

(1993) 10 BOM CK 0060

Bombay High Court

Case No: None

Aditya Textile Industries
P. Ltd.

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Oct. 7, 1993

Acts Referred:

- Income Tax Act, 1961 - Section 252(1)

Citation: (1994) 209 ITR 779 : (1994) 72 TAXMAN 321

Hon'ble Judges: D.R. Dhanuka, J; B.P. Saraf, J

Bench: Division Bench

Advocate: D.H. Dwarkadas, for the Appellant; G.S. Jetley, for the Respondent

Judgement

D.R. Dhanuka J.

1. By this reference u/s 66(1) of the Indian Income Tax Act, 1922, the Income Tax Appellate Tribunal has referred the following question to this court for opinion.

"Whether, on the facts and the circumstances of the case, the Tribunal has misdirected itself in law in setting aside the order of the Appellate Assistant Commissioner and restoring the appeal to its file for fresh disposal for the assessment years 1961-62 and 1962-63 ?"

2. The assessee is a textile mill engaged in the manufacture of velvet and other types of cloth. Up to and inclusive of the assessment year 1959-60, all the processes, including the printing and processing of cloth, was done by the assessee-company itself. With effect from November 1, 1959, the assessee entered into a leave and licence agreement dated January 20, 1960, with the firm of Messrs. Devyani Dyeing and Printing Works whereby the printing and processing machinery of the assessee is supposed to have been leased out to the party on monthly rental/compensation fee of Rs. 12,000. From that

day onwards, the work of printing and processing of textile goods manufactured by the assessee was done by Messrs. Devyani Dyeing and Printing Works. During the course of assessment proceedings for the assessment year 1960-61, the question arose as to whether the firm of Messrs. Devyani Dyeing and Printing Works was a genuine firm or a bogus firm. The Income Tax Officer did not record any finding on this issue. The assessment proceedings for the year 1960-61 ultimately culminated in second appeal before the Income Tax Appellate Tribunal. In the said second appeal the Income Tax Tribunal *inter alia*, observed as under :

"We are, however, unable to find any merit in this submission. The material brought on record in the assessee's case does not by any means establish that the firm was a bogus concern. The Income Tax Officer has referred to certain statement made by the partner of the firm but admittedly these statements were not taken in the assessee's presence nor was the assessee given an opportunity to rebut the conclusions that might have been drawn on the basis of these statements. So far as the present assessment is concerned, we can only proceed on the footing that the "finding" of the Income Tax Officer in paragraph 12 of his order, which we have reproduced earlier, is not a finding at all. In fact, the Income Tax Officer himself has in so many words stated he is not giving any decision on the question of the genuineness of the leave and licence arrangement. When the Income Tax Officer himself has not decided an issue, we are unable to understand how it can be urged that the Appellate Assistant Commissioner has not disturbed the finding given by the Income Tax Officer". (The underlining is done to supply emphasis).

3. Thus, the Tribunal came to the conclusion that the Income Tax Officer had not recorded any finding on the issue concerning the genuineness of the firm of Messrs. Devyani Dyeing and Printing Works. Thus no positive finding was recorded on this aspect during the course of assessment proceedings for the assessment year 1960-61.

4. In the course of assessment proceedings for the assessment years 1961-62 and 1962-63, the Income Tax Officer examined the matter in greater detail and recorded a positive finding to the effect that the business carried on in the name of Messrs. Devyani Dyeing and Printing Works in reality belonged to the assessee and the income of the said firm concerning the said business was thus liable to be included in the assessment concerning the assessee. In the appeal that followed, the Appellate Assistant Commissioner set aside the order of the Income Tax Officer merely by relying on the order of the Income Tax Appellate Tribunal in appeal concerning the assessment year 1960-61 without examining the findings arrived at by the Income Tax Officer on the merits. The Appellate Assistant Commissioner interpreted the earlier order of the Tribunal to mean that a positive finding was already recorded by the Tribunal to the effect that Messrs. Devyani Dyeing and Printing Works was a genuine third party firm. Being aggrieved by the said order, the Income Tax Officer filed a second appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal interpreted the earlier order of the Tribunal concerning the assessment year 1960-61 and came to the conclusion that during the course of the earlier assessment proceedings no findings were

recorded by the Income Tax Officer or the Tribunal on the above-referred issue. In this view of the interpretation of the Tribunal's order for the earlier year, the order of the Appellate Assistant Commissioner was set aside and the Appellate Assistant Commissioner was directed to dispose of the appeal on the merits and in accordance with law.

5. Learned counsel for the assessee has submitted that the Tribunal was not justified in passing the above-referred order of remand.

6. We have carefully gone through the record of the case and heard learned counsel for the assessee at length. In our opinion, the Tribunal was more than justified in reaching the conclusion that the Income Tax Officer was not precluded in law from recording a finding on the issue under consideration while dealing with the assessment proceedings for the assessment years 1961-62 and 1962-63. It is well-settled that the principle of res judicata are not applicable to the assessment proceedings for sub-sequent years. We are satisfied that the Tribunal was right in interpreting its order for the earlier year and holding that the relevant issue was not decided by the Income Tax Officer or the Tribunal on the merits during the course of assessment proceedings for the assessment year 1960-61. The assessee cannot be said to have been prejudiced by the order passed by the Tribunal directing the Appellate Assistant Commissioner to hear the appeal on the merits and dispose of the same in accordance with law.

7. Learned counsel for the assessee has submitted that there was no fresh material before the Income Tax Officer for the assessment years 1961-62 and 1962-63 and the Income Tax Officer was not justified in recording a finding on the issue of genuineness of the firm of Messrs. Devyani Dyeing and Printing Works. It is not necessary to examine this contention. Even if there was no fresh material before the Income Tax Officer, the Income Tax Officer could record a finding on the issue under consideration while finalising the assessment orders for the assessment years 1961-62 and 1962-63 when no finding was recorded as such on this issue during the course of assessment proceeding for the earlier year.

8. We are satisfied that the Appellate Assistant Commissioner was in error in interpreting the Tribunal's order for the earlier years and canceling the order of the Income Tax Officer. In this view of the matter, in the light of the above discussion, we answer the question referred to us in the negative and in favour of the Revenue.

9. No order as to costs.