

(2004) 09 DEL CK 0142

Delhi High Court

Case No: IT Appeal No. 334 of 2004 23 September 2004

Commissioner of Income Tax

APPELLANT

Vs

Ritesh Industries Ltd.

RESPONDENT

Date of Decision: Sept. 23, 2004

Citation: (2004) 192 CTR 81 : (2005) 142 TAXMAN 551

Hon'ble Judges: B. C. Patel, C.J; Badar Durrez Ahmed, J

Bench: Full Bench

Advocate: Mrs. Prem Lata Bansal and Ajay Jha, for the Revenue Ajay Vohra and Shammi Kapoor and Vinay Vaish, for the assessee, for the Appellant;

Judgement

B.C. Patel, C.J.

The present appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred as the Act) is preferred by the revenue raising the following question

"Whether the amount of "duty drawback" can be regarded as income derived from an industrial undertaking so as to entitle the assessed a deduction u/s 80-I of the Income Tax Act, 1961 ?"

2. In this matter, one need not go into the facts as it is an admitted position that the assessed, who is a manufacturer, has received "duty drawback" in view of the export of garments. The question is whether the amount of "duty drawback" which the assessed has received can be considered to be "profits and gains derived from an industrial undertaking" in the context of section 80-I of the Act. Sub-section (1) of section 80-I of the Act, is relevant for our purpose and, Therefore, we reproduce it below :

"80-I (1) Where the gross total income of an assessed includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft 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 assessed, a deduction from such profits and gains of an amount equal to twenty per cent thereof : "

3. As aforesaid, we are required to consider whether the expression "profits and gains derived from an industrial undertaking" would include the duty drawback or not. In the case of [Commissioner of Income Tax Vs. Jameel Leathers and Uppers](#), a Division Bench of the Madras High Court had an occasion to consider the similar provisions contained in section 80HH as well as in section 80J of the Act. The question raised in that case was as under.

"Whether the Tribunal is right in law in holding that "cash assistance" and "duty drawback" received from the government by assessed are includible in the profits derived from the industrial undertaking and eligible for relief u/s 80HH and 80J of the Income Tax Act, 1961 ?"

4. We need not set out section 80HH or section 80J of the Act as the relevant part is the same as that of section 80-I of the Act. In that case the assessed's claim was negated by the Income Tax Officer and ultimately the Tribunal upheld the order made by the Commissioner, who granted benefits. The court, considering various decisions, answered the question in favor of the revenue and against the assessed. The Division Bench in that case held that :

"While the "cash assistance", "duty drawback" and import entitlements are undoubtedly attributable to the business carried on by the assessed and the assessed would not have been in a position to receive any of these benefits, had the assessed not been carrying on business, it cannot be said, however, that such income is "derived" from the business."

5. The Division Bench for the proposition aforesaid, relied on the decisions of the Supreme Court in [National Organic Chemical Industries Ltd. Vs. Collector of Central Excise, Bombay](#), and [Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad](#),

6. The Madras High Court had another occasion to examine a similar question in the case of [Commissioner of Income Tax Vs. Viswanathan and Co.](#) In the said judgment the court pointed out as under :

"Though the assessed's right to receive those benefits under those schemes was attributable to the fact that it was running the industrial undertaking, that however did not render such benefits "derived" from the industrial undertaking the scope of the term "derived from" being narrower than the scope of the term attributable to".

7. The court also stated that there is no reason to doubt or depart from the law that has been laid down in the case of CIT v. Jarneel Leathers & Uppers (supra).

8. The Supreme court in the case of [Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore](#), examined the question of import entitlements. The court

observed as under

"We do not think that the source of the import entitlements can be said to be the industrial undertaking of the assessed. The source of the import entitlements can, in the circumstances, only be said to be the Export Promotion Scheme of the Central Government whereunder the export entitlements become available. There must be, for the application of the words "derived from", a direct nexus between the profits and gains and the industrial undertaking. In the instant case, the nexus is not direct but only incidental. The industrial undertaking exports processed sea food, By reason of such export, the Export Promotion Scheme applies. there under, the assessed is entitled to import entitlements, which it can sell. The sale consideration there from cannot, in our view, be held to constitute a profit and gain derived from the assessed"s industrial undertaking."

9. In our view, this would apply with equal vigour to duty drawback. It is required to be understood that on the raw materials utilised as inputs, the assessed pays duty (D) and on the total component of costs the assessed adds his profits component (P) to arrive at the sale price. It is this profit (P) which is included in the expression "profits and gains derived from an industrial, undertaking". Merely because under the scheme to encourage exports the duty (D) is refunded subsequently by way of "duty drawback", it cannot be regarded as the profit or gain "derived" from the industrial undertaking. It may constitute profits or gains of the business by virtue of section 28 of the Act, but, it cannot be construed as profits or gains "derived" from the industrial undertaking for, its immediate and proximate source is not the industrial undertaking but the scheme for duty drawback. Whether duty drawback is or is not allowed, the profit "derived" from the industrial undertaking remains to be the profit (P). On account of the duty drawback, business profit may be increased, but so far as profits and gains "derived" from an industrial undertaking is concerned, it will not increase. It will remain the same.

10. In view of this, the appeal is required to be allowed, We answer the question in favor of the revenue and against the assessed. Ordered accordingly.

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