
(2012) 02 RAJ CK 0035

In the Rajasthan High Court

Case No : Income Tax Appeal No's. 1 and 3 of 2000

Commissioner of Income - Tax

APPELLANT

Vs

Business Information Processing Services

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Income Tax Act, 1961 — Section 260A, 80I

Citation : (2012) 345 ITR 548

Hon'ble Judges : S.S. Kothari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : J.K. Singhi, with Anuroop Singhi, for the Appellant; Prakul Khurana and Atul Saxena, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—The decision rendered in this appeal shall also govern the disposal of other connected appeal, being D.B.I.T.A. No. 3 of 2000, because both these appeals arise out of one impugned order and against the same assessee. This appeal is listed today for final hearing. It is, however, noticed that this appeal came up for hearing on the question of admission on March 1, 2000, when the following order was passed :

Heard.

Admit.

2. Section 260A of the income tax Act, 1961, is akin to section 100 of the Civil Procedure Code, 1908, with slight modification by insertion of one more sub-section. Section 260A of the Act provides that every appeal shall lie to the High Court only if the case involves a substantial question of law. Sub-section (3) in clear terms makes it obligatory upon the High Court while admitting the appeal to formulate the substantial question of law involved in the appeal. Sub-section (4) provides that the appeal shall be heard only on the question, so formulated

by the High Court as required under sub-section (3).

3. We, however, notice that while admitting this appeal on March 1, 2000, no substantial question of law was formulated.

4. In the light of such situation emerging from the record of the case, we are of the considered opinion that we have to again hear the matter keeping in view the requirement of subsections (3) and (4) of the Act with a view to find out as to whether questions of law proposed by the appellant, arise in this appeal and if one or more questions so arise, then to formulate such questions as required under sub-section (4) for their answer on the merits after affording an opportunity of being heard to the respondent. It is only then, one can say that appeal u/s 260A of the Act was admitted and heard keeping in view its object and requirement.

5. We have accordingly heard learned counsel for the appellant again with a view to find out whether it involves any substantial question of law and having so heard, are inclined to readmit this appeal on the following substantial questions of law which, in our opinion, involves in this case :

(i) Whether the Tribunal was justified in holding that the respondent-assessee was entitled to claim deduction u/s 80I of the Act?

(ii) Whether the activities undertaken by the assessee, namely, computer data processing services and sale of computer stationery amounts to manufacture or production of any article or thing and can be termed as an industrial undertaking within the meaning of section 80I of the Act ?

6. No notice need be issued to the respondent-assessee because they have already entered appearance in this appeal pursuant to the notice already issued in this behalf in past.

7. With the consent of the parties, the appeal is also heard finally on the aforementioned two questions framed by this court for its disposal.

8. The respondent (assessee) is engaged in the business of computer data processing services and sale of computer stationery and derives its income from this business. This work they do on job work basis.

9. In the assessment years 1989-90 and 1990-91, the question arose as to whether the business activity undertaken by the assessee can be termed as industrial undertaking engaged in the business of "manufacture" within the meaning of section 80I of the Act ? It was the contention of the assessee before the Assessing Officer that it is in fact in the nature of the manufacture and, hence, it be held to be an industrial undertaking within the meaning of section 80I *ibid* for claiming special deduction under the said section while computing their business income. The Assessing Officer held against the assessee but the Commissioner of income tax (Appeals) in an appeal filed by the assessee held in their favour so also the Tribunal which dismissed the appeal filed by the Revenue

filed against the order of the Commissioner (Appeals). It is against this decision the Revenue felt aggrieved and filed this appeal.

10. Having heard the learned counsel for the parties and on a perusal of the record of the case, we find no merit in this appeal.

11. In our view, the issue involved in the case remains no longer *res integra* and stands decided by several decisions of the High Courts and finally by the Supreme Court which affirmed the views of the High Court in favour of the assessee and against the Revenue. The Karnataka High Court first decided it in a case reported in *Commissioner of Income Tax Vs. Datacons (P.) Ltd.*, Then, by placing reliance on the decision of *Datacons*, the Calcutta High Court decided the issue in the case reported in *Commissioner of Income Tax Vs. Peerless Consultancy Services (Pvt.) Ltd.*, Then, by placing reliance on these two decisions, the Gujarat High Court decided this issue in the case reported in *Commissioner of Income Tax Vs. Professional Information Systems and Management*, and, lastly, taking note of these decisions, the Supreme Court in the case reported in *COMMISSIONER OF INCOME TAX Vs. PEERLESS CONSULTANCY and SERVICES (P) LTD.*, affirmed the view taken in these cases.

12. In all these cases it is held that technical and industrial consultancy and processing of the data with the help of computers amounts to processing of the goods and being in the nature of manufacture hence falls within the expression "industrial undertaking" for the purpose of claiming benefits u/s 80I of the Act.

13. In the light of the foregoing discussion, we have no hesitation in holding that the view taken by the Commissioner of income tax (Appeals) and upheld by the Tribunal in favour of the assessee holding their activity to be in the nature of manufacture and, hence, it is an industrial undertaking for the purpose of section 80I *ibid* is just, legal and hence does not call for any interference in this appeal. Indeed it stands decided by the apex court in favour of the assessee and, hence, no more discussion is called for on this issue though raised in this case.

14. Learned counsel for the appellant then made an attempt to argue that sale of computer stationery should not be taken to be the business of industrial undertaking. We do not agree with this submission in the facts of this case for more than on reason. First, no finding of fact on this issue was rendered by any of the authorities in this case. Second, the only question, which was debated before the authorities since inception was as to whether the entire business/activity carried on by the assessee can be termed as an industrial undertaking for the purpose of section 80I and it was held as a fact that it was so. In the light of these facts, we cannot entertain this submission in this case.

15. In the light of the foregoing discussion, we find no merit in this appeal. It fails and is accordingly dismissed. No costs.