

(1990) 11 AHC CK 0098

In the Allahabad High Court

Case No : Income-tax Reference No. 12 of 1978

Additional Commissioner of Income Tax

APPELLANT

Vs

Syntex Fabrics Ltd.

RESPONDENT

Date of Decision : 19-11-1990

Acts Referred:

Income Tax Act, 1961 — Section 32, 33, 80J

Citation : (1991) 92 CTR 94 : (1991) 191 ITR 52

Hon'ble Judges : B.P. Jeevan Reddy, C.J.;G.D. Dubey, J

Bench : Division Bench

Advocate : V.B. Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—Five questions are stated by the Income Tax Appellate Tribunal u/s 256(2) of the Income Tax Act, 1961. They are :

"(i) Whether, on the facts and in the circumstances of the case, there was material before the Tribunal to hold that the promoters intended to float a company from January, 1969 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the profit or loss of the promoters for the period January 1, 1969, to December 31, 1969, was the profit or loss of the company ?

(iii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in setting aside the assessment for the assessment years 1971-72 and 1972-73 with a direction to the Income Tax Officer to redo the assessment ?

(iv) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee-company was entitled to development rebate and also relief u/s 80J under the Income Tax Act, 1961 ?

(v) Whether the Tribunal was justified in holding that the assessee-company was

engaged in the business of manufacturing artificial silk and was, therefore, entitled to depreciation at the rate of 15% as against 10% allowed by the Income Tax Officer ?"

2. The assessee is a company which was incorporated Under the Companies Act on November 26, 1969. The assessment years concerned are 1971-72 and 1972-73. The facts relevant to the above questions are the following :

Sarvsri R, N. Gupta and R. S. Bajpai proposed to start a company for doing the business of knitting yarn. They purchased machines and installed them. They started doing business from the year 1969 itself. However, after the company was incorporated on November 26, 1969, and it obtained a certificate of commencement of business on January 1, 1970, a resolution was passed by the assessee-company on January 23, 1970, accepting and adopting the business and the loss suffered by the said two promoters while carrying on the business on behalf of the assessee. In the return filed for the assessment year 1971-72, the assessee showed a loss of Rs. 1,21,383 said to have been incurred during the period January 1, 1969 to June 30, 1970, a period of 18 months. The assessee claimed to carry forward the said loss. This claim was disallowed by the Income Tax Officer. He was of the opinion that the business carried on and the loss incurred prior to the incorporation of the assessee-company could not be considered in its assessment. He referred to the fact that the certificate of commencement of business was issued to the assessee only on January 1, 1970, and that being so, it could not have carried on business prior to the said date. He also found that the business carried on by the promoters and the business carried on by the assessee-company are different. Accordingly, he disallowed the loss said to have been incurred prior to January 1, 1970. The assessee had also claimed development rebate and the benefit u/s 80J. These claims were also disallowed on the ground that the machines purchased and used by the promoters for their business were not new machines and hence the assessee-company could not claim the said benefits. Yet another claim put forward by the assessee for grant of depreciation at the rate of 15% on the ground that it is engaged in the production of art silk was also disallowed. For the assessment year 1972-73 too, the Income Tax Officer took the same view. The assessee filed appeals against both the assessment orders. The Appellate Assistant Commissioner affirmed the Income Tax Officer's orders in all respects except one. He held that the Income Tax Officer was wrong in making one assessment in respect of the period of 18 months, January 1, 1969 to June 30, 1970. He held that two assessments ought to be made, one for the period January 1, 1969, to December 31, 1969, and the other for the period January 1, 1970, to June 30, 1970. He accordingly recalculated the income for the assessment year 1970-71. The assessee then carried the matter in appeal to the Appellate Tribunal. The Tribunal referred to the letter of J, K. Synthetics Ltd., dated April 12, 1969, addressed to the said two promoters and the agreement dated June 11, 1969, entered into between the said two promoters as well as the resolution passed by the assessee-company on January 23, 1970, and held, applying the decision of

this court in Commr. of Income Tax, U.P. and Ajmer-Merwara, Lucknow Vs. Bijli Cotton Mills Ltd., Agra, , that the loss claimed by the assessee-company ought to be allowed, and allowed to be carried forward. The Tribunal opined, on the basis of the above material, that the said two promoters had entertained the idea of floating the assessee-company even in January, 1969, and inasmuch as the company has, after its incorporation, passed a resolution adopting the action of the promoters, the profit and loss of the said promoters is the profit and loss of the assessee-company. The Tribunal, however, observed that the filing of one return by the assessee for a period of 18 months is not in accordance with law. It held that there ought to be two separate assessments, one for the calendar year 1969 and the other for the period January 1, 1970, to June 30, 1970. With this direction, the matter was remitted to the Income Tax Officer. So far as the development rebate and benefit u/s 80J were concerned, it was held allowable on the above finding. The Tribunal also found that the product of the assessee-company is "art silk" and, therefore, it is entitled to depreciation at the higher rate of 15%. In this connection, the Tribunal followed the definition of "art silk" contained in certain decisions rendered under sales tax enactments. It is, thereupon, that the Revenue obtained the present reference u/s 256(2). We shall deal with each question in its proper order.

3. The first question is whether there was material before the Tribunal to hold that the promoters intended to float a company from January, 1969 ? Having perused the order of the Tribunal, we must say that there was material before it. It must be remembered that, in a reference u/s 256, we cannot go into the adequacy of the material. The question stated is whether there was material before the Tribunal to hold that the promoters intended to float a company even in January, 1969. The Tribunal relied upon the letter of J. K. Synthetics Ltd., dated April 12, 1969, addressed to the said promoters which clearly refers to knitting operations which the said promoters intended to carry on "for and on behalf of the public limited company proposed to be formed in the name of Syntex Fabrics Ltd." The Tribunal also referred to the agreement dated June 11, 1969, entered into between the said two promoters, which expressly speaks of promoting and forming, a company in the name and style of Syntex Fabrics Ltd. It is true that there is no document of January, 1969, evidencing the said intention, but it cannot be said that the Tribunal's inference is totally unreasonable or that it acted perversely in drawing the inference it did from the above two documents. Unless we are able to say that the Tribunal's finding is perverse, we cannot interfere in the matter. We may mention that the decision of this court in Commr. of Income Tax, U.P. and Ajmer-Merwara, Lucknow Vs. Bijli Cotton Mills Ltd., Agra, , fully supports the decision of the Tribunal. In that case too, a firm entered into an agreement to purchase a mill for a company which they intended to float and obtained possession of the mill on December 10, 1942, on behalf of the company. The company was floated on December 11, 1943, and the sale deed was executed in its favour on January 2, 1945. The company resolved to accept the profit made before its incorporation and treat

the promoters as accountable for all profits made during the period December 11, 1942, to December 10, 1943. It was held by this court that, in the above circumstances, the income for the period December 11, 1942, to December 10, 1943, could be legally assessed in the hands of the company. This court observed that where the promoters of the company buy a property or carry on business on behalf of the company, which they intended to float, the company has a right, after its incorporation, to either accept what had been done on its behalf by the promoters or to repudiate the same. If, however, the company accepts what the promoters had done, it was held that it has a right to claim from the promoters the entire income of the property since its purchase or the entire income for the period during which the business was carried on for the benefit of the company. It was held that though the promoters, in such a situation, cannot be said to be trustees, their relationship is fiduciary in nature. The said decision is binding upon us. We find that the said decision was followed in another decision of this court in *Security Printers of India (P.) Ltd. Vs. Commissioner of Income Tax*, . Accordingly, the first question is answered in the affirmative, that is, in favour of the assessee and against the Revenue.

4. The second and third questions are interconnected and can be dealt with together. In our opinion, the Tribunal as well as the Appellate Assistant Commissioner were both right in holding that making one assessment in respect of a period of 18 months (January 1, 1969 to June 30, 1970) was not in accordance with law and that there ought to be two assessments, one for the period January 1, 1969, to December 31, 1969, and the other for the period January 1, 1970, to June 30, 1970. This finding of the Tribunal has been accepted by the assessee and has not been questioned by it. The only clarification which we need make is that the assessment year relevant to the calendar year 1969 would be 1970-71. The previous year corresponding to calendar year 1969 would not be relevant either for the assessment year 1971-72 or for 1972-73, which were the only two assessment years concerned before the Tribunal, While redoing the assessment for the assessment years 1971-72 and 1972-73 in pursuance of the direction of the Tribunal, the Income Tax Officer shall keep this clarification in mind and act accordingly. The said two questions are, accordingly, answered in the affirmative subject to the above clarification.

5. Now, coming to the fourth question, it has to be answered in favour of the assessee once the first question is answered in favour of the assessee. Once it is held that the promoters were carrying on business for and on behalf of the assessee and the assessee has, by its resolution, adopted and agreed to treat the business done by the promoters as its business and the profit or loss arising therefore as its profit or loss, it is evident that the assessee-company would be entitled to development rebate as well as relief u/s 80J.

6. Coming to the fifth and the last question, the finding of the Tribunal with respect to the precise activity of the assessee-company is to the effect that "the

company knits nylon yarn into cloth". The question is whether it can be said that the petitioner is carrying on a business in art silk. In *Kishinchand Chellaram v. Joint CTO* 1968 21 STC 367, a Bench of the Madras High Court has elaborately considered the meaning of the expression "artificial silk". No doubt, the decision arose under the Madras General Sales Tax Act, yet the discussion relating to the meaning of the said expression is perfectly relevant herein. In that case, it was contended by the Department, as has been done before us, that nylon properly belongs to the field of petro-chemicals and cannot be considered as artificial silk. The said argument was rejected and it was held that nylons and -similar fabrics must be treated as artificial silk or art silk as it is called. We respectfully agree with the reasoning and approach of the said decision. We accordingly hold, agreeing with the Tribunal, that the activity of the assessee-company described above, must be held to be a business in art silk. For the above reason, question No. 5 is answered in the affirmative, that is, in favour of the assessee and against the Revenue.

No costs.