
(1979) 04 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 78 to 82 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Batala Engineering Co. Ltd.

RESPONDENT

Date of Decision : 25-04-1979

Acts Referred:

Income Tax Act, 1961 — Section 80J, 84, 84(3)

Citation : (1979) 120 ITR 683

Hon'ble Judges : Rajendra Nath Mittal, J; J.V. Gupta, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; J.N. Kaushal and Ashok Bhan, for the Respondent

Judgement

J.V. Gupta, J.—These five Income Tax References Nos. 78 to 82 of 1974, relating to the assessment years 1963-64 to 1967-68, arise out of one reference order, in which the following question of law has been referred to this court by the Income Tax Appellate Tribunal (Chandigarh Bench) u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"):

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the industrial undertaking running the new re-rolling mill was not formed by the reconstruction of the business already in existence ?"

2. The facts giving rise to these reference applications are these I The assessee, i.e., M/s. Batala Engineering Co. Ltd., Ballabgarh, is a limited company and in addition to manufacturing machine tools, it has re-rolling mill also. The accounting year followed was the financial year. The assessee is in re-rolling business since 1933. The mill which was about 30 years old had outlived its utility and that mill was, therefore, scrapped in June, 1962. The assessee installed a new mill which started functioning from July 29, 1962. The new machinery was purchased at a cost of Rs. 5,10,781. Along with certain other items like lathes, weighbridge, motors and tools, etc., the total cost of new machinery came to Rs. 6,10,020, The old machinery worth Rs. 1,07,034 was

transferred from the old rolling mill and the total cost of the machinery, therefore, came to Rs. 7,17,054. The new building worth Rs. 37,732 was constructed and the old building worth Rs. 16,239 was transferred to the new rolling mill. Certain machinery of the old rolling mill of which the original cost was Rs. 88,738 and the written down value was Rs. 20,972 was scrapped and the scrap was sold some time in 1966. The area of the old rolling mill was 3,575 sq. feet, whereas the area of the new rolling mill is 24,544 sq. feet. There are other distinguishing features of the old mill and the new rolling mill in the statement of the case, which need not be reproduced here. The assessee's claim u/s 84 of the I.T. Act, 1961, prior to its amendment in the year 1967 (hereinafter referred to as "the Act"), was disallowed by the ITO for the assessment year 1963-64, on the ground that the assessee started only a modernised rolling mill and it was not a new industrial undertaking. According to the ITO, the new business of the rolling mill was only a reconstruction of the old business. For the assessment years 1964-65, 1965-66, 1966-67 and 1967-68, the order for the assessment year 1963-64 was followed.

3. The assessee, feeling aggrieved by this order, filed appeals and the AAC accepted the assessee's claim for exemption u/s 84 of the Act for the assessment year 1963-64. He found that the new rolling mill was an industrial undertaking within the meaning of Section 84 of the Act and it was not a case of reconstruction or continuing in operation of the old undertaking.

4. The revenue, being aggrieved by this order of the AAC, filed an appeal before the Income Tax Appellate Tribunal, Chandigarh, and pleaded that Section 84 being an exemption clause, must be construed strictly and in support thereof placed reliance on the judgments in CROWN FLOUR MILLS Vs. COMMISSIONER OF INCOME TAX., , The Commissioner of Income Tax, Bihar and Orissa Vs. Sri Ramakrishna Deo, , Parimiseti Seetharamamma Vs. Commissioner of Income Tax, Hyderabad, and Udhavdas Kewalram Vs. Commissioner of Income Tax, Bombay City I, . The learned Tribunal did not dispute the rule laid down in these judgments, but it was observed by it that the observations made in these decisions related to different set of circumstances. The revenue further urged before the Tribunal that the business of the rolling mill was reconstruction of the business already in existence, and, therefore, Clause (i) of Sub-section (2) of Section 84 (as the text stood until March 31, 1963) was not fulfilled by the assessee. For this contention, reliance was strongly placed on a judgment in Commissioner of Income Tax Vs. Textile Machinery Corporation, , However, on considering the whole matter, the Tribunal observed in its order as under :

" Applying these principles to the facts of this case we find that the old rolling mill ceased functioning and its identity was lost. The site of the new rolling mill was different from the old site. The area was different, the raw material was different, the process was also different and the final product was also different. What emerged was the new rolling mill and it cannot be said that the new mill was simply reorganisation of the old mill on sounder lines. Even though

machinery worth Rs. 1,07,034 from the old rolling mill was transferred to the new rolling mill, of which the new machinery cost the assessee Rs. 6,10,020, yet the old machinery transferred was less than 20% of the total value and this is covered by the Explanation to Sub-section (3) of section 84. The old building from which the machinery was taken out is used for storage. On the facts of this case, we do not have the slightest hesitation in coming to the conclusion that the new rolling mill set up by the assessee is not formed by the reconstruction of a business already in existence."

5. The learned counsel for the revenue vehemently argued that though the Supreme Court in *Textile Machinery Corporation Limited, Calcutta Vs. The Commissioner of Income Tax, West Bengal*, did reverse the judgment of the Calcutta High Court in *Commissioner of Income Tax Vs. Textile Machinery Corporation*, , yet the observations made therein, at page 448, are quite relevant and have not been held to be wrong. We do not find any force in this contention. Their Lordships of the Supreme Court in the said authority have clearly laid down thus (p. 203) :

" The answer, in every particular case, depends upon the peculiar facts and conditions of the new industrial undertaking on account of which the assessee claims exemption u/s 15C. No hard and fast rule can be laid down. Trade and industry do not run in earmarked channels and particularly so in view of manifold scientific and technological developments. There is great scope for expansion of trade and industry. The fact that an assessee by establishment of a new industrial undertaking expands his existing business, which he certainly does, would not, on that score, deprive him of the benefit u/s 15C. Every new creation in business is some kind of expansion and advancement. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes u/s 15C or not. "

6. In view of this authoritative pronouncement by the Supreme Court, reference to any other case cited at the bar by the learned counsel for the revenue is not necessary. As a matter of fact, this authority has come after the decision by the Tribunal in the year 1973. It has been further laid down in the said authority that in order to be entitled to the benefit u/s 15C (corresponding to Section 84 of the Act), the following facts have to be established by the assessee, subject always to time-schedule in the section (p. 206):

- "(1) investment of substantial fresh capital in the industrial undertaking set up,
- (2) employment of requisite labour therein,
- (3) manufacture or production of articles in the said undertaking,
- (4) earning of profits clearly attributable to the said new undertaking, and

(5) above all, a separate and distinct identity of the industrial unit set up."

7. Applying these tests to the facts of the present case, we are of the opinion that the AAC, as well as the Tribunal, have come to a right conclusion in granting the assessee the benefit of Section 84 of the Act.

8. The legislature has advisedly refrained from inserting a definition of the word "reconstruction" in the Act. Indeed, in the infinite variety of instances of restructuring of industry in the course of strides in technology and of other developments, the question has to be left for decision on the peculiar facts of each case.

9. We are, therefore, of the opinion that the assessee-company was entitled to the benefit of Section 84 of the Act. The question referred to this court is, consequently, answered in the affirmative and in favour of the assessee. The revenue shall pay the costs of these references to the asses-see.

10. Question answered in the affirmative.

Rajendra Nath Mittal, J.

11. I agree.