

(1997) 07 BOM CK 0100

Bombay High Court

Case No: IT Ref. No. 127 of 1994

Commissioner of Income Tax

APPELLANT

Vs

Hind Filters Pvt. Ltd.

RESPONDENT

Date of Decision: July 28, 1997

Acts Referred:

- Income Tax Act, 1961 - Section 263, 28, 32A

Citation: (1998) 145 CTR 459 : (1998) 234 ITR 207

Hon'ble Judges: Pratibha Upasani, J; B.P. Saraf, J

Bench: Division Bench

Advocate: Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Dr. Pratibha Upasani, J.

By this reference under s. 256(1) of the IT Act, 1961 ("the Act"), the Tribunal, at the instance of the Revenue, has referred the following question of law to this Court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in allowing investment allowance under s. 32A in respect of plant and machinery used in manufacturing the cigarette filter rod of the Eleventh Schedule ?"

2. The reference pertains to the asst. yr. 1982-83.

3. Brief facts giving rise to this reference can be narrated as follows :

The assessee-company manufactures cigarette filter rods. It claimed investment allowance under s. 32A of the Act of Rs. 46,071 on the plant and machinery worth Rs. 1,84,286. Rejecting the claim of the investment allowance with respect to a pedestal fan costing Rs. 1,650, and a deep chilling machine costing Rs. 8,150, the ITO allowed investment allowance on the balance cost of plant and machinery amounting to Rs. 1,74,486.

4. In the revision proceedings, the CIT(A) observed that the Department had propounded a view that manufacture of cigarette filter rod would be covered by Item 27 of the Eleventh Schedule of the Act. He further observed that the point was not free from doubt and that the matter was not duly considered by the AO. Observing thus, he remanded the matter back to the AO, for reconsidering the same in greater detail.

5. The assessee approached the Tribunal challenging the order of revision passed by the CIT(A).

6. The assessee, however, gave up its first ground regarding jurisdiction of the CIT(A) to revise the order of the IAC under s. 263 of the Act, and the same was not pressed at the time of the hearing.

7. The only dispute, therefore, in the appeal before the Tribunal, on merits, was regarding allowability of the investment allowance under s. 32A of the Act.

8. The Tribunal by its reasoned order dt. 25th June, 1991, however, disagreed with the case of the Revenue that the manufacture of cigarette filter rod fell within entry 27 of the Eleventh Schedule. The Tribunal accordingly vacated the order of the CIT and restored the order of the ITO. Being aggrieved by the order passed by the Tribunal, the present reference has been filed at the instance of the Revenue to this Court for its opinion.

9. The only issue before this Court is to decide whether the Tribunal was justified in coming to the conclusion that manufacture of cigarette filter rod did not fall within entry 27 of the Eleventh Schedule.

10. We have heard Mr. Khatri, the learned counsel for the Revenue at length. None appeared for the assessee. However, we have gone through the statement of the case. We have perused the assessment order dt. 7th April, 1992, order of the CIT(A) and order of the Tribunal dt. 25th July, 1991, and after carefully considering the same, we do not find any reason to interfere with the order of the Tribunal, for reasons given below.

11. Sec. 32A of the Act provides for deduction of investment allowance equal to 25 per cent. of the cost of plant and machinery installed in an industrial undertaking for the purposes of business of construction, manufacture or production of an article or thing not being an article or thing specified in the list in the Eleventh Schedule.

12. Case of the Revenue is that manufacture of cigarette filter rod falls within entry 27 of the Eleventh Schedule. The said entry 27 of the Eleventh Schedule reads as under :

"Crown corks or other fittings of corks, rubber, polyethylene or any other material".

It was the submission of the assessee right from the beginning that cigarette filter rod was made from cellulose adding made of rayon fibre or isolate fibre or webs of

cellulose fibres. According to the submission made by the assessee, the cigarette filter rod was neither a crown cork, nor a fitting of cork, nor was it of rubber or of polyethylene or any other material. We have perused entry No. 27 of the Eleventh Schedule of the Act. There is no mention of cigarette filter rod in the Eleventh Schedule of the Act. In fact, the meaning and use of crown corks or the fittings stated in entry 27 of the Eleventh Schedule is quite different from the filters manufactured by the assessee. It is quite evident that the crown corks or the fittings of which mention is made in entry 27 of the Eleventh Schedule are the fittings used as stopper, so that, the contents would not come out, whereas, the filters manufactured by the assessee are used in the cigarette as sucker. It is therefore, crystal clear that these two things are entirely different, and there is not an iota of semblance between these two items.

13. Under these circumstances, and for the abovementioned reasons, we do not find any infirmity in the order passed by the Tribunal. We, therefore hold that the Tribunal was right in allowing investment allowance under s. 32A of the Act in respect of plant and machinery used in manufacturing the cigarette filter rod of the Eleventh Schedule. Accordingly, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the Revenue.

14. Reference disposed of accordingly. No order as to costs.