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(2011) 07 CAL CK 0012

Calcutta High Court

Case No: IT Appeal No. 565 of 2004

Stewart Holl (India) Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax, Kolkata-II		RESPONDENT

Date of Decision: July 13, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 28, 35(1)(B), 80HHC, 80HHC(3)(a)

Citation: (2012) 207 TAXMAN 179

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: J.P. Khaitan, R.L. Mitra and Ms. Priyanka Dhar, for the Appellant; Md. Nizamuddin, for the Respondent

Judgement

Bhaskar Bhattacharya, J.

This appeal is at the instance of the assessee u/s 260A of the income tax ("Act") and is directed against an order dated March 31, 2004 passed by the income tax Appellate Tribunal "D" Bench, Kolkata in ITA No. 97 (Cal) of 2000 & ITA No.1344 (Cal) 2001 disposing of those two appeals relating to Assessment Years 1997-97 and 1997-98 by a common judgment. The Appellant before us has paid double court fees as by a single appeal it has challenged order in respect of two assessment years. The appellant is a public limited company and carries on business of growing and manufacturing tea. As part and parcel of its business, appellant purchased a small quantity of tea manufactured by other tea estates and blended those with the tea manufactured by it. According to the appellant, in order to get the appropriate blend, samples of different varieties of tea are mixed in appropriate proportions and tasted. As a consequence of such blending of different varieties of tea, the appellant claims, there is a qualitative change and the blended tea is transformed into a different quality from the tea which was blended. According to the appellants, such blended tea is exported by the appellant.

2. For the relevant assessment year, the contention of the appellant was that the appellant was entitled to the benefit provided in sub-section 3(a) of Section 80HHC as blending of tea amounts to processing within the meaning of said provision.

3. The Assessing Officer, however, turned down the said plea and held that the case of the appellant came within the purview of sub-section 3(b) of the Act as the activity of the appellant related to the one provided in the definition of "trading" of tea.

4. Being dissatisfied, the appellant preferred two appeals before the Commissioner of income tax (Appeals) in respect of those two years but the said authority dismissed the appeals.

5. Being dissatisfied, the appellant preferred further two appeals before the Tribunal below and by the order impugned herein the said Tribunal has affirmed the order passed by the authorities below.

6. Against the aforesaid order, the appellant has come up with the present appeal after payment of court fees of two appeals.

7. A Division Bench of this Court has formulated the following substantial question of law for determination in this appeal:

Whether the Tribunal was justified in law in holding that blending of tea did not constitute processing and that the appellant was not entitled to deduction u/s 80HHC(3)(a) of the Income Tax Act, 1961 in respect of profits derived from export of tea?

Therefore, the sole question that arises for determination in this appeal is whether the blending of different types of tea comes within the purview of the word "processed" within the meaning of Section 80HHC(3a) of the Act.

8. In order to appreciate the aforesaid question, it will be profitable to refer to the provision contained in Section 80HHC of the Act as it stood at the relevant point of time:

"80HHC. 1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the derived by the assessee from the export of such goods or merchandise:

Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an Export House or a Trading House, as the case may be,) issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be

reduced by such amount which bears to the derived by the assessee from the export of trading goods, the same proportions as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee in respect of such trading goods.

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"3. For the purposes of sub-section (1), -

(a) where the export out of India is of goods or merchandise manufactured [or processed] by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same, proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;

(c) where the export out of India is of goods or merchandise manufactured [or processed] by the assessee and of trading goods, the profits derived from such export shall, -

(i) in respect of the goods or merchandise manufactured [or processed] by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee; and

(ii) in respect of the trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods:

Provided that the profits computed under clause (a) or clause (b) or clause (c) of this sub-section shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiia) (not being profits on sale of a licence acquired from any other person), and clauses (iiib) and (iiic) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

Explanation.-For the purposes of this sub-section, -

(a) "adjusted export turnover" means the export turnover as reduced by the export turnover in respect of trading goods;

(b) "adjusted profits of the business" means the profits of the business as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (b) of sub-section (3);

(c) "adjusted total turnover" means the total turnover of the business as reduced by the export turnover in respect of trading goods;

(d) "direct costs'' means costs directly attributable to the trading goods exported out of India including the purchase price of such goods;

(e) "indirect costs" means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover;

(f) "trading goods" means goods which are not manufactured [or processed] by the assessee].

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[Emphasis supplied].

9. Mr. Khaitan, the learned Senior Advocate appearing on behalf of the appellant, places strong reliance in the case of Commissioner of Income Tax, Kerala Vs. Tara Agencies,) and contended that in those decisions the Supreme Court has disapproved the Division Bench decision of Bombay High Court in the case of Nilgiri Ceylon Tea Supplying Co. v. State of Bombay [1959] 10 STC 500 (Bom.) where the Bombay High Court had held that blending of tea did not amount to processing of tea.

10. By relying upon those two decisions, Mr. Khaitan contended that the authorities below committed substantial error of law in holding that blending of tea did not come within the purview of processing so as to get the benefit of 80HHC (3a) of the Act.

11. Mr. Nizzamuddin, the learned Counsel appearing on behalf of the Revenue, supported the views taken by authorities below including the Tribunal.

12. After hearing the learned Counsel for the parties and after going through the decisions of the Supreme Court in the cases of Tara Agencies Chowgule & Co. (P.) Ltd. (supra), we find that the point involved herein is covered by those decisions.

13. In the case of Nilgiri Ceylon Tea Supplying Co. (supra), the Bombay High Court took the view that blending of different qualities to tea did not amount to processing. The said decision came up for consideration in the case of Chowgule & Co. (P.) Ltd. (supra) before the Supreme Court. The Apex Court made the following observations regarding the legality of the aforesaid view taken by the Bombay High Court:

The Revenue however relied on the decision of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v. State of Bombay, [1959] 10 STC 500. The assessees in

this case were registered dealers in tea under the Bombay Sales Tax Act, 1953 and they purchased in bulk diverse brands of tea and without the application of any mechanical or chemical process, blended these brands of different qualities according to a certain formula evolved by them and sold the tea mixture in the market. The question arose before the Sales Tax Authorities whether the different brands of tea purchased and blended by the assessees for the purpose of producing the tea mixture could be said to have been ''processed'' after the purchase within the meaning of the proviso to Section 8(a), so as to preclude the assessees from being entitled to deduct from their turnover u/s 8(a) the value of the tea purchased by them. The High Court of Bombay held that the different brands of tea purchased by the assesses could not be regarded as ''processed'' within the meaning of the proviso to Clause (a) of Section 8, because there was "not even application of mechanical force so as to subject the commodity to a process, manufacture, development or preparation" and the commodity remained in the same condition. The argument of the Revenue before us was that this decision of the Bombay High Court was on all fours with the present case and if the blending of different brands of tea for the purpose of producing a tea mixture in accordance with a formula evolved by the assessees could not be regarded as ''processing'' of tea, equally on a parity of reasoning, blending of ore of different chemical and physical compositions could not be held to constitute ''processing'' of the ore. Now undoubtedly there is a close analogy between the facts of Nilgiri Tea Company''s case and the facts of the present case, but we do not think we can accept the decision of the Bombay High Court in the Nilgiri Tea Company''s case as laying down the correct law. When different brands of tea were mixed by the assessees in Nilgiri''s Tea Company''s case for the purpose of producing a tea mixture of a different kind and quality according to a formula evolved by them, there was plainly and indubitably processing of the different brands of tea, because these brands of tea experienced, as a result of mixing, qualitative change, in that the tea mixture which came into existence was of different quality and flavour than the different brands of tea which went into the mixture.

14. The aforesaid view of the Supreme Court has been reiterated in a recent decision of the Supreme Court in the case of Tara Agencies (supra), where the Court did not dispute the proposition of law laid down in the case of Chowgule and Company as would appear from the following observations:

It may be pertinent to mention that reference of Chowgule''s case acquires greater significance because, in that case, this Court dealt with a Division Bench judgment of the Bombay High Court in the case of Nilgiri Ceylon Tea Supplying Co. v. State of Bombay [1959] 10 STC 500. This Court observed that the judgment of the Bombay High Court did not lay down the correct law because it held that the activity of the assessee did not amount to processing. Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, .

33. Details of relevant Statute are as under:

Section 8 of the Bombay Sales Tax Act, 1953, so far as is "subject to the provisions of section 7, there shall be levied a sales tax on the turnover of sales of goods specified in column I of Schedule B at the rate, if any, specified against them in column 2 of the said Schedule, after deducting from such turnover-

(a) sales of goods-

(i) which have been purchased from a registered dealer on or after the appointed day, or

(ii) on the purchase of which the dealer has paid or is liable to pay the purchase tax:

Provided that the goods have not been processed or altered in any manner after such purchase.

34. This Court held that the different brands of tea which were mixed by the assessee in Nilgiri''s case for the purpose of producing a tea mixture of a different kind and quality according to the formula evolved by them, there was plainly and indubitably processing of different brands of tea, because these brands of tea experienced, as a result of mixing, qualitative change, in that the tea mixture which came into existence was of different quality and flavour than the different brands of tea which went into the mixture.

15. However, the Court distinguished the said decision in the facts of the case before it by making the following observations:

Undoubtedly, the facts of Nilgiri''s case are identical to the facts of the present case and the ratio of Nilgiri''s case is fully applicable to this case. But we have to bear in mind a significant difference in the language employed in section 8(a) of the Bombay Sales Tax Act, 1953 in Nilgiri''s case and the language of section 35(1)(B) of the Income Tax in the present case. The difference is that the term processing which has been specifically incorporated in Nilgiri''s case has been specifically omitted in the present case. Similarly, in Chowgule''s case, the term processing has been incorporated in the statute and the activities of the assessees both in Chowgule''s and Nilgiri''s cases were held to be processing and, in these respective cases, the assessees were held to be entitled to the benefit under the respective statutes. In the present case, same benefit cannot be extended to the respondent assessee because the word processing has been specifically omitted in the statute. The activities of the assessees both in Nilgiri''s and Chowgule''s cases amount to processing. The activity of the respondent assessee in the present case also amounts to ''processing''. Section 35(1)(b) governing the instant case incorporated the terms "manufacture" and "production" and omitted the term ''processing''. Therefore, the respondent assessee cannot be extended the benefit of section 35(1)(B) of the Income Tax Act." Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, .

16. In the case before us, the word "processed" has been specifically mentioned in sub-section (3a) of Section 80HHC of the Act and thus, the decision of Chowgule and Company is squarely applicable.

17. We, therefore, find that the authorities below including the learned Tribunal committed a substantial error of law in refusing the benefit of sub-section (3a) of Section 80HHC of the Act to the appellant notwithstanding the fact that the goods imported by the appellant is processed by it.

18. We, consequently, set aside the order impugned and direct the Assessing Officer to give relief to the appellant in terms sub-section (3a) of Section 80HHC of the Act for the export of the blended tea by the appellant and answer the question formulated by the Division Bench in the affirmative and against the Revenue. In the facts and circumstances, there will be, however, no order as to costs.

Sambuddha Chakrabarti, J.

I agree.