

**(1997) 03 BOM CK 0067****Bombay High Court****Case No:** IT Ref. No. 6 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Hardcastle and Waud Mfg. Co.  
Ltd.

RESPONDENT

**Date of Decision:** March 9, 1997**Acts Referred:**

- Income Tax Act, 1961 - Section 32A

**Citation:** (1997) 142 CTR 168**Hon'ble Judges:** Pratibha Upasani, J; B.P. Saraf, J**Bench:** Division Bench**Advocate:** T.U. Khatri and J.P. Deodhar, for the Appellant; Atul Jasani, for the Respondent**Judgement**

Dr. Pratibha Upasani, J.

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

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the product manufactured by the assessee would not come within the ambit of the word "paint" in the list of articles of Entry 26 of Eleventh Schedule and consequently holding that the assessee-company was entitled to investment allowance ?"

2. The reference pertains to the asst. yr. 1980-81.

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

The assessee-company installed new machineries worth Rs. 16,01,651 for the manufacture of a product, which is described as, "Powder Coating". The commercial name of the said powder coating is, "Hawco Plast Powder Coating".

4. The assessee-company claimed investment allowance under s. 32A of the IT Act, 1961 on the cost of new plant and machinery. The point for determination before the ITO was, whether the Powder Coating was an article specified in the list in the Eleventh Schedule, because for determining the eligibility for investment allowance, the product which was manufactured should not be one which is specified in the Eleventh Schedule. The ITO relied on Entry No. 26 in the Eleventh Schedule (as it existed at the relevant time). The items mentioned at Entry No. 26 at the relevant time were as follows :

"Pigments, colours, paints, enamels, varnishes, blacks, and cellulose lacquers."

5. Being aggrieved by the order passed by the ITO, the assessee-company filed appeal before the CIT(A). The assessee produced voluminous evidence in the form of opinion of experts about the concerned product and its ingredients in support of the submission that the said product did not come within the ambit of the word "paint" in Entry No. 26 of the Eleventh Schedule. However, CIT(A) also did not agree with the submissions made by the assessee and confirmed the order of the ITO, disallowing the investment allowance. The assessee then filed appeal before the Tribunal. The Tribunal vide reasoned order dt. 18th August, 1988 allowed the appeal of the assessee-company by holding that investment allowance was allowable. The Tribunal thus directed the ITO to allow the investment allowance. Being aggrieved by the said order of the Tribunal, the CIT, Bombay City IV, Bombay has filed this reference.

6. We have heard Mr. Khatri, the learned counsel for the Revenue and Mr. Atul Jasani, the learned counsel for the assessee-company/respondent. We have also perused carefully the orders of the ITO, CIT(A) and of the Tribunal, and for reasons given below, we find no reason to interfere with the order passed by the Tribunal.

7. Eleventh Schedule contains the list of articles or things which are specifically excluded for the purpose of claiming investment allowance. Entry No. 26 in the Eleventh Schedule at the relevant time contained following items :

"Pigments, colours, paints, enamels, varnishes, black and cellulose lacquers."

8. In the present case, the only point which is to be decided is whether product of assessee-company, "Powder Coating" can be construed as "paints" so as to be disentitled for claiming any investment allowance.

9. The word "paint" is defined in Webster's Third New International Dictionary as follows :

"A mixture of a pigment and a suitable vehicle (as oil, water) that together form a liquid or paste that can be applied and spread (as with a brush, spray gun, roller) to a surface so as to form thin closely adherent quoting that dries opaque and imparts colour to the surface and that is often to protect the surface (as against weathering).

In the book entitled "Organic Coating Technology" by Henry Payne in Vol. II on page 677, the word paint is defined as "a pigmented liquid composition which is converted to an opaque solid film after application as thin layer.

In Chemical Dictionary, the word "paint" is defined as "a suspension of finely grounded pigments with added colour pigments, if required in a vehicle (linseed oil, varnish or turpentine)".

The Britannia Encyclopaedia has defined the word "paint" as "a fluid suspension spread in thin coats to decorate and protect surfaces, consists of pigment or colouring matter and the vehicle in which the pigment is suspended".

10. From the above mentioned definitions of the word "paint", it is crystal clear that paints are necessarily in liquid form. In fact, it is quite evident from these definitions that being in liquid form is the necessary pre-requisite of a "paint". In short, it has to be said that if it is a paint, it can never be in a dry form or in a powder or granule form. If the article or thing is not liquid, then it can be anything else, but not paint.

11. Now, coming to the facts of the present case, it is evident that the Hawco Plast Powder Coating, which is the product of the assessee-company, is not in liquid form, nor it is required to be converted into a liquid form. Moreover, in the case of ordinary paints, no chemical changes take place, while as far as Hawco Plast Powder Coating is concerned, chemical changes do take place. The assessee-company had produced before the CIT(A) and also before the Tribunal letter dt. 2nd November, 1983 by Shri K. C. Kudva, consulting chemical engineer and professor in Bombay University, Department of Chemical Technology, and who also was holding the position of teaching fellow in the University of Louis, Kentucky, U.S.A., wherein it was stated that Powder Coating should not be confused for or with paints.

12. From the record, it also appears that the assessee-company had produced before the CIT(A) and also before the Tribunal an article published in New York Times, wherein it was mentioned that the Powder Coating was a better approach to the process of coating appliances, electric equipments and other products to protect them from corrosion and improve their looks. It was further mentioned therein that the powders were essentially plastics, such as epoxies, polyesters and vinyls that were grounded and blended into diverse formulations.

13. Thus, it is clear that the Power Coating is made from coating material used in the form of powder, unlike paints, which are always liquids. Galvanising of steel is also a coating, tinning of steel to produce tinned steel is also a coating. Even electro plating produces a coating. All these cannot be said to be paints. They are known as coatings and are to be necessarily distinguished from paints. In the present case, the function of Hawco Plast Powder Coating is different from the ordinary paints. Ordinary paints are applied with brush, while Powder Coatings are applied by electrostatic spray or by fluidized techniques.

14. Mr. Atul Jasani, the learned counsel for the assessee-company/respondent drew our attention to the decision of this Court in *CST vs. Colour Chem. Ltd.* (1968) 22 STC 90. The question which was referred to the Division Bench under the Sales-tax Ref. (STR 32/65) was "whether pigment powders or pigment emulsions fell within the term "paints" which was included in Entry 39 of Schedule C and Entry 22 of Schedule E of Bombay ST Act. While giving opinion on this question, the Division-Bench, after discussing the word "paint" in its common parlance as used in plain language, so also, after considering the various definitions of the word "paint", came to the conclusion that paint was defined as pigmented liquid composition, and that, pigment powders did not fall within the term "paints" in Entry No. 39 of Schedule C to the Bombay ST Act, 1959. We see no reason to deviate from the interpretation of the word "paint" as given by the Division Bench in the said Sales-tax Reference.

15. We, therefore, are of the opinion that on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the product manufactured by the assessee would not come within the ambit of the list of article in Entry No. 26 of the Eleventh Schedule, and consequently, holding that the assessee-company was entitled to investment allowance. Accordingly, we answer the question referred to us in the affirmative and in favour of the assessee and against the Revenue.

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