
(1995) 06 BOM CK 0049
In the Bombay High Court
Case No : IT APPEAL NO. 925 (BOM.) OF 1990

ASSISTANT COMMISSIONER OF Income Tax	APPELLANT
Vs	
VIRENDRA and CO.	RESPONDENT

Date of Decision : 30-06-1995

Acts Referred:

Income Tax Act, 1961 — Section 80HHA, 80I

Citation : (1995) 55 ITD 309

Hon'ble Judges : J. K. Verma, A.M.

Bench : Division Bench

Judgement

Per J. K. Verma (AM) - The only objection taken by the revenue in this appeal is against the decision of the Id. CIT(A) whereby he has held that the assessee is an industrial undertaking engaged in manufacturing activities and consequently erred in directing the ITO to allow the assessee deduction under sections 80HHA and 80-I of the I.T. Act.

2. We have heard the rival submissions. The admitted facts are that the assessee is involved in breaking of ships and selling the parts and its other articles. The assessee claimed that in this way the assessee was an industrial undertaking and was engaged in manufacturing of articles or things and was thus entitled to deductions under sections 80-HHA and 80-I. The Assessing Officer on the other hand took the view that the assessee was in industrial undertaking because, according to him, by no stretch of imagination the activities of breaking of ship and selling the parts and its other articles could be considered to be industrial undertaking.

3. When the assessee went in appeal, the Id. CIT(A) referred to seven decided cases of High Courts and Tribunals and took the view that the assessee was an industrial undertaking engaged in manufacturing activities.

4. In the appeal filed by the revenue while the Id. D.R. very heavily relied on the decision of the Hon"ble Supreme Court in the case of Commissioner of Income

Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , the Id. counsel for the assessee relied on a large number of decisions including the decisions of the Bombay High Court in the case of CST v. Indian Metal Traders [1978] 41 STC 169 where their Lordships had held that dismantling and breaking up of ship to obtain scrap, iron and steel amounts to manufacture.

5. We have carefully considered the arguments advanced from both the sides, the orders of the authorities below as well as the material on record which includes citations and extracts from various decisions of Tribunals and High Courts. At the outset we would like to point out that with the pronouncement of the decision of the Hon"ble Supreme Court in the case of N. C. Budharaja & Co. (supra) the concepts of "industrial undertaking", "manufacture", "production" and "articles" have undergone a sea change. It will not be out of place, before referring to some of the law laid down by their Lordships in that decision, to mention that through that decision their Lordships have reversed decisions of the Hon"ble Orissa, Bombay and Karnataka High Courts which were being accepted and followed almost throughout the country. In the decision reported in N. C. Budharaja & Co. (supra) their Lordships have specifically reversed the decision of the Hon"ble Bombay High Court in the case of Commissioner of Income Tax, Bombay City-II Vs. Pressure Pilling Co. (India) P. Ltd., and thereafter, in one of the most recent decisions of the Hon"ble Bombay High Court in the case of Commissioner of Income Tax Vs. Sterling Foods (Goa), , the Hon"ble Bombay High Court has discussed the legal propositions associated with the expressions "industrial undertaking" and "manufacture" and "production of articles", which issues are covered by the provisions of section 80-HHA of the I.T. Act. It would be worth quoting from pages 856 and 857 of the report in the case of Sterling Foods (Goa) (supra) to the following effect.

"This principle of interpretation is too well-known to need any elaboration. As observed by the Supreme Court in Polestar Electronic (P.) Ltd. v. Addl. CST [1978] 41 STC 409, if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable, or totally irreconcilable with the rest of the statute".

6. Again while dealing with the word manufacturer or "produce articles", which words are to be found in sections 80-HHA and 80-I also, the Hon"ble Court has observed on page 859 of the report as under :

"Where the commodity retains a continuing substantial identity through the processing stage, it cannot be said that there has been manufacture."

7. Again on the same page - Thus though "manufacture" also implies a change, every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary to term

it as manufacture. There must be transformation, a new and different article must emerge, "having a distinctive name, character or use". Then and only then can manufacture be said to take place.

8. While dealing with the word production their Lordships have observed as under :

"Similarly, the word production has wider connotation than the word manufacture. While every manufacture can be characterised as production, every production need not amount to manufacture. As observed by the Supreme Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , the word production or produce when used in juxtaposition with the word manufacture takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods."

9. We have substantially quoted some of the observations of the Hon''ble Bombay High Court which include references to the decisions of the Hon''ble Supreme Court to indicate that after the decision of the Hon''ble Supreme Court in the case of N. C. Budharaja & Co. (supra) the concept of adopting a liberal interpretation has also been reconsidered and now as per the Supreme Court the principles of adopting a liberal interpretation which advances the purpose and object of beneficial provisions cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the Court to re-write the section or substitute words of its own for the actual words employed by the legislature in the name of giving effect to the supposed underlying object.

10. With the abovementioned principles laid down in the recent judgments of the Hon''ble Supreme Court and the Hon''ble Bombay High Court referred to above it becomes obvious that the ratio of decision of the Hon''ble Bombay High Court in the Sales Tax case of Indian Metal Traders (supra) which is dated 29-11-1977, may no longer apply to the provisions of sections 80-HHA and 80-I. We have to consider the meaning of manufacture and production of articles or things in their ordinary plain and natural meaning. When we do this we find ourselves in agreement with the view taken by Assessing Officer because breaking or dismantling a ship would perhaps be just the opposite of manufacturing or production of an article or a thing. When a ship is dismantled or broken what is obtained by the person or persons who are engaged in this process are those components by which the ship was constructed or manufactured and if it is possible to reassemble those pieces or parts, the ship may be manufactured or constructed. Hence in our view it would be doing violence to the language if we say that while we are dismantling or breaking or destroying a ship we are in effect manufacturing or producing an article or a thing. In these circumstances applying the law laid down by the Hon''ble Supreme Court in the case of N. C. Budharaja & Co. (supra) and by the Hon''ble Bombay High Court in the case of

Sterling Foods (Goa) (supra) we come to only one conclusion and that is that the activity of breaking or dismantling a ship or ships cannot be considered to be an industrial undertaking which manufactures or produces articles or things and hence we hold that it is not entitled to the deductions mentioned in sections 80-HHA and 80-I of the I.T. Act.

We therefore reverse the order of the Id. CIT(A) in this regard. The appeal filed by the revenue is allowed.