(1999) 09 KL CK 0056

In the High Court Of Kerala

Case No : Income-tax Reference No. 13 of 1997

Commissioner of Income Tax APPELLANT

Vs

Geo Tech Foundations and Constructions RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:
Income Tax Act, 1961 — Section 80I

Citation : (2000) 241 ITR 90

Hon'ble Judges : Arijit Pasayat, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; None, for the Respondent

Judgement

Arijit Pasayat, C. J.

1. Heard Sri P. K. Ravindranatha Menon, learned counsel for the Revenue. No one appears for the assessee when the matter is called.

2. Considering an application for reference u/s 256(1) of the Income Tax Act, 1961 (in short "the Act"), the following question has been referred by the Income Tax Appellate Tribunal, Cochin Bench (in short "the Tribunal"), for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding,

(i) the assessee is an industrial undertaking ;

(ii) the assessee is entitled to get deduction u/s 80-I in respect of profits referable to manufacture of any article or product or thing in the course of its construction activities and are not the above finding and decision wrong and unreasonable ?"

3. The factual position necessary to be noted for disposal of the question is as follows : The assessee is a partnership firm engaged in the execution of pile

foundation work. In its return of income for the assessment year 1985-86, deduction was claimed u/s 80-I of the Act. The same was rejected by the Assessing Officer on the ground that it was not an industrial undertaking engaged in manufacturing activity but only a contractor for execution of work for others. The matter was carried in appeal before the Commissioner of Income Tax (Appeals) (in short "the CIT (Appeals)"), who allowed the claim. The Revenue challenged the appellate order before the Tribunal. It was, inter alia, held by the Tribunal that the assessee was not entitled to get the deduction in respect of profits from construction activities, but was eligible for deduction in respect of profits and gains derived from manufacture of frames, doors, windows, etc. The issue was restored to the file of the Assessing Officer to quantify the profit from manufacture of frames, doors, windows, etc. An application for reference being made, as stated above, the question quoted has been referred for opinion.

4. Sri Ravindranatha Menon, learned counsel for the Revenue, submitted that the assessee is not an industrial undertaking engaged in the manufacture or production of any article or thing, entitling it to claim deduction u/s 80-I of the Act. The test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. The word "production" has a wider connotation than the word "manufacture". While every manufacture can be characterised as production, every production need not amount to manufacture. The word "production" or "produce", when used in juxtaposition with the word "manufacture", takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the byproducts, intermediate products and residual products which emerge in the course of manufacture of goods. The expressions "manufacture" and "produce" are normally associated with movables--articles and goods--but they are never employed to denote construction activity of the nature involved in construction of a dam or a building. The word "article" is not defined in the Act or the Income Tax Rules, 1962 (in short "the Rules"). It must therefore, be understood in its normal connotation, i.e., the sense in which it is understood in the commercial world. It is equally well-settled that a word takes its colour from its context.

5. The undisputed factual position is that the assessee was engaged in the execution of pile foundation work. As was observed by the apex court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , such activities cannot be construed to involve a process of manufacture or a process of production. It is to be noted that the Tribunal itself had observed that frames, doors and windows as well as cement, concrete slabs and other allied articles were used in the building construction activity.

6. In view of the aforesaid position, the second limb of the question is answered in the negative, i.e., in favour of the Revenue and against the assessee. In view of this answer, it is not necessary to deal with the first part of the question.

7. The reference is disposed of accordingly.