(2006) 09 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Bee Pee Poultries RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:
Income Tax Act, 1961 — Section 32A, 33, 80I, 80J

Citation : (2006) 09 P&H CK 0027

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. Following question has been referred for opinion of this court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its 25-9-1997 in ITA No. 200/Chd./94 in respect of assessment year 1991-92:

Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the poultry farming was an industrial undertaking producing articles and things entitling the assessee to claim deduction u/s 80-I ?

2. Facts noticed by the Tribunal are that the assessee derives income from poultry business. In the course of the assessment proceedings, it claimed deduction u/s 80I of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''), which came to be rejected by the assessing officer on the ground that poultry farming did not constitute an "industrial undertaking" which was a necessary prerequisite for claiming such a deduction. The decision of Commissioner (Appeals) for assessment year 1989-90 in the case of Shivalik Poultries, Mauli, was placed on record by the assessee to support its claim but this was not acceded to by the assessing officer on the ground that the department had filed second appeal to the Tribunal against the impugned order of Commissioner (Appeals). On further appeal, however, the CIT(A) accepted the assessee''s claim following in this connection the decision of the Chandigarh Bench of the Tribunal in the case of Sandeep Poultry Farm in ITA No. 511 Chandi./88, dated 4-3-1993.

3. We have heard learned counsel for the parties and perused the record.

4. We proceed to answer the question referred as under:

Section 80I of the Act provides for deductions in respect of profits and gains, inter alia, from "industrial undertakings". Question is whether poultry farming was an "industrial undertaking". The question was gone into by the Hon''ble Supreme Court in The Indian Hotels Company Ltd. and Others Vs. The Income Tax Officer, Mumbai and Others, , with reference to identical provision in Section 80J of the Act and it was observed that industrial undertaking must be involved in manufacture or production. In the context, production of a new article or bringing into existence some new commodity must be involved. Industrial undertaking should not be "trading activity". The matter was also considered by the MP High Court in Indian Poultry Vs. Commissioner of Income Tax, and it was observed:

Suffice it to say that the process which is involved in development of chicks into broilers is nothing but basically the chicks remain chicks only. There is no substantial change so as to acquire new commercial identity. Chicks are smaller - ones and when they are reared for some time, they develop suitably for table purposes. Therefore, there is no change of the substance.

It is true that even if the chicks which develop into broilers and they are dressed and sold in the market, they still continue to be chicks only. Therefore, there is no substantial change in the matter. ''Manufacture'' implies a change, but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation and does not necessarily mean that on account of certain treatment and manipulation, a new identity has come to be acquired.

In the present case, the chicks are only reared for a few days and they are developed; thereafter they become broilers. Therefore, even after rearing, they remain chicks only.(p. 911)

5. In Commissioner of Income Tax, Bangalore Vs. Venkateswara Hatcheries (P) Ltd. etc. etc., , the Hon''ble Supreme Court considered the issue and held that running of poultry farm does not involve any manufacture or production nor articles or things" were involved, chicks being animate creature and development of eggs was a natural process. Relevant observations in the judgment are:

From a perusal of the self-stated steps taken by the assessee for the alleged production of chicks it is clear that the assessee does not contribute to the formation of chicks. The formation of chicks is a natural and biological process over which the assessee has no hand or control. In fact, what the assessee is doing is to help the natural or biological process of giving birth to chicks. The chicks otherwise can also be produced by conventional or natural method and in that process also, the same time is taken when the chicks come out from the eggs. What the assessee by application of mechanical process does in the hatchery is to preserve and protect the eggs at a particular temperature. But the coming out of chicks from the eggs is an event of nature. The only difference seems to be that by application of mechanical methods, the mortality rate of chicks is less and the assessee may get chicks more in number. This, however, would not mean that the assessee produces chicks and that chicks are ''articles or things''. We are, therefore, of the opinion that the assessee is neither an industrial undertaking nor does the business of hatchery carried out by the assessee fall within the meaning of Section 32A and Section 80J of the Act.

It was then urged by learned counsel for the assessee that the Act uses the words ''articles or things'' at several places and the meaning assigned to them in other places of the Act should also be assigned u/s 32A and Section 80J of the Act. The Fifth Schedule to the Act sets out a list of items which are treated as articles or things manufactured or produced for the purpose of Section 33(1)(b) of the Act. In this Schedule we find that processed seeds which are products of plants have been shown as ,articles or things''. Similarly, item No. (30) of the said Schedule is ''fish'', which is an animate object, it has been shown under the heading ''articles or things''. On the strength of the meaning assigned to articles and things in the Fifth Schedule to the Act, it was urged that hatching of chicks is also production of ''articles or things''. It is, no doubt, true that processed seeds and fish have been described under the heading''articles or things'' in the Fifth Schedule. Generally, the same words in a statute have the same meaning whenever used in that statute, but they may also have a different meaning in different provisions of the same statute.... (p. 183)

6. The Hon''ble Supreme Court approved the view taken by the Bombay High Court in Commissioner of Income Tax Vs. Deejay Hatcheries, and disapproved the view taken by the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Sri Venkateswara Hatcheries (P) Ltd., .

7. In view of the above, we answer the question against the assessee and in favour of the revenue.

8. Reference is disposed of accordingly.

