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Bombay High Court

Case No: Income-tax Reference No. 171 of 1976

Commissioner of Income Tax		APPELLANT
	Vs	
Telelink Products (P.) Ltd.		RESPONDENT

Date of Decision: Dec. 2, 1988

Acts Referred:

- Income Tax Act, 1961 - Section 80

Citation: (1989) 75 CTR 128 : (1989) 177 ITR 291 : (1989) 42 TAXMAN 177

Hon'ble Judges: T.D. Sugla, J; S.P. Bharucha, J

Bench: Division Bench

Judgement

Bharucha, J.
The only question in the reference, made at the instance of the Revenue, reads thus:

"Whether, on the facts and in the circumstances of the case, the assessee-company can be treated as one engaged in a priority industry and whether deduction u/s 80-I of the Income Tax Act, 1961, and development rebate at higher rate are admissible ?"

2. The issue to be considered is whether the assessee manufactures or produces one or more of the articles or things listed in the Sixth Schedule to the Income Tax Act, 1961. The assessee manufactures tele communication equipment and also fabricates and assembles it. It was treated by the Income Tax Officer as falling within the definition of a priority industry and was given benefits accordingly, the Additional commissioner of Income Tax invoked section 263 of the Act and called upon the assessee to show cause why these benefits should not be withdrawn. He relied upon the provisions of the first Schedule to the Industries (Development and Regulation) Act, 1951. The assessee showed cause but the Additional commissioner was not impressed. He was of the view that the Industries (Development and Regulation) Act treated electronic equipment and telecommunication equipment separately. Telecommunication equipment fell, according

to him, outside item (17) of the Sixth Schedule. The said item (17) dealt with "electronic equipment, namely,... electronic communication equipment.....". The assessee preferred an appeal to the Income Tax Appellate Tribunal and produced an opinion obtained from the Technical Director of the Department of Electronics, Government of India, which stated "that electronic communication is telecommunication equipment in every sense". Basing itself, inter alia, upon this opinion, the Tribunal held that the assessee"s telecommunication equipment fell within the description of electronic communication equipment in the said item (17). Accordingly, the Tribunal set aside the order of the Additional Commissioner of Income Tax.

3. Before us, Mr. Jetley, learned counsel for the Revenue, supported the view that found favour with the Additional commissioner of Income Tax. We are unable to subscribe thereto.

4. The Tribunal having concluded that the assessee"s product was electronic communication equipment, there was no option but to treat it as falling within the said item (17). A provision in a statute must, if it is clear, be interpreted as it reads. Reference to external aids in interpretation may be resorted to only if there is an ambiguity. There being no ambiguity here and, reference cannot be made to the provisions of the Industries (Development and Regulation) Act or, for that matter to anything else. It is relevant also to note, as the Tribunal did, that where the Legislature intended recourse to be taken to the Industries (Development and Regulation) Act for the purpose of the Sixth Schedule, it has specifically so provided; thus, in item (4), the Industries (Development and Regulation) Act has been expressly mentioned.

5. Further, the argument on behalf of the Revenue proceeds upon a misconception in regard to the interpretation of the First Schedule to the Industries (Development and Regulation) Act. There is no warrant for the underlying assumption that an article can fall only under one or the other of the items therein set out. Thus, typewriters fall within sub-item (1) of item (13) thereof, which deals with commercial, office and household equipment. But typewriters, if of the electronic variety, would also fall within sub-item (8) (electronic equipment) of item (5) (electrical equipment). Equally an item of telecommunication equipment covered by item (6), if of the electronic variety, also falls within sub-item (8) of item(5).

6. In the result, the view taken by the Tribunal cannot be faulted. The question is answered in the affirmative and in favour of the assessee.

7. The Revenue shall pay to the assessee the costs of the reference.