

(1999) 03 BOM CK 0117

Bombay High Court

Case No: Income Tax R. No. 262 of 1987

Colour Chem Limited

APPELLANT

Vs

Commissioner of Income Tax,
Bombay City II, Bombay

RESPONDENT

Date of Decision: March 10, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 32

Citation: (2000) 2 BomCR 215 : (1999) 155 CTR 23 : (1999) 238 ITR 171 : (1999) 3 MhLj 980 : (1999) 105 TAXMAN 28

Hon'ble Judges: S.H. Kapadia, J; B.P. Saraf, J

Bench: Division Bench

Advocate: J.D. Mistry and Ms. H. Desai, instructed by M/s. T. Pooran and Co, for the Appellant; R.V. Desai and B.M. Chatterjee, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.H. Kapadia, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the assessee, the Income Tax Appellate Tribunal has referred the following questions of law to this Court for opinion.

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that proportionate salary of employees of assessee for the period of their stay outside India in the ordinary course of their employment should not be excluded from the total salary while computing disallowance u/s 40-A(5) of the Income Tax Act, 1961?"

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount representing medical reimbursement given to employees which was not treated as perquisite in computing disallowance u/s

40-A(5) of the Income Tax Act, 1961 should be treated as part of salary for computation of disallowance under said provision?"

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that amount payable towards surtax was not liable to be deducted in computing the profits and gains of the business of the assessee?"

2. Counsel for the parties are agreed that question No. 1 is covered by the decision of the Supreme Court in [Commissioner of Income Tax, Delhi \(Central-I\) Vs. M/s. Continental Construction Ltd.](#), and following the same, it should be answered in the negative and in favour of the assessee. The question is answered accordingly.

3. The Counsel for the parties are agreed that question No. 2 is covered by the decision of this Court in [Commissioner of Income Tax, Bombay City-II Vs. Indokem Private Ltd.](#), and following the same, it should be answered in the negative and in favour of the assessee. Question No. 2 is answered accordingly.

4. The Counsel for the parties are agreed that question No. 3 is covered by the decision of the Supreme Court [Smith Kline and French \(India\) Ltd. and Others Vs. Commissioner of Income Tax](#), and following the same, it should be answered in the affirmative and in favour of the revenue. The question is answered accordingly.

5. The Income Tax Appellate Tribunal has also referred the following question of law to this Court for opinion at the instance of the revenue :

" 1. Whether on the facts and in the circumstances of the case, the tribunal was justified in law in allowing investment allowance of Rs. 26,50,507/- to the assessee by treating the chemicals manufactured by the assessee as heavy chemicals as listed in Ninth Schedule to the Income Tax Act, 1961?"

6. During the relevant accounting year, the assessee acquired and installed machinery at the cost of Rs. 1,06,02,027/- for manufacture of the following tanning agents viz. 1) Diketene, 2) Acetoacet Arylides and Acetocetamides 3) Acetic Anhydride 4) Synthetic Tanning Agents. u/s 32-A of the Act, investment allowance at the rate of 25% of the cost is allowable on new machinery or plant for the purpose of manufacture or production of one or more of the articles or things specified in the Ninth Schedule. Entry 26 and Entry 27 of the 9th Schedule reads as follows :

"26. Inorganic heavy chemicals (other than soda ash and caustic soda mentioned in items 12 and 13 respectively)."

27. Organic heavy chemicals."

The assessee claimed that chemicals manufactured or produced by the assessee came within the ambit of Entries 26 and 27 as the above tanning agents constitute heavy chemicals. The assessee accordingly made reserve for making claim for investment allowance. The assessing officer held that the items manufactured by the assessee were not heavy chemicals and he, therefore, disallowed the claim of

the assessee. The disallowance was confirmed by the Commissioner of Income Tax (Appeals). The assessee came in appeal before the Tribunal. The Tribunal accepted the plea of the assessee and came to the conclusion that the assessee was entitled to claim investment allowance. The product manufactured by them came within the ambit of Entries 26 and 27 of the 9th Schedule as heavy chemicals.

7. The short point which arises for consideration is : whether the chemicals manufactured or produced by the assessee were heavy chemicals? The assessing officer came to the conclusion that the word "heavy chemical" must be understood in common parlance. That the word "heavy" being used as an adjective qualifying the quality of the chemical, such as large specific gravity, large molecular weight or chemical made up of heavier elements or consisting of heavier isotope of a particular element like "heavy water" which consists of a heavy isotope of hydrogen. This reasoning of the assessing officer was accepted by the Commissioner of Income Tax (Appeals). However, the Tribunal relied upon the dictionary meaning given to word "heavy chemical". In condensed Chemical Dictionary, IXth Edition, published by Van Norestrand, Reinhold company-page 430 the word "Heavy chemicals" has been defined to mean "A chemical produced in tonnage quantities often in a relatively impure state. Examples : Sodium Chloride, Sulphuric Acid, etc." Whereas the word "Fine chemicals" is defined at page 384 of the same Dictionary as "A Chemical produced in comparatively small quantities and relatively pure state. Examples : Pharmaceutical and biological products, perfumes, photographic chemicals etc." Similarly in The New Encyclopaedia Britannica, 15th Edition, Vol. 4, page 128 gives the definition of the word "Heavy organic chemicals" to mean chemicals like phenol, ethylene etc. Similarly, Websters Third New International Dictionary Unabridged-1968 Edition page 1047 has defined the word "Heavy chemical" to mean "A chemical produced and handled in large lots" whereas the word. "Fine Chemical" is defined to mean "A chemical which is produced and handled in relatively small amounts like a perfume".

8. Looking to the above meanings given by the Chemical Dictionaries, it is clear that "heavy chemical" is described as heavy chemical on the basis of the tonnage whereas "Fine Chemical" is defined on the basis of the smaller quantity. In other words, the parameter of tonnage applies in order to ascertain whether the chemical is a heavy chemical or a fine chemical. The assessing officer has applied a different test which normally applies to cases of molecular weight. That test is not correct as indicated by the above meanings given by the Dictionaries to heavy chemicals.

9. In the circumstances, the above question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

10. Reference is disposed of accordingly with no order as to costs.

11. Reference answered in favour of assessee.