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Bombay High Court

Case No: Income-tax Reference No. 303 of 1983

Commissioner of Income Tax	APPELLANT
Vs	
Ravi Ratna Exporters	RESPONDENT

Date of Decision: Nov. 11, 1994

Acts Referred:

- Income Tax Act, 1961 - Section 80J, 80J(4)

Citation: (1995) 126 CTR 141 : (1995) 212 ITR 588

Hon'ble Judges: S.M. Jhunjhunwala, J; B.P. Saraf, J

Bench: Division Bench

Advocate: Dr. V. Balasubramaniam, for the Appellant; K.B. Bhujle, for the Respondent

Judgement

DR. B.P. Saraf, J.
By this reference made u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue, the following question of law have been referred to us by the Income Tax Appellate Tribunal, Bombay Bench "A", Bombay ("the Tribunal"), for opinion :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to relief u/s 80J of the Income Tax Act, 1961, in respect of the income derived by it from processing of prawns ?"

2. The assessee is a registered firm deriving income from business of processing of prawns. In the assessment of its income for the assessment year 1980-81, it claimed relief u/s 80J of the Act on the footing that it was engaged in the manufacture or processing of articles. The Income Tax Officer rejected this claim of the assessee on the ground that the expression "processing" did not find a place in section 80J of the Income Tax Act, 1961 ("the Act"). The assessee appealed to the Commissioner of Income Tax (Appeals). The Commissioner (Appeals) held that processing of prawns amounted to manufacture of articles and hence the assessee was entitled to relief u/s 80J of the Act. He, therefore, allowed the appeal of the assessee. Against this

order of the Commissioner (Appeals), the Revenue appealed to the Tribunal. The Tribunal affirmed the order of the Commissioner (Appeals) and held that processing of prawns amounted to manufacture of articles. Hence, this reference at the instance of the Revenue.

3. We have perused section 80J of the Act which provides for deduction in respect of profits and gains from newly established industrial undertaking. Sub-section (4) says that this section would apply only to those industrial undertakings which fulfil all the conditions set out therein. These conditions are :

(i) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces articles, or operates one or more cold storage plant or plants, in any part of India, and has begun or begins to manufacture or produce articles or to operate such plant or plants, at any time within the period of thirty-three years next following the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(iv) in a case where the industrial undertaking manufactures or produces articles, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

4. It is evident from these conditions that in order to claim any relief u/s 80J, the undertaking concerned must manufacture or produce articles. It is a condition precedent.

5. The question that arises for consideration is whether processing of prawns amounts to manufacture or production of articles within the meaning of section 80J(4) of the Act. According to learned counsel for the assessee, processing of prawns amounts to manufacture. In support of this contention, reliance is placed on the decision of the Madras High Court in Commissioner of Income Tax Vs. Continental Sea Foods India (Private) Ltd., .

6. We have carefully gone through the above decision of the Madras High Court. We, however, find that in that case, the court did not come to any finding of its own whether processing of prawns amounts to manufacture of articles. The above case as decided in favour of the assessee mainly because of the fact that the Income Tax Officer himself had granted relief u/s 80J to the assessee treating the undertaking of the assessee as an industrial undertaking. The above decision, therefore, is not an authority for the proposition that processing of prawns amount to "manufacture or production of articles".

7. It is well-settled now by a catena of decisions of the Supreme Court and the various High Court that every process does not amount to manufacture of articles or goods. In order to constitute manufacture, as a result of the processing of a commodity, a commercially different and distinct commodity should emerge. The test to be applied is whether the commodity subjected to the process can no longer be regarded as the original commodity but is recognised in the trade as a new and distinct commodity. Applying this test, processing of prawns cannot be held to amount to "manufacture of prawns".

8. We do not propose to have a detailed discussion on the subject, which in our opinion would be academic in view of the decision of the Supreme Court in Sterling Foods v. State of Karnataka [1986] 63 STC 239 . In that case, the Supreme Court was required to consider whether shrimps, prawns and lobsters, when subjected to the process of cutting of heads and tails, peeling, divining, cleaning and freezing, retain their original character and identity or become another distinct commodity. The Supreme Court observed that the test which has to be applied for the purpose of determining whether a commodity subjected to processing retains its original character and identity is whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded, commercially and in the trade, the same as the original commodity.

9. Applying the above test, it was held by the Supreme Court in Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, that processed or frozen shrimps, prawns and lobsters are commercially regarded as the same commodity as shrimps, prawns and lobsters. When raw shrimps, prawns an lobsters are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to the shrimps, prawns and lobsters and become another distinct commodity. They are in common parlance known as shrimps, prawns and lobsters. There is no essential difference between raw shrimps, prawns and lobsters and process or frozen shrimps, prawns and lobsters. They continue to possess their original character and identity as shrimps, prawns and lobsters notwithstanding the removal of heads and tails, peeling, deveining and cleaning which are necessary for making them fit for the table. Equally it makes no difference in character or identity when shrimps, prawns and lobsters are frozen for the purpose of preservation and transfer to other places including far off countries in the world. There can therefore be no doubt that processed or frozen shrimps, prawns and lobsters are not a new and distinct commodity but retain the same character and identity as the original shrimps, prawns an lobster. In that view of the matter it is clear that "processing of prawns" for making them fit for the market is not a process of manufacture. No manufacture of articles or prawns takes place as a result of the process undertaken by the assessee. This decision of the Supreme Court affords a complete answer to the question referred in this case.

10. Having regard to the above, we answer the question referred to us in the negative and in favour of the Revenue.

11. In the facts and circumstances of the case, there shall be no order as to costs.