Commissioner of Income Tax Vs Fashion Prints Limited

Court: Bombay High Court

Date of Decision: Nov. 25, 1994

Acts Referred: Income Tax Act, 1961 â€" Section 28, 32, 32(1), 32A, 34

Citation: (1995) 123 CTR 272 : (1996) 217 ITR 456

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

Bench: Division Bench

Advocate: Deokinandan, Dr. V. Balasubramaniam and J.P. Devadhar, instructed by Mrs. S. Bhattacharya, for the Appellant; K.M.L. Majele and Arun Sathe, for the Respondent

Judgement

S.M. Jhunjhunuwala, J.
By this reference made u/s 256(1) of the Income Tax Act, 1961, the following question has been referred to this

court for opinion at the instance of the Revenue :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the activities of the assessee in dyeing, printing

and processing grey cloth produced by others amounted to manufacture or production of textiles as specified under item No. 21 of the List in the

Ninth Schedule of the Income Tax Act, 1961, so as to entitle it to additional depreciation u/s 32(1)(vi) of the Act?

2. The assessee is a limited company incorporated under the provisions of the Companies Act, 1956. The assessment years involved are 1976-77

and 1977-78. The assessee was engaged in the business of dyeing, printing and processing textile goods and for that purpose, the assessee used to

purchase grey cloth and sell the same on its own account after dyeing, printing and processing. The assessee was also doing job work of dyeing,

printing and processing on grey cloth belonging to others. The claim of the assessee before the Income Tax Officer was that since the assessee was

engaged in the manufacture and production of dyed, printed and processed textiles within the meaning of item No. 21 of he Ninth Schedule to the

Income Tax Act, 1961 (for short, ""the Act""), the assessee was entitled to higher depreciation under 32(1) (vi) of the Act. The Income Tax Officer

held that the activities carried by the assessee did not fall within the scope and ambit of the said item No. 21 as the assessee itself did not produce

the grey cloth but had merely dyed, printed or processed the same. According to the Income Tax Officer, in the facts of the case, the assessee

could not be said to be a manufacturer to producer of cotton textiles. The Income Tax Officer rejected the claim of the assessee. The assessee

appealed to the Commissioner of Income Tax (Appeals) who held that the assessee was engaged in manufacture and production of textiles since in

the opinion of the Commissioner of Income Tax (Appeals), the grey cloth acquired by the assessee was different from the dyed, printed and

finished cloth produced by the assessee. The Commissioner of Income Tax (Appeals) allowed the claim of the assessee. The Department

appealed to the Tribunal. The Tribunal accepted the claim of the assessee and upheld the order of the Commissioner of Income Tax (Appeals). It

is in these circumstances, the above question has been referred to this court for opinion at the instance of the Revenue.

3. In the assessment year 1976-77, the assessee had installed a boiler in respect of which the assessee claimed initial depreciation u/s 32(1)(vi) of

the Act contending the processing of textiles is covered under the said item No. 21 of the List mentioned in Ninth Schedule to the Act. u/s 32(1)

(vi) of the Act, the assessee was entitled to deduction of depreciation in respect of the said boiler installed for the purpose of business of the

assessee, subject, however, to section 34 of the Act provided the assessee manufactured textiles as specified in the said item No. 21. The said

item No. 21 in the List of articles or things mentioned in the Ninth Schedule to the Act reads as follows :

21. Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope.

4. Mr. Arun Sathe, learned counsel appearing for the assessee, has submitted that in the concerned assessment year, the assessee carried on the

business of manufacture of textiles specified in the said item No. 21 as the assessee used to purchase grey cloth and after dyeing, printing and

processing, sell the same on its own account and was also doing job work of dyeing, printing and processing grey cloth belonging to others. Mr.

Arun Sathe further submitted that as the grey cloth acquired by the assessee was different from the dyed, printed and finished cloth produced by

the assessee, the assessee was entitled to deduction of depreciation as claimed. In the submission of learned counsel, when the assessee subjected

grey cloth to dyeing, printing and/or any other processing, it produced a distinct article having distinct use as distinguished from the grey cloth and

by this transformation, grey cloth became a different commodity which was sufficient to hold that there was manufacturing or production of article

within the meaning of clause (vi) of sub-section (1) of section 32 of the Act. In support of his submissions, learned counsel has put reliance on the

judgment in the following cases :

(1) Empire Dyeing and Manufacturing Company Limited Vs. The State of Maharashtra, ;

(2) Commissioner of Income Tax Vs. J.B. Kharwar and Sons, ;

(3) Empire Industries Limited and Others Vs. Union of India and Others, ; and

(4) Commissioner of Income Tax Vs. Yavatmal Co-operative Ginning and Pressing Factory Limited, .

5. Dr. Balasubramaniam, learned counsel for the Revenue, has submitted that the assessee has merely printed the textile goods already

manufactured by others and, as such, in the facts of the case, the assessee could not be said to be engaged in the manufacture or production of

textiles within the meaning of clause (vi) of sub-section (1) of section 32 of the Act read with the said item No. 21 in the Ninth Schedule to the Act.

6. Since u/s 32(1)(vi) of the Act, what is required is to manufacture or produce any one or more of the articles or things specified in items Nos. 1

to 24 (both inclusive) in the list of articles or things mentioned in the Ninth Schedule to the Act, in the present case, to be entitled to initial

depreciation allowance, the assessee was required to manufacture or produce textiles including those dyed, printed or otherwise processed made

wholly or mainly of cotton including cotton yarn, hosiery and rope. Admittedly, it is not the case of the assessee that the assessee manufactured or

produced grey cloth on which the process of dyeing or printing was carried out by the assessee. Textiles in the form of grey cloth were already

manufactured or produced by some person other than the assessee before the process of dyeing or printing was carried out by the assessee on the

grey cloth already manufactured or produced by others, the grey cloth did not cease to be a textile. Be the process of dyeing or printing carried out

by the assessee on grey cloth manufactured or produced by others, such grey cloth did undergo some chemical changes but it retained the

characteristics and/or property of the textiles and, as such, it cannot be said that by merely carrying out the process of dyeing or printing on grey

cloth manufactured or produced by others, the assessee manufactured or produced textiles to comply with the requirements of section 32(1)(vi) of

the Act read with the said item No. 21. The language or expression used in the said item No. 21 is unambiguous and clear and is capable of no

two interpretations. In a taxing act, as observed by Rowlatt J. in Cape Brandy syndicate v. IRC [1921] 1 KB 64, one has to look merely at what

is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in,

nothing is to be implied. One can only look fairly at the language used. We feel, a judge must not alter the material of which the Act is woven

though he can and should iron out the creases. In view of wordings of section 32(1)(vi) and the said item No. 21, it is not possible for us to hold

that the assessee, by applying the process of printing or dyeing on the grey cloth admittedly manufactured by others carried on the business of

manufacture or production within the meaning of section 32(1)(vi) of the Act.

7. As the facts in the judgments relied upon by learned counsel for the assessee are different than the controversy involved in the present case, the

ratio in none of the said judgments has any applicability to the facts in the present case. In the case of Empire Dyeing and Manufacturing Company

Limited Vs. The State of Maharashtra, , this court was concerned with the question of construction of clause (b) of sub-section (3) of section 8 of

the Central Sales Tax Act, 1956. The applicant in that case was registered as dealer both under the Bombay Sales Tax Act, 1959, and the Central

Sales Tax Act, 1956, and carried on the business of bleaching and printing fabrics manufactured by them for sale and also of bleaching and printing

fabrics manufactured by others for sale. The real controversy in that case revolves around the interpretation required to be placed upon the phrase

for use by him in the manufacture or processing of goods for sale"" in the said clause (b) of sub-section (3) of section 8 of the Central Sales Act,

1956. In the case of Commissioner of Income Tax Vs. J.B. Kharwar and Sons, , the Gujarat High Court was considering the provisions of section

80J of the Act, amongst other things, the assessee was required to prove : (i) that the undertaking was an industrial undertaking; (ii) that such

undertaking was not formed by reconstruction of a business already in existence; (iii) that it was not formed by the transfer to a new business of

machinery or plant previously used any purpose; and (iv) that it manufactured or produced articles. The controversy considered was in the context

of meaning of clause (iii) of sub-section (4) of section 80J of the Act. The question considered was whether the undertaking of the assessee therein

was an industrial undertaking and whether any articles were manufactured or produced therein. It was in this context, the Gujarat High Court held

that when the assessee subjected grey cloth to the process of dyeing and printing, the assessee carried on manufacturing activities within the

meaning of clause (iii) of sub-section (4) of section 80J. In the present case, what was required was to manufacture or produce textiles made

wholly or mainly of cotton as specified in the said item No. 21. The emphasis in section 32(1)(vi) read with the said item No. 21 has been on

manufacture or production of textiles made wholly or mainly of cotton, which, in the present case, were fully manufactured or produced by persons

other than the assessee in the form of grey cloth and was in saleable condition when received by the assessee for dyeing or printing. In the case of

Empire Industries Limited and Others Vs. Union of India and Others, , the Supreme Court was considering the meaning of the expressions

manufacturing process"" and ""manufacture"" used in section 2(f) of the Central Excises and Salt Act, 1944. Section 2 of the Central Excise and Salt

and Additional Duties of Excise (Amendment) Act, 1980, amended section 2(f) of the Excise Act by sub-items in the definition of ""manufacture"".

By the said Amending Act, in relation to goods comprised mercerising, dyeing, printing, waterproofing, rubberising, shrink-proofing, organdie

processing or any other process or any one or more of these processes were included in the definition of manufacture"". The said Amending Act

was impugned before the Supreme Court as ultra vires and it was in that context the Supreme Court has delivered the judgment, inter alia, holding

that the Amending Act is valid. In the case of Commissioner of Income Tax Vs. Yavatmal Co-operative Ginning and Pressing Factory Limited, ,

the court was considering the question of investment allowance u/s 32A of the Act and a claim for deduction u/s 80HH of the Act in respect of

machinery installed by the assessee for the purpose of use in the factory of the assessee. In that case, it was held that the process of ginning cotton

resulted in the manufacture or production of articles like ""ginned cotton"" and ""cotton seeds"" since ginning is the proceed of separating cotton seeds

from the fibre.

8. In the light of the foregoing discussion, we hold that the Tribunal was wrong in allowing the claim of the assessee. We, accordingly, answer the

question in the negative, that is, in favour of the Revenue and against the assessee.

9. In the circumstances of the case, there shall, however, be no order as to costs.