(1994) 11 BOM CK 0005

In the Bombay High Court

Case No : IT Reference No. 293 of 1983

Commissioner of Income Tax APPELLANT

Vs

Beejay Hatcheries RESPONDENT

Date of Decision : 14-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 10, 10(27), 256(1), 80J, 80JJ

Citation : (1995) 79 TAXMAN 231

Hon'ble Judges : S.M. Jhunjhunuwala, J;B.P. Saraf, J

Bench : Division Bench

Advocate : V. Balasubramaniam and J.P. Devadhar, for the Appellant; S.S. Shetty and P.C. Tripathi, for the Respondent

Judgement

B.P. Saraf, J.—The following two questions of law have been referred by the Tribunal for opinion of this Court u/s 256(1) of the income tax Act, 1961 (''the Act'') at the instance of the revenue: 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to deduction u/s 80J as an industrial undertaking?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the certificate given by the auditors under Rule 18-O in the course of assessment proceedings could be considered for the purpose of allowing deduction u/s 80J?

The assessee is a registered firm. It runs a modern poultry farm. The assessee collects eggs which are initially subjected to various processes like fumigation, cooling and incubation. These eggs are hatched by a mechanical process keeping the humidity and temperature constant as required. The chicks which are hatched out are given special food so that they turn out to be layers. Considerable amount of mechanical process is applied by the assessee in conducting poultry farm. ''Hatcheries'' as this business is called, is a capital intensive business and considerable labour is involved. It also requires extensive use of plant and machinery like airconditioning, etc. Scientific methods and research also play an important role in this business. The assessee is registered as a small scale industry.

2. In course of its assessment under the Act, the assessee claimed deduction u/s 80J of the Act as, according to it, it was an industrial undertaking engaged in the production of articles, viz., chicken. This claim was rejected by the ITO. The assessee appealed to the Commissioner (Appeals) who held that the provisions of section 80J were not applicable to the business of the assessee. According to him, the business of the assessee basically being the business of poultry farming, it was covered by the provisions of section 80JJ and not section 80J. Against the order of the Commissioner (Appeals), the assessee also went in further Appeal to the Tribunal. The Tribunal, following an earlier decision of its Madras Bench, held that chicks had to be treated as articles or things and a poultry farm producing such chicks by mechanical process as an industrial undertaking engaged in the manufacture or production of chickens for the purpose of section 80J. The Tribunal also considered the effect of non-furnishing of certificate from the auditors along with the return as required by Rule 18-O of the income tax Rules, 1962 and held that the requirement of filing of the certificate under the said rule was directory and, hence, the certificate submitted during the course of the assessment proceedings had to be considered. Dissatisfied with the order of the Tribunal, the revenue has come to this Court by way of reference of the questions of law set-out in paragraph 1 above, u/s 256(1).

3. The learned counsel for the revenue submits that the Tribunal was wrong in holding that the assessee being engaged in the business of running a poultry farm was an industrial undertaking engaged in the production of articles or things. Business of poultry farm, according to the learned counsel, cannot be held to be an industrial undertaking engaged in the manufacture of production of goods and articles. Reference is made in this connection to clause (27) of section 10 of the Act, as it stood till its deletion in the year 1980 and section 80JJ which was inserted in its place in the year 1980 for giving incentive to persons engaged in the business of poultry farming.

4. The learned counsel for the assessee, on the other hand, submits that the business of poultry farming run by the assessee is not business in the ordinary sense of the term because the assessee uses most sophisticated machinery in the said farm for fumigation cooling and incubation of the eggs and hatching thereof by a mechanical process by keeping the humidity and temperature constant at the required degree. The learned counsel specified the steps taken by the assessee for the purpose of hatching the eggs by mechanical process, which are as follows:

1. The farm and hatchery are kept strictly under quarantine.

2. The eggs are collected from the breeding farm frequently and hygienically. They are transported to the hatchery. Before admitting the egg into the hatchery it passes through the fumigation chamber. Once the eggs are fumigated they are

free from most of the micro organisms which are pathogenic and present on the surface of the egg shell.

3. Storage of eggs is necessary because eggs cannot be incubated every day and hatched every day due to economical reasons.

4. The incubation period of eggs is 21 days. Even in natural process it takes the same time, but there are certain research works which show that incubation period of broilers particularly, can be reduced to 18 days. The assessee, however, follows the same 21 days incubation period. The incubation period can be divided into two stages: (i) First 18 days and (ii) last 3 days. First 18 days the eggs are incubated in large scale in automatic machines where the temperature, humidity and changing of position of the eggs every hour is done automatically. After completion of 18 days the same eggs are transferred to another machine in which except turning, the rest are the same like above machines. On completion of 21 days the chicks will be out from the eggs.

5. Once the chicks are out the male and female are separated. The process is called sexing. The sexed females (in case of layers) are vaccinated against various diseases.

6. The chicks are thereafter sent to the farmers.

According to the counsel for the assessee, the above activities amount to running an industrial undertaking for production of chicken. Reliance is placed on the decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Sri Venkateswara Hatcheries (P) Ltd., . Counsel also submits that the fact that separate provision has been made for giving deductions to an assessee in respect of profits and gains derived from the business of livestock breeding and poultry and dairy farming in section 80JJ or section 10(27) does not militate against the claim of the assessee as an industrial undertaking u/s 80JJ because section 80J and section 80JJ are two independent sections and benefit can be given to the assessee under both the sections.

5. We have carefully considered the rival submissions. We have perused the provisions of section 80J. Section 80J provides, inter alia, for deduction out of profits and gains derived by an assessee from an industrial undertaking which manufactures or produces articles. The question that arises for consideration is whether by reason of the fact that for hatching the eggs, sophisticated mechanical process is used by the assessee, the business of poultry farm can be termed as an ''industrial undertaking'' for manufacturing or producing articles. Much reliance is placed on the expression ''production of articles''. According to the counsel for the assessee, chickens are produced from eggs by use of mechanical process and, hence, the poultry farm is an industrial undertaking. We have given our careful consideration to the above submission. We, however, find it difficult to hold that the ''business of poultry farming'' which uses mechanical process, can be characterized as an industrial undertaking engaged in the manufacture or production of articles. Though the word ''production'' has a wider

connotation than the word ''manufacture'' when used in juxtaposition with word ''manufacture'', it takes in bringing into existence new goods by a process which may not amount to manufacture. The decisive test is ''bringing into existence new goods''. Applying this test, it is difficult to hold that the assessee is engaged in producing chickens in the hatchery. In a hatchery, the mother hen is not excluded for purposes of hatching. The assessee merely undertakes the hatching of eggs giving birth to chicks. By use of sophisticated mechanical process, the assessee merely aids in the natural process of production of eggs. Neither the mechanical process applied by the assessee. in its poultry farm can be characterised as process of production of chicken nor the chicks can be termed as ''products of the hatchery''. The production of chicken is a part of the business of the poultry farming which may be carried on in the conventional manner or in a sophisticated manner. The process employed by the assessee will not convert a business of poultry farming, which has been separately dealt with by the Legislature as such, into an industrial undertaking. In our opinion, laying of eggs by fowls and obtaining chicks therefrom is the nature''s life-giving process. Even during the process of grading, selection and keeping the eggs in hatchery, the eggs remain eggs. These activities do not produce or generate any life in the eggs. Chicks come out of eggs by natural process. Use of mechanical balance is to assist the process to achieve better result.

6. For the reasons set-out above, we find it difficult to accept the decision of the Andhra Pradesh High Court in Sri Venakateswara Hatcheries (P.) Ltd. ''s case (supra) where it held that an assessee who runs a hatchery in which eggs are hatched and chicken produced on a large scale by adopting scientific and technical methods, would be entitled to deduction u/s 80J of the Act. The ratio of the decision of this Court in Commissioner of Income Tax Vs. Yavatmal Co-operative Ginning and Pressing Factory Limited, on which reliance was placed by the assessee, has no application to a hatchery. Other decisions of this Court relied upon by the assessee are also not relevant for determination of the controversy in this case. The above conclusion also gets support from the provisions of section 80JJ which was inserted in place of section 10(27), which was on the statute book till 1-4-1976. Just as section 80J provides for deduction in respect of profits and gains derived from newly established industrial undertakings manufacturing or producing articles, section 80JJ provides for deduction to an assessee in respect of profits and gains from business of livestock breeding or poultry and dairy farming. Prior to the insertion of section 80JJ, deduction or exemption in respect of profits from poultry farming, etc., was dealt with in section 10(27) under which total exemption was available to an assessee in respect of the profits from business of livestock breeding or poultry farming for the assessment years 1964-65 to 1975-76. Section 10(27) read:

(27) any income derived from a business of livestock breeding, or poultry or dairy farming....

It was deleted with effect from 1-4-1976 and a new provision, viz., section 80JJ was inserted with effect from the very same date which deals with deductions allowable to an assessee from business of livestock breeding or poultry or dairy farming. Section 80JJ read:

80JJ. Deduction in respect of profits and gains from business of livestock breeding or poultry or dairy farming. - Where the gross total income of an assessee includes any profits and gains derived from a business of livestock breeding, or poultry or dairy farming, there shall be allowed, in computing the total income of the assessee, a deduction as specified hereunder, namely:-

(a) in a case where the amount of such profits and gains does not exceed, in the aggregate, ten thousand rupees, the whole of such amount; and

(b) in any other case, one-third of the aggregate amount of such profits and gains or ten thousand rupees, whichever is higher.

7. From a conjoint reading of sections 80J, 10(27) and 80JJ, it is clear that the Parliament has made provision for giving incentive to persons engaged in the business of livestock breeding or poultry or dairy farming distinct and different from those made for industrial undertakings producing or manufacturing articles. The income from the business of livestock breeding, poultry and dairy farming was totally exempt from income tax till 31-3-1976 by virtue of provision contained in section 10(27). Separate provision was made for the same with effect from 1-4-1976 by enacting section 80JJ. Section 80J deals with industrial undertakings engaged in producing or manufacturing articles. It does not apply to business of livestock breeding or poultry or dairy farming. Evidently such business cannot be termed as industrial undertaking producing or manufacturing articles. We are, therefore, of clear opinion that the business of poultry farming in which the assessee in the present case is engaged cannot be held to be an industrial undertaking merely because of the fact that the said business is run with the aid of modern plant and machinery.

8. In view of the above, we answer the first question referred to us in the negative and in favour of the revenue.

9. So far as the second question is concerned, in view of our answer to the first question, it has become academic. Hence, it is not necessary to answer the same. We, therefore, decline to answer the second question.

10. This reference is disposed of accordingly. In the facts and circumstances of the case, there shall be no order as to costs.