Commissioner of Income Tax Vs Sesa Goa (India) Ltd. and Another

Court: Bombay High Court (Goa Bench)

Date of Decision: Aug. 23, 2005

Acts Referred: Income Tax Act, 1961 â€" Section 260A, 32A, 33, 35E, 43
Income Tax Rules, 1962 â€" Rule 13

Citation: (2006) 202 CTR 302

Hon'ble Judges: R.M. Lodha, J; N.A. Britto, J

Bench: Division Bench

Advocate: S.R. Rivonkar, for the Appellant; V. Frank, for the Respondent

Judgement

R.M. Lodha, J.
This appeal u/s 260A of the IT Act, 1961, is at the instance of the Revenue.

2. The appeal has been admitted on the following substantial questions of law :

I. Whether, on the facts and in the circumstances, the Tribunal was justified in holding that the assessee is entitled for deduction on account of

investment allowance, by ignoring the fact that the assessee is engaged only in processing activity and not in production and manufacturing of any

article or thing, ignoring the decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C.

Budharaja and Company and Others, ?

II. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the claim of the assessee of Rs. 90,000 being

fees paid to the RoC for increasing the authorised capital of the company for the purpose of issuing bonus shares, based on the decision of the

Hon''ble Bombay High Court in the case of Bombay Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV, ,

ignoring the decision of the Hon''ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd., Chandigarh Vs.

Commissioner of Income Tax, Patiala, ?

III. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing to grant the depreciation of Rs. 76,368 totally

ignoring Expln. 8 to Section 43(1) of the IT Act ?

3. As regards the substantial question of law No. I, learned Counsel for the Revenue fairly conceded that in view of the decision of this Court in the

case of Commissioner of Income Tax Vs. Sesa Goa Ltd., D.B. Bandodkar and Sons Pvt. Ltd. and Chowgule and Co. Ltd., , he does not have

anything to say and as per the said decision, the said question has to be decided against the Revenue and in favour of the assessee.

In the case of CIT v. Sesa Goa Ltd. (supra), the Division Bench considered the judgment of the apex Court in the case of Commissioner of

Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, and the judgments of various High Courts wherein N.C.

Budharaja & Co. (supra) was considered and observed thus :

The apex Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , has again

reiterated the expression "manufacture" used in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food

Packers, . The apex Court noted both the words "manufacture" and "production" have received extensive judicial attention both under the IT Act

as well as the Central Sales-tax Act and various sales-tax laws. It further observed that the expressions "manufacture" and "production" are

normally associated with movable articles and goods, big and small. We may now consider some of the judgments of the High Courts relied upon

by learned Counsel for the purpose of finding out whether extraction or raising of ore would amount to manufacture or production, considering the

entire process from the stage of extraction till its export as it would be an integral part of the business of mining. The first case we have before us is

Commissioner of Income Tax Vs. Gogte Minerals, . It is no doubt true that in this case-the test as applied in the case of CIT v. N.C. Budharaja &

Co. (supra), was not considered. The case involved excavation of iron ore. The Division Bench of the Karnataka High Court considering the issue,

observed, that what was being considered was mining operation carried out for excavation of iron ore and sequestering of some other materials. It

involves a process and there is a complete transformation of material from one form to another altogether and does not continue to be in the same

form, as was found in the earth before excavation. When such complicated process is involved, it cannot be said that there is no manufacturing

activity because what is brought into existence is iron ore. Thus, it must be stated that the process involved is a manufacturing activity. It may be

noted that what the Division Bench of the Karnataka High Court observed was that mere removing from the earth by itself is not manufacture, but

various processes which thereafter are applied would amount to manufacture. The next judgment we have is the case of Commissioner of Income

Tax Vs. Mysore Minerals Ltd., . This was a case in respect of mining of granite. The Division Bench held that it would amount to manufacture

relying on an earlier judgment in the case of Commissioner of Income Tax Vs. Mysore Minerals Ltd., . The criticism against this judgment is that

this judgment relied upon an earlier judgment in the case of Mysore Minerals, which has been reversed by the apex Court in Commissioner of

Income Tax Vs. Mysore Minerals Ltd., , and as such would no longer be a good law. Considering that aspect, we do not propose to consider the

ratio of the said judgment. The next judgment relied upon is Deputy Commissioner of Income Tax Vs. Mysore Minerals Ltd., . In this case also

what was involved was mining of granite. The learned Division Bench of the Karnataka High Court relied upon the judgment in CIT v. N.C.

Budharaja & Co. (supra) and explained and distinguished it. In that case the process involved extracting granite and converting it into slabs, cutting

and polishing them. This was held to be a manufacturing activity. In Commissioner of Income Tax and Another Vs. Mysore Minerals Ltd., , again

the matter involved granite. The Division Bench observed that it stands concluded in view of the judgment in CIT v. Mysore Minerals Ltd. (supra).

Therefore, if the tests as laid down in the judgments of the apex Court and considered in the various judgments of the High Courts and even

considering that various processes are involved, would mere extraction of iron ore from the earth amount to ''manufacture'' ? In the instant case,

considering the material on record, as noted by the apex Court, iron ore is merely extracted by removing the top soil. That by itself would not

amount to manufacture, if the tests considered by the apex Court in its various judgments are applied. In Chowgule and Co. Pvt. Ltd. and Another

Vs. Union of India (UOI) and Others, , which was a case under the Central Sales-tax Act and what was under consideration was Section 8 and

Rule 13 of the Rules, the apex Court held that even if the various processes are applied, it is commercially the same article, namely, ore. The

composition may change, the content may change, but as noted by the apex Court, the ore extracted commercially continues to be ore. It would,

therefore, not be possible for us to accept the contention that extractions of ore and the various processes which it undergoes until it is sold

amounts to ''manufacture''. In our opinion, the various processes applied do not amount to ''manufacture'' and, consequently, it would be difficult to

hold that the extraction of ore amounts to ''manufacture''.

The Division Bench went on to observe further as follows :

The question there is whether extraction of ore and the various processes would involve ''production''. The expression ''production'' again is no

longer res Integra, having been considered by the apex Court in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja

and Company and Others, . The apex Court noted in the said judgment that the word "production" or "produce" when used in juxtaposition with

the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. Three High

Courts, at least, have taken the view that the extraction of ore would amount to "production". We first have the judgment of the Andhra Pradesh

High Court in Commissioner of Income Tax Vs. Singareni Collieries Co. Ltd., . A Division Bench of the Andhra Pradesh High Court was

considering the expression "production". The Andhra Pradesh High Court noted the argument of the Revenue against the finding of the Tribunal

which had held that extracting coal or winning coal from a coal mine is an article or thing produced. The argument was then noted that the

contention of the Revenue that coal which is extracted from the mine is not an article or thing. What was contended is that winning or excavating

coal is not an activity of production.

The learned Division Bench then relied on the judgment in the case of CIT v. N.C. Budharaja & Co. (supra) and also placing reliance on

Webster"s New International Dictionary, for the word "produce", which is defined to mean "something that is brought forth or yielded either

naturally or as a result of effort and work". In Shorter Oxford English Dictionary, the meaning given is : "To bring forward, bring forth or out ; to

bring into being or existence". In Black"s Law Dictionary, the expression "produce" is "To bring forward; to show or exhibit; to bring into view or

notice; to bring to the surface". Considering the language used and also placing reliance on the provisions of Section 35E of the IT Act, the learned

Division Bench noted that "production of mineral" is used in the allied provisions of the Act itself and it is a definite point that Parliament employed

the expression "production" to the minerals extracted from underneath the surface. For all those reasons, the learned Division Bench took the view

that it amounted to "production". Another learned Division Bench of the Delhi High Court in Commissioner of Income Tax Vs. Univmine (P.) Ltd.,

, observed that mining of marble would amount to carrying on business of production and for that purpose placed reliance on the case of Chrestien

Mica Industries Ltd. v. State of Bihar (1961) 12 STC 150 (SC), where the apex Court held that the process of mining mica is a process of

production. We also have the judgment of another learned Division Bench of the Calcutta High Court in the case of Commissioner of Income Tax

Vs. G.S. Atwal and Co. (Gua), . The Division Bench observed, taking into consideration the various contentions and judgments which were

involved, that winning of coal is ''production''. The learned Division Bench considering the earlier judgment of Chakravartti, C.J., which was later

on approved by the Supreme Court, where the Calcutta High Court had taken the view that winning of coal is no doubt ''production''.

From the dictionary meaning of what would amount to ''production'' and the judgments of the Andhra Pradesh High Court, Delhi High Court and

the Calcutta High Court, the question would be whether the view taken by the Tribunal can be upheld on the ground that extraction or winning of

ore would amount to ''production''. Our attention had been invited to Section 32A to hold that considering items and goods not included in the

Eleventh Schedule, they would be entitled to the benefit u/s 32A of the said Act. Our attention was also invited that earlier u/s 33 of the said Act,

an assessee would have been entitled to the benefit of development rebate, which is no longer available. Iron ore was specifically included in the

Fifth Schedule and, consequently, was entitled to the development rebate. The Act also contains internal evidence to show that the legislature has

treated raw ore differently from processed ore. A Division Bench of this Court in Commissioner of Income Tax Vs. Emirates Commercial Bank

Ltd. (now known as Abu Dhabi Commercial Bank Ltd.), , has given the benefit even in respect of data processing done on computers. In other

words, the legislation being a beneficial piece of legislation, an expanded meaning should be so given and has to be given.

4. In view of the aforesaid decision with which we concur, it cannot be said that the extraction of ore would not amount to ''''production''''. The

assessee, was therefore, entitled for deduction on account of investment allowance.

5. As regards the substantial question of law No. II, learned Counsel for the Revenue heavily relied upon the judgment of the Supreme Court in the

case of Punjab State Industrial Development Corporation Ltd., Chandigarh Vs. Commissioner of Income Tax, Patiala, . In that case, the question

before the apex Court was whether the amount of fee paid to the RoC as filing fee for enhancement of capital was not revenue expenditure ? The

Supreme Court noticed the conflict of opinions amongst various High Courts and on examination of these issues held that the fee paid to the

Registrar for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although

incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains the character of a capital

expenditure since the expenditure was directly related to the expansion of the capital base of the company. It may be noticed here that the

Supreme Court in Punjab State Industrial Development Corporation Ltd. v. CIT (supra) also considered the judgment of this Court in Bombay

Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV, .

6. Learned Counsel for the assessee, however, submitted that the judgment of the apex Court in the case of Punjab State Industrial Development

Corporation Ltd. v. CIT (supra) shall not be applicable, as in the present case the fee was paid to the RoC in connection with the issue of bonus

shares and that fee cannot be treated as capital expenditure, but would be allowable as being of a revenue nature. In this connection, he placed

reliance on the Division Bench judgment of this Court in the case of Bombay Burmah Trading Corporation Ltd. v. CIT (supra).

7. In our considered view, from the facts of this case, it is clear that the assessee claimed deduction of the expenses of Rs. 90,000 paid to the RoC

for increasing the authorised capital of the company for the purpose of issuing bonus shares. That was ultimately allowed by the Tribunal. The fees

of Rs. 90,000 paid by the assessee to the RoC, was not an expenditure for the purpose of issuing bonus shares but was for the purpose of

increasing the authorised capital of the company though for the purpose of issuing bonus shares. The decision of the Supreme Court in the case of

Punjab State Industrial Development Corporation Ltd. v. CIT (supra) is, thus, squarely applicable. The fee paid by the assessee to the RoC for

increasing the authorised capital of the company for the purposes of issuing bonus shares is held to be capital expenditure. The substantial question

of law No. II is, accordingly, decided in favour of the Revenue and against the assessee.

8. As regards the substantial question of law No. III, learned Counsel for the Revenue could not dispute that Expln. 8 appended to Section 43

relates to the amount paid or payable by way of interest. In that event, the said provision shall not be applicable where the exchange rate difference

had arisen in relation to repayment of loan and not repayment of interest. In this situation, Section 43A of the IT Act is directly attracted. The

finding of the Tribunal on this issue cannot be faulted.

9. We, accordingly, conclude thus :

(i) The substantial question of law No. I is decided against the Revenue and in favour of the assessee.

(ii) The substantial question of law No. II is decided in favour of the Revenue and against the assessee.

(iii) The substantial question of law No. III is decided in favour of the assessee and against the Revenue.

The appeal is disposed of in the aforesaid terms. No costs.