

(2006) 08 AHC CK 0004
In the Allahabad High Court

Commissioner of Income Tax	Vs	APPELLANT
Agra Construction Corpn.		RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 80I

Citation : (2006) 08 AHC CK 0004

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal, New Delhi has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act" for opinion to this Court:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that deduction u/s 80-1 was to be allowed to the assessee by holding that the assessee was manufacturing or producing articles or things?
2. The present reference relates to the assessment year 1984-85.

Briefly stated the facts giving rise to the present reference are as follows : The Income Tax Officer in making the assessment for the year 1982-83 found that the assessee was carrying on contract business and was undertaking for manufacture and construction of tubular trusses, beams girders and other structurals rolling shutters along with other civil works. In respect of this business the assessee had claimed deduction u/s 80-1 of the Act. The Income Tax Officer was, however, of the view that the business of the assessee was of a contractor and it could not be held to be carrying on business of manufacture or production of articles as required u/s 80-I of the Act. The Income Tax Officer did not allow the claim u/s 80-I.

3. Before the Appellate Assistant Commissioner, it was submitted that the assessee had been granted registration as a small scale industry and it was manufacturing various structures at the workshop and these structures were

used in erecting these structures at the site. It was pointed out that the nature of the business was different from normal civil work/contract work and the assessee was mainly engaged in manufacturing steel structures. On these facts, the Appellate Assistant Commissioner held that the firm was engaged in small industrial undertaking for the purpose of manufacture and production of articles and things. In this connection, he referred to the manufacture of tubular roof ing structures, steel fabrications and allied structures bearns, girders and rolling shutters. The Appellate Assistant Commissioner also held that investment allowance was allowable to the assessee as the assessee was carrying on manufacturing activity and he was actually producing various structures and fabricated items.

4. Feeling aggrieved the revenue as well us the assessee preferred separate appeals before the Tribunal and the Tribunal has allowed the assessee's appeal by observing as follows:

7. We have considered the facts of the case and we are of the view that the case of the assessee cannot be equated with that of a normal civil contractor constructing buildings, dams, tunnels, etc, it is true that neither the Income Tax Officer nor the Appellate Assistant Commissioner has brought out any detail of the nature or the activity and the articles produced have not been considered in the light of the erection contracts completed by the assessee. The nature of the contract has also not been brought out in the orders. The Income Tax Officer has also used the words "civil contracts" but merely use of a word cannot determine the nature of the activity. There is force in the submission of the assessee's counsel that the basic activity of the assessee is of manufacturing various fabrication parts and tubular roofing structures like beams, girders as well as rolling shutters. It may be that besides these, some other activities may have been carried on by the assessee but that is not brought out in the order of the lower authorities. If the assessee uses the manufactured articles and erects the mechanical structures by just fixing them in a particular position, the claim of the assessee u/s 80-I could not be denied. Here we are not concerned with the construction of a bridge or dam or a building and, therefore, this case is distinguishable from the case of Hydle Construction (P) Ltd. Relied upon by the learned Departmental Representative. We are, therefore, inclined to agree with the contention of the learned Counsel that in case the firm's activity is of manufacturing structures, the benefit of Section 80-I should be available to the assessee. However, the learned Appellate Assistant Commissioner has not gone into the matter in detail and has not found whether the profit is against which the deduction was claimed related to such manufacturing activity or to some other activities. The section provides for allowance of 20 per cent of such profit and gains as deduction and such profit and gain has to be from the industrial undertaking itself, which is engaged in the manufacturing activity and not from any other type of activity. The Appellate Assistant Commissioner is, therefore, directed to ascertain the position of profits vis-a-vis the manufacturing activities as this aspect of the matter is not brought out in the orders of the authorities.

Subject to this direction, the claim of the assessee is accepted.

5. We have heard Sri A.N. Mahajan, learned Standing counsel for the revenue.

6. Learned Standing counsel for the revenue submitted that it is not in dispute that the respondent-assessee was engaged in the civil construction work and used to fabricate steel structures in relation to the contract undertaken by it and it did not do any fabrication on a regular basis for others. Therefore, the ratio laid down in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, squarely applies to the present case. He also relied upon a decision of the Kerala High Court in the case of Commissioner of Income Tax Vs. Asian Techs Ltd.,

7. In the case of N. C. Budharaja & Co. (supra), the Apex court has held that the word "articles" cannot comprehend in its ambit a dam, a bridge, a building, a road, a canal land so on and it is equally difficult to say that the process of constructing a dam is a process of manufacture or a process of production.

8. In the case of Asian Techs Ltd. (supra), the Kerala High Court has held that there is no scope for finding out whether the part of the activity generated an income for the purpose of Section 80HH and the business activities were conducted as a whole and it is almost impossible to decipher one of the activities for the purpose of finding out whether any profit is relatable thereto.

9. Having given our anxious consideration to the various plea raised by the learned Standing counsel for the revenue, we find that in paragraph 7 of the Tribunal's order the Tribunal has recorded the following findings:

7. We would like to observe here that the assessee is a civil contractor engaged in the business of construction of industrial sheds which required steel structures. For this purpose, the assessee has been fabricating steel structures. It is an admitted fact by the assessee that the fabrication of the steel structure is done in relation to each of the contracts and does not involve fabrication on a regular basis for others. The fabrication work is part of the civil contract.

10. As the assessee was not fabricating the steel structures in general, but had confined itself for being used in civil constructions undertaken by him, the principle laid down by the Apex Court in the case of N. C. Budharaja & Co. would be squarely applicable and, therefore, the assessee would not be entitled for deduction u/s 80-I inasmuch as no article or thing was manufactured or produced.

11. Accordingly, the question referred to us is answered in the negative, i.e., in favour of the revenue and against the assessee. There shall not be any order as to costs.