Commissioner of Income Tax Vs Mazagaon Dock Ltd.

Court: Bombay High Court

Date of Decision: March 7, 1991

Acts Referred: Income Tax Act, 1922 â€" Section 15C
Income Tax Act, 1961 â€" Section 279(1), 43(3), 80, 80J

Citation: (1991) 191 ITR 460

Hon'ble Judges: T.D. Sugla, J; D.R. Dhanuka, J

Bench: Division Bench

Advocate: G.S. Jetley, for the Appellant; S.E. Dastur, for the Respondent

Judgement

T.D. Sugla, J.
In this departmental reference relating to the assessee''s assessment for the assessment years 1968-69 to 1970-71, the

Tribunal has referred to this court the following questions of law u/s 256(1) of the Income Tax Act, 1961, for opinion :

2. Question in respect of all the three assessment years :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to deduction u/s

80J of the Income Tax Act, 1961, in respect of the Frigate Project for the three years ?

3. Question relating to assessment year 1970-71 only :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the concrete walls on three sides built after

necessary excavation also constitute part of the plant in Kasara Basin Wet Dock and the assessee is entitled to depreciation and development

rebate on the expenditure incurred on excavation of Rs. 77,80,000 and masonry including R.C.C. Work, etc., of Rs. 81,33,000 in respect of the

said walls of the dock ?

4. For the sake of convenience, we propose to deal with the second question first. The assessee incurred expenditure of Rs. 1,76,35,639 in all on

the Kasara Basin Wet Dock. It claimed that the entire expenditure represented the cost of plant and machinery and that it was entitled to

depreciation and development rebate on that basis. The Income Tax Officer held that the assessee was entitled to development rebate on the

expenditure amounting to Rs. 17,22,639 only as that amount alone represented the cost of plant and machinery. According to him, the remaining

amount represented the cost of excavation and masonry including R.C.C. Work, etc. For this purpose, he derived support from our court''s

decision in the case of Jayasingrao Piraji Rao Ghatge Vs. Commissioner of Income Tax, Bombay South, ; the decision in the case of Dumbarton

Harbour Board v. Cox [1918] 7 TC 147 and the House of Lords decision in the case of Barclay, Curle and Co. Ltd. [1970] 76 ITR 62.

5. The Appellate Assistant Commissioner found that an impounded wet dock is used in the fitting out work on ships. It is essentially an enclosure

which impounds sea water and consists of walls on three sides and a flap gate at the entrance. The walls are reinforced concrete walls of cellular

construction. The flap gate is operated by a powerful winch for docking and undocking of ships in the basin. The dock is equipped with all

equipment necessary for the supply of compressed air, salt water, etc. A pump-house with powerful pumps is also positioned on either side of the

basin for easy fitting out work. The new ships under construction are berthed alongside the quarry walls of the basin for the fittings out work. He

concluded that an impounded wet dock was, as a whole, a plant by itself used in the construction of new ships. The Appellate Assistant

Commissioner, accordingly, held that the assessee was entitled to depreciation as well as development rebate on the entire cost of the Kasara

Basin Wet Dock amounting to Rs. 1,76,35,639.

6. The Department filed an appeal against the order of the Appellate Assistant Commissioner. The Tribunal discussed this issue in paragraph 12 of

its judgment. It has, for more or less same reasons, concluded that the masonry including excavation formed an integral unit of the plant. Without

anyone of them, the plant could not work. The concrete walls on the sides for which the excavation and the masonry work were necessary were as

much parts of the plant as were the other parts like cranes, winches and other machinery. In taking this view, the Tribunal derived support from the

Gujarat High Court decision in Commissioner of Income Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd., .

7. It is submitted before us by Shri Jetley, learned counsel for the Revenue, that the Tribunal wrongly followed the Gujarat High Court decision in

Commissioner of Income Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd., . The House of Lords decision in IRC v. Barclay, Curle and Co. Ltd.

[1970] 76 ITR 62 , he pointed out, was based on the fact that there was no definition of the word ""plant"" in the British Act and, in any event, the

dry dock under consideration of the Houses of Lords is materially different from the wet dock involved in the present case. He then referred to the

inclusive definition of the word ""plant"" in section 43(3) to show that the word ""plant"", though not defined as such, has to take colour from the

subsequent items included in its definition. This is what is required to be done in view of the principle of interpretation ejusdem generis. In

particular, he pointed out that all items included in the definition are movable items. That would indicate that only movable items are to be included

in the expression ""plant"". Lastly, he pointed out that the House of Lords decision was rendered on the basis of certain facts found by the

commissioners in the light of evidence led before the Commissioners. Similar facts have not been found by the tribunal in the present case and,

therefore, even if it is assumed that the principle laid down by the House of Lords in that case is applicable, it cannot be applied to this case. In this

context, Shri Jetley submitted that the place where a plant is located can never be a part of the plant because it is only a location where it is

housed. In this regard, he placed strong reliance on our court''s judgment in Jayasingrao Piraji Rao Ghatge Vs. Commissioner of Income Tax,

Bombay South, . He also relied on our court''s decision in the case of Commissioner of Income Tax, Poona Vs. Sandvik Asia Ltd., where our

court held that roads within the factory premises were not plant.

8. Shri Dastur, learned counsel for the assessee. On the other hand, stated that the House of Lords decision is squarely applicable to the facts of

the case before us. He invited our attention to the assessment order in which the Income Tax Officer himself had stated that the case in IRC v.

Barclay, Curle and Co. Ltd. [1970] 76 ITR 62 was similar to the assessee''s case. Shri Dastur then pointed out that the House of Lords decision

has been quoted with approval both by Supreme court and by our court. The Supreme court has, in the case of Scientific Engineering House (P)

Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, , it was pointed out, after referring to a number of decisions including the aforesaid

House of Lords decision, observed at page 96 :

In other words, the test would be : Does the article fulfill the function of a plant in the assessee''s trading activity ? Is it a tool of his trade with

which he carries on his business ? If the answer is in the affirmative, it will be a plant.

9. Our court, in Commissioner of Income Tax, Poona Vs. Sandvik Asia Ltd., , after referring to the House of Lords decision in IRC v. Barclay,

Curle and Co. Ltd. [1970] 76 ITR 62, stated that the judgment in that case clearly indicated that a dry dock was treated as a tool of the trade with

which the business was carried on and since the excavation and concrete work were absolutely necessary for the construction of the dry dock, the

expenditure incurred on excavation and concrete work was held to have attracted the initial allowance u/s 279(1) of the Income Tax Act, 1952

(U.K.).

10. Shri Dastur then pointed out that it is not as if the Supreme Court in Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax,

Andhra Pradesh, or our court in Commissioner of Income Tax, Poona Vs. Sandvik Asia Ltd., , was not aware of the fact that the word ""plant"" has

been defined in section 43(3). He pointed out that the definition was only an inclusive definition and the items included were such as books, etc.,

and yet the word ""plant"" was held to have a wider meaning rather than a restricted one. It was also pointed out that the House of Lords decision

was a majority decision. In the minority decision, reliance was placed on the judgment of Lord Hodson who preferred to rely on the case of

Margrett v. Lowestoft Water and Gas Co. [1935] 19 TC 481. The majority decision, it was further pointed out, has placed reliance on the

decision in Jarrold v. John Good and Sons Ltd. [1963] 1 WLR 214. THE Majority observed that, in view of the decision in Jarrold v. John Good

and Sons Ltd. [1963] 1 WLR 214, the case of Margrett v. Lowestoft Water and Gas Co. [1935] 19 TC 481, though not specifically overruled,

was no longer to be considered an authority to look at. The decision in Jarrold"s case, he further stated, was approved by our court and the

Supreme Court.

11. The minority judges in the case decided by the House of Lords proceeds, it was pointed out, on the assumption that a dam could never be a

plant. The majority has not said anything specific about a dam. However, referring to our court"s decision in the case of Commissioner of Income

Tax, Bombay Vs. Tata Hydro Electric Power Supply Company Ltd., , he pointed out that expenditure on a dam has also been considered as

constituting the cost of the plant. The sum and substance of Shri Dastur"s argument has been that in view of the Supreme Court decision and our

court"s decision, there can be no dispute that even a building can, in an appropriate case, be plant. What requires to be considered is whether the

building or the structure is the tool or means of carrying on the business or a mere location for so doing.

12. Referring then to the facts found by the departmental authorities and the Tribunal in the present case, Shri Dastur stated that tilt cannot but be

held that the concrete walls on the sides for which the excavation and the masonry work were necessary formed an integral part of the plant and it

is inconceivable that a ship-manufacturing unit or a wet dock can come into existence without having the type of structure the assessee has for the

purpose of carrying on its business.

13. We have carefully gone through the House of Lords decision in IRC v. Barclay, Curle and Co. Ltd. [1970] 76 ITR 62 , our court''s judgments

in Commissioner of Income Tax, Bombay Vs. Tata Hydro Electric Power Supply Company Ltd., , Commissioner of Income Tax, Poona Vs.

Sandvik Asia Ltd., , the Allahabad High Court decision in the case of Commissioner of Income Tax Vs. Kanodia Cold Storage, , the Delhi High

Court decision in the case of R.C. Chemical Industries Vs. Commissioner of Income Tax, New Delhi, , and the Supreme Court decision in the

cases of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and R.C. Chemical Industries Vs. Commissioner of

Income Tax, New Delhi, , has referred to certain principles that emerge from all these decisions. We are in respectful agreement with the Delhi

High Court when it states (p. 336) :

From a perusal of the above decisions and the provisions of the 1961 Act, certain principles emerge : pH

1. The definition of ''plant'' is section 43(3) should be given a wide meaning as it is an inclusive definition.

2. All buildings are not ''plant'' despite the dictionary meaning which includes buildings; but a building or structure is not per se to be excluded from

the ambit of the expression ''plant''.

3. If the concrete construction or building is used as the premises or setting in which the business is carried on in contradistinction to the fulfilling of

the function of a plant, the building or construction or part Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra

Pradesh, . The Delhi High Court, in its decision in the case of thereof is not considered a plant. The true test is whether it is the means of ''carrying

on the business'' or the location for so doing.

4. In order for a building or concrete structure to qualify for inclusion in the term ''plant'', it must be established that it is impossible for the

equipment to function without the particular type of structure.

5. The particular apparatus or item musts be used for carrying on the assessee''s business land must not be his stock-in-trade. The matter has to be

considered in the context of the particular business of the assessee, e.g., books are a lawyer''s plant but a bookseller''s stock-in-trade.

14. The majority judgment of the House of Lords in IRC v. Barclay, Curle and Co. Ltd. [1970] 76 ITR 62 has been, if not approved as such,

quoted with approval both by the Supreme Court and our court in the cases supra. We also agree with Shri Dastur that the fact that the expression

plant"'' has been defined in section 43(3) will not make any difference for the reason that the definition has been noticed both by our court and the

Supreme Court in the above judgment and it was held that the definition did not in any way restrict the purport and the scope of the expression

plant"". On the other hand, it widened it. Therefore, the mere fact that, in the English Act, the word ""plant"" was not defined will not, in our view,

make any difference. This would mean that all buildings are not plant, but certain buildings or structures can be plant. The test to be applied is the

functional test, that is, whether the structure is the means of carrying on the business or the mere location for so doing. For this purpose, it is

necessary to refer to the facts as found by the Tribunal and the facts relied upon by the House of Lords in its decision. The findings in the House of

Lords case, as pointed out by Shri Jetley, were (see [1970] 76 ITR 62) -

The function of the No. 3 dry dock was neatly summed up by Mr. Geddes who, giving evidence before us, said that the dock was similar to an

hydraulic tank which was used for taking ships out of their elements, exposing them and then returning them. We accepted this and found further

that the dock acted like a large vice for holding ships in position while they were repaired or cleaned. The dry dock was in our view not the mere

setting or premises in which ships were repaired. It was different from a factory which housed machinery, for in the operation of the dock, the

dock itself played a part in the control of water and enabled the valves, pumps, and electricity generator, which were an integral part of its

construction, to perform their functions. The dock was not a mere shelter or home but itself played an essential part in the operation which took

place in getting a ship into the dock, holding it securely and then returning it to the river.

15. In the present case, the facts found by the Appellant Assistant Commissioner which were more or less accepted by the Tribunal have already

been summarised by us earlier. Apart from the fact that we do not see any material difference between the facts in the two cases, it has to be borne

in mind that the Tribunal has found, after enumerating all those facts, that the concrete walls on the sides for which excavation and masonry work

were necessary were as much a part of the plant as were the cranes or winches. The Tribunal has gone on to say that these are integral parts of the

plant as such. Without any one of them, the plant could not have worked. Under the circumstances, it is not possible to accept that the Tribunal

was not correct in concluding that the entire expenditure incurred on the Kasara Basin Wet Dock did constitute a plant. It may not be out of place

to observe that Shri Jetley had contended that the case of a dry dock would be different from that of a wet dock. A dry dock, according to him,

would be a floating dock. In the case of a floating dock, different considerations would arise. However, he has not been able to point out any

authority for the proposition that there was really any material difference between dry dock and wet dock in this regard. Shri Dastur had, on the

other hand, invited our attention to the Chambers'' Dictionary of Science and Technology in which the words dry dock, floating dry dock and wet

dock were defined. As per the definition, it was only the floating dry dock which could be said to be floating or movable. Both dry docks and wet

docks are docks under water level. The only material difference appears to be that whereas in a dry dock water is excluded by means of gates or

caissons after the dock has been emptied, in the wet dock water is impounded at suitable level by means of dock gates, and entrance is generally

effected by means of locks. In our opinion, there is, thus, no material difference between a dry dock and a wet dock from the point of view of

application of functional tests laid down by the Supreme Court and other courts. Accordingly, we answer the second question in the affirmative

and in favour of the assessee.

16. The facts pertaining to the first question are that the assessee-company was taken over by the Central Government in the year 1960. After it

was taken over, it was decided that there should be new and modern facilities at the dock for taking up warships and other vessels. For that

purpose, consultants were engaged and feasibility reports were obtained from them in November, 1961. Eventually, the frigate project for which a

separate licence was required and obtained was commissioned in the year 1966. It is in respect of this project that the assessee claimed relief u/s

80J. The Income Tax Officer rejected the claim by placing reliance on a Calcutta High Court decision in the case of Commissioner of Income Tax

Vs. Textile Machinery Corporation, . He also observed that, in the absence of separate accounts maintained in respect of this project, it was not

possible to compute the capital employed in it for working out the relief u/s 80J. In appeal, the Appellate Assistant Commissioner, after a study of

the historical background and the nature of the assessee''s activities, came to the conclusion that the frigate project was a new undertaking and that

the assessee was entitled to relief u/s 80J. The Tribunal confirmed the order of the Appellate Assistance commissioner.

17. From annexure A-1 to the assessment order for the assessment year 1968-69, it can be reasonably inferred that the frigate project was a new

project. As already stated, a new licence for the project was required and was obtained. The capital outlay in the new project was many times the

assessee''s capital. The only reason that seems to have led the Income Tax Officer for not granting the relief u/s 80J is the Calcutta High Court

decision in Commissioner of Income Tax Vs. Textile Machinery Corporation, which now stands overruled. In fact, another decision of the Calcutta

High Court which is nearer to the assessee''s case is the case of Commissioner of Income Tax Vs. Indian Aluminium Co. Ltd., , which was

confirmed by the Supreme Court in Commissioner of Income Tax, West Bengal-I Vs. Indian Aluminium Co. Ltd., . As regard non-maintenance of

separate accounts, our court has already held in the case of Mahindra Sintered Products Ltd. Vs. Commissioner of Income Tax, , that

maintenance of separate accounts is not a pre-requisite for granting relief u/s 80J. In the above view of the matter, we answer the first question also

in the affirmative and in favour of the assessee.

18. No order as to costs.