the Act.

Hence, the reference pursuant to the orders made in T.C.P. Nos. 131 and 132 of 1996 at the instance of the assessee.

4. The learned counsel Mr. Janardhanaraja appearing for the assessee has contended that the activity of the assessee is after importation, the

photographic colour papers are stored in air conditioned godown; the jumbo rolls are lifted mechanically with the help of forklift to the slitting room

and thereafter the jumbo rolls are loaded on the computerized automatic slitting machine with the help of overhead hoist and tilt table. The slitting

machine converts the jumbo rolls into small marketable size papers. The slitting machine winds the slitted rolls on to the cores and the wound slit

rolls are then removed and packed in photo grade polythene covers and scaled. The whole process is required to be done in dark air conditioned

humidity controlled dust proof room. Thus the conversation of jumbo rolls into small marketable rolls or flats amounts to manufacturing and

processing and as such the assessee is entitled to the investment allowance as well as deduction under the above said two provisions of the Act.

For that purpose, he heavily relied on the decision of the Supreme Court in ASPINWALL and CO. LTD. Vs. Commissioner of Income Tax, ,

wherein the process of manufacturing coffee from raw berries has been held to be a manufacturing activity.

5. The learned counsel appearing for the respondent Mr. Ramanujam has contended that the activity of the assessee is nothing but reducing the size

of the bigger photographic paper into small rolls and flats so as to cater to the needs of the assessee''s customers, which process does not involve

any manufacturing activity and he relied on the decision of the Supreme Court in Commissioner of Income Tax Vs. Gem India Manufacturing Co.,

, wherein the Supreme Court has held that in the absence of any material to show that polished diamond is a new article or thing which is the result

of manufacture or production, subjecting raw uncut diamonds to a process of cutting and polishing, which yields the polished diamond, cannot be

said to amount to manufacture or production of an article or thing, for the purpose of obtaining the deduction u/s 80-I of the Income Tax Act.

6. We heard the learned counsel appearing on either side and perused the materials on record.

7. Section 32A provides for investment allowance in respect of a ship or an aircraft or machinery or plant specified in sub-section (2), which is

owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the

provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or

plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that

previous year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant.

Sub-section (2) of section 32A to which a reference is made in subsection (1) provides as follows :

(2) The ship or aircraft or machinery or plant referred to in sub-section (1) shall be the following, namely

(a) * *

(b) any new machinery or plant installed after the 31-3-1976,

(i) for the purposes of business of generation or distribution of electricity or any other form of power; or

(ii) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any article or thing; or

(iii) in any other industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing, not being an

article or thing specified in the list in the Eleventh Schedule.

8. As stated above, the assessee''s case is that it is entitled to investment allowance and also deduction u/s 80-I of the Act on the ground that the

activities involved in cutting jumbo rolls into smaller rolls or cut sizes, is manufacturing activity. A cursory reading of the above provision would

indicate that the plant and machinery should be used by an industrial undertaking for the purpose of business of manufacture or production of any

article or thing, as stated in section 32A(2)(b)(ii) of the Income Tax Act. As set out in the statement of the case, the assessee is not a manufacturer,

but only a dealer in photographic colour paper, who imports manufactured or produced photographic colour paper for the purpose of sale. In the

facts and circumstances of the case as narrated above, we will have to see whether the activity of the assessee would amount to manufacture or

production so as to entitle him to the benefit under sections 32A and 80-I of the Act.

9. The words ""manufacture"" and ""production"" have not been defined in the Act. In the case of Commissioner of Income Tax, Orissa and Others

Vs. N.C. Budharaja and Company and Others, , the Supreme Court while considering whether the construction of dam would amount to

manufacture within the meaning of section 80HH of the Income Tax Act has observed as follows :

. . . The words "manufacture" and "production" have received extensive judicial attention both under this Act as well as the Central Excises Act

and the various sales tax laws. The word "production" has a wider connotation than the word "manufacture". While every manufacture can be

characterised as production, every production need not amount to manufacture. The meaning of the expression "manufacture" was considered by

this court in Dy. CST v. Pio Food Packers (1980) 46 STC 63, among other decisions. In the said decision, the test evolved for determining

whether manufacture can be said to have taken place is, whether the commodity which is subjected to the process of manufacture can no longer be

regarded as the original commodity but is recognised in the trade as a new and distinct commodity. Pathak J., as he then was, stated the test in the

following words (at page 65) :

"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."

The word "production" or produce when use in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process

which may or may not amount to manufacture. It also takes in all the by products, intermediate products and residual products which emerge in the

course of manufacture of goods..."" (p. 423)

10. The Supreme Court in the above case while rejecting the submission of the counsel for the assessee that section 80HH is intended to

encourage establishment of industrial undertakings in backward areas for the reason that such establishment leads to development of that area

besides providing employment and in that context, a liberal interpretation, which advances the purpose and object underlying the provision, should

be adopted, has held that :

The said principle, however, cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not

be reasonable or permissible for the court to rewrite the section or substitute words of its own for the actual words employed by the legislature in

the name of giving effect to the supposed underlying object. After all, the underlying object of any provision has to be gathered on a reasonable

interpretation of the language employed by the legislature.

11. The case of Gem India Mfg. Co. (supra) on which reliance has been placed by the counsel for the revenue considered the question as to

''whether on the facts and in the circumstances of the case and in law, the Tribunal was right in confirming the order of the Commissioner (Appeals)

holding that the assessee, engaged in cutting and polishing of diamonds, amounts to manufacturing or production of goods and is entitled to

deduction u/s 80-I of the Income Tax Act, 1961?, and held that :

There can be little difficulty in holding that the raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished

diamond, but that is not to say that the polished diamond is a new article or thing which is the result of manufacture or production.

12. Sterling Foods v. State of Karnataka (1986) 63 STC 239 (SC) was a case of export of lobsters. In that case, the appellants purchased

shrimps, prawns and lobsters locally for complying with orders for export and they cut the heads and tails of the shrimps, prawns and lobsters and

then they were subjected to peeling, deveining and cleaning and freezing before being exported in cartons. The Supreme Court held that :

..... by reason of processing of the goods after their purchase, there was no change in their identity and that, in fact, commercially they were to

be regarded as the original goods.

13. In the case of Commissioner of Income Tax Vs. Madurai Pandian Engineering Corporation Ltd., , the Division Bench of this court, while

considering the question whether the retreading of old tyres would amount to manufacture or production and the assessee is entitled to the relief

under sections 80HH and 80J of the Income Tax Act, 1961 has held as follows :

The word ''production'' or ''produce'' has been used in the section 80HH of the Income Tax Act, 1961, in juxtaposition with the word

''manufacture'' and it would take in bringing into existence new goods by a process which may or may not amount to manufacture. The article

referred to in the section, therefore, has reference to new articles and brought into existence by a process of manufacture or by any other mode,

which can be regarded as production. The resultant article whether it is by manufacture or by way of production must be a new article. The term

''new'' is not found in the section. It must be held to be implicit in the word ''manufacture''. Having regard to the fact that the word ''production'' or

the word ''produce'' is used in juxtaposition with the word ''manufacture'' these terms also must be regarded as referring to production, which

brings into existence a new article...'''' (p. 375)

The court further held

...The tyre continues to be a tyre throughout and when it is worn out, it maybe either discarded or its life renewed by retreading, so that it is made

serviceable for some more time. The commodity at all stages is the tyre. There is no change in the character of that commodity. A different and

distinct commodity cannot be said to have come into existence as a result of the retreading."" (p. 380)

The activity of retreading of a worn out tyre by fixing the tread on the worn out tyre by certain process, which is converse to the activity involved in

the present case, wherein a bigger article is cut into small articles, was held to be not a manufacturing activity, The civil appeal against the judgment

was dismissed by a three Judges Bench of the Apex Court, after holding that there was no merit in the appeal. That decision as Tamil Nadu State

Transport Corporation Ltd. Vs. Commissioner of Income Tax, .

14. The case relied on by the learned counsel viz. Aspinwall& Co. Ltd."s case (supra) in order to sustain his case that the activity of the petitioner

involves a manufacturing and processing activity, is a case in which the assessee had a coffee curing plant. In relation to machinery installed for

curing of the coffee, the assessee claimed investment allowance u/s 32A of the Income Tax Act for the assessment years 1980-81 and 1983-84.

The Appellate Tribunal found that nine processes were involved in curing coffee and to deal with the nine processes, the assessee had a factory

area where godowns for storage of uncured/clean coffee, coffee drying yards, machine rooms, garbling sheds, etc., were located. The Tribunal

held that in this process the assessee was involved in an activity of manufacturing the coffee beans from the raw material plucked from the plant,

and that, therefore, the assessee was entitled to investment allowance on the machinery installed for curing coffee. On a reference, the High Court

held that the assessee was not entitled to the allowance as the activity of the assessee was not either manufacture or production. On appeal to the

Supreme Court, the Supreme Court held that the assessee after plucking or receiving the raw coffee berries made them under go nine processes to

give them the shape of coffee beans. The final product was absolutely different and separate from the input. The change made in the article resulted

in a new and different article, which was recognised in the trade is a new and distinct commodity. The coffee beans had an independent identity

from the raw material from which they were produced. Conversion of a raw berry into the coffee beans was a manufacturing activity. While

holding so, the Supreme Court held as follows :

The word "manufacture" has not been defined in the Income Tax Act. In the absence of a definition, the word "manufacture" has to be given a

meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials

by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new

and different article then it would amount to manufacturing activity.

In that case, by means of the nine processes as found by the Tribunal, there was conversion of the raw berry into the coffee beans, which are

commercially two different commodities and that activity has been considered by the Supreme Court as a manufacturing activity. But in the case on

hand, the activities discussed above clearly show that the jumbo photographic colour papers were only slitted into small rolls and sheets of required

sizes. The slitted small photographic colour paper or a small flat colour paper is not a commodity different from the jumbo roll of photographic

colour paper. The marketability might be different.

15. On the facts of the present case, the assessee by the use of slitting machine slitted the jumbo photographic colour paper into smaller rolls and

cut size flats of the desired size. By this activity, no manufacturing process has been done by the assessee. The assessee imported already

manufactured colour papers, which has been now reduced in size according to the needs of the assessee''s customers. The original goods as well

as the size reduced goods by slitting are all one and the same, i.e., they are photographic colour paper. No new commercial commodity emerged

out of the activity carried on, on the original goods-Jumbo rolls, which could be considered as a manufacturing activity at the hands of the assessee.

The assessee is only trading in photographic colour papers as a wholesaler and slitted the already manufactured and produced photographic paper

into required size to suit the requirement of its customers and in easily marketable sizes. Therefore, the slitting of the bigger roll into marketable

smaller rolls or sizes is an integral part of the trading activity of the assessee. In the above said process, neither manufacture nor production is

involved nor a new product emerges even though the goods are handled by forklift and hoist and slitted by computerized slitting machine and which

process is required to be done in a dark air conditioned humidity controlled dust proof room.

16. In view of the above discussion with particular reference to the activity carried on by the assessee, and in the light of the decisions above

referred to, we are of the considered view that on the facts and circumstances of this case, the assessee cannot be regarded as being engaged in

the business of manufacture or production of an article or thing. The question is answered in favour of the revenue and against the assessee.