

(2002) 10 MAD CK 0158

Madras High Court

Case No: Tax Case No. 92 of 1998 29 October 2002

Commissioner of Income Tax

APPELLANT

Vs

Sree Annapoorna Gowrishankar
Metals (P) Ltd.

RESPONDENT

Date of Decision: Oct. 29, 2002

Citation: (2003) 127 TAXMAN 404

Hon'ble Judges: N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench: Full Bench

Advocate: T. Ravikumar, for the Revenue R. Meenakshisundaram, for the Assessee, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

N.V. Balasubramanian, J.

The Tribunal has stated a case and referred the following question of law at the instance of the revenue :

"Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the assessee is a non-trading company and hence the rate of taxation is 55 %?"

2. The assessment year involved is 1986-87. The assessee is a private limited company carrying on the business of running a chain of hotels in Coimbatore and the Income Tax Officer in the original assessment made on the assessee for the assessment year 1986-87, treated the company as a non-trading company and levied the tax at the rate of 55 per cent. Thereafter, he resorted to rectification proceedings u/s 154 of the Income Tax Act and treated the company as a trading company and levied the tax at the rate of 60 per cent. The assessee challenged the order of rectification by filing an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) upheld the order of the assessing officer in the light of the

decision of this court in the case of [Commissioner of Income Tax \(Central\) Madras Vs. Buhari Sons Pvt. Ltd.,](#) . Aggrieved by the order, the assessee carried the matter in appeal by filing appeal before the Income Tax Appellate Tribunal, Madras. The Tribunal, following its earlier order rendered in the assessee's own case, held that as per section 2(7)(g) of the Finance Act, 1986, the assessee is not a trading company and is liable to be taxed at the rate of 55 per cent and not at 60 per cent as levied by the Income Tax Officer in the order of rectification. The Tribunal thereby allowed the appeal preferred by the assessee and the order of the Tribunal is the subject matter of reference.

3. We heard learned counsel for the revenue and the learned counsel for the assessee. We noticed that the Tribunal has followed its earlier order rendered in the assessee's own case for the assessment years 1987-88 to 1989-90 holding that the assessee is a non-trading company, but the earlier order of the Tribunal is not enclosed as a part of the statement of case. The Tribunal has been reminded by this court several times that when the Tribunal relies on its earlier order, such earlier order should form part of the statement of case, but, unfortunately, the Tribunal has not enclosed its earlier order. Further, the present order of the Tribunal, which is the subject matter of reference, does not contain any independent reason.

4. We also directed learned counsel for the revenue to furnish a copy of the order of the Tribunal. Learned counsel for the revenue submitted that though he instructed the department to forward a copy of the order, the department has not furnished a copy of the earlier order. When the court directed the department to submit a copy of the order of the Appellate Tribunal, the department should have produced the same. We record our strong displeasure towards the attitude adopted by the Income Tax Department in not furnishing a copy of the earlier order of the Tribunal, even when it was so directed by the court. We also make it clear that in future such lapse will be viewed with more seriousness.

5. As far as the merits of the case are concerned, it depends upon the interpretation of section 2(7)(g) of the Finance Act, 1986 which reads as under :

"trading company means a company whose business consists mainly in dealing in goods or merchandise manufactured, produced or processed by a person other than that company and whose income attributable to such business included in its gross total income (as defined in section 80P of the Income Tax Act) is not less than fifty-one per cent of the amount of such gross total income."

A careful reading of the definition of trading company shows that a company is liable to be treated as a trading company, only if its main business consists in dealing in goods or merchandise manufactured, produced or processed by a person other than that company. The primary condition for a trading company is that it must deal in the goods manufactured, produced or processed by a person other than that company. Admittedly, the assessee is a hotel and it produces its own food

products and sells the same in its own hotel. In other words, it is not dealing in the goods manufactured, produced or processed by a person other than the assessee. Therefore the primary condition to treat the company as a trading company is not satisfied and hence, the Tribunal was correct in holding that the assessee company is a non-trading company and it does not fall within the definition of the expression, trading company as defined in section 2(7)(g) of the Finance Act.

6. As far as the decision of this court in Buhari Sons (P) Ltd.'s case (supra), which has been relied upon by the assessing officer to initiate rectification proceedings is concerned, the case dealt with the definition, industrial company within the meaning of section 2(7)(d) of the Finance Act, 1986. Though this court has dealt with the case of a hotel, this court was not considering the question whether the said hotel should be treated as trading company or a non-trading company, and hence, the decision of this court in Buhari Sons (P) Ltd.'s case (supra) has no application to the facts of the case. We have also gone through the Finance Act, 1986 and in the classification of companies, trading company finds a place and we do not find any classification as an industrial company. Therefore the decision of this court in Buhari Sons (P) Ltd.'s case (supra) has no application.

7. Accordingly, we hold that the view taken by the Tribunal is justifiable in law and there are no grounds or infirmities in the order warranting our interference. Accordingly, the question of law referred to us is answered in the affirmative, in favour of the assessee and against the revenue. Counsel for the assessee is entitled to costs of Rs. 500.