(1992) 07 MAD CK 0002

In the Madras High Court

Case No : T.C. No. 856 of 1992, Reference No. 417 of 1992 22 July, 1992

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

J. K. K. TEXTILE PROCESSING MILLS — RESPONDENT

Date of Decision : 22-07-1992

Acts Referred:
Income Tax Act, 1961 — Section 32A

Citation : (2000) 111 TAXMAN 91

Hon'ble Judges : R. Jayasimha Babu, J;Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Full Bench

Advocate : S.V. Subramanian and C.V. Rajan, K. Ramagopal, for the Appellant;

Judgement

Jayasimha Babu, J.

The assessee is engaged in the processing of unbleached grey cloth by bleaching, calendering, dyeing and printing so as to produce printed cloth.

For the assessment year 1981-82, the assessee claimed deduction u/s 32A of the Income Tax Act, 1961 which claim was rejected by the IAC

who u/s 144B directed the ITO to disallow the claim. On appeal, the Commissioner (Appeals) granted that deduction. He did so following the

decision of the Tribunal for the assessment years 1979-80 and 1980-8 1. The revenue have appealed to the Tribunal against the order of the

Commissioner. The Tribunal affirmed the order of the Commissioner (Appeals) relying on the decisions of the Supreme Court in the case of

Empire Industries Limited and Others Vs. Union of India and Others, and in the case of Ujagar Prints v. Union of India : [1989]179ITR317(SC)

Taxman 151.

2. Before us, the learned senior counsel for the revenue submitted that in the

light of the recent decision of the Supreme Court in the case of S.S.M

Bros. (P.) Ltd. v. CIT (1993) 3 SCC 229 decided on 12-1-1999, there is no error in the order of the Tribunal and the question is to be answered

in favour Of the assessee.

3. In the aforementioned case, it was held by the Supreme Court that when section 33(1)(b)(B)(i) is read alongwith item 32 of the Fifth Schedule

of the Income Tax Act, that item being ""32. Textiles (including those dyed, printed otherwise processed) made wholly or mainly of cotton,

including cotton yarn, hosiery and rope."" read together, the result is :

Where the machinery or plant is installed for the purpose of the business of production of textiles, including those dyed, printed or otherwise

processed, made wholly or mainly out of cotton, the assessee is entitled to the deduction of the development rebate thereunder. What is important

is that this development rebate is available if the machinery or plant is installed for the purposes of the production of textiles, including those

otherwise processed''. If the machinery or plant is required to be utilised in the production of such textiles, at whatever stage, the assessee is

entitled to the benefit of this development rebate.

4. The Supreme Court in the case of Empire Industries Ltd. (supra) has held that processing like bleaching, dyeing and printing is not alien to the

concept of ''manufacture''. It was held that the processing, etymologically also meant manufacturing process.

5. In the case of Ujagar Prints (supra), it was held by the Constitution Bench of the Apex Court that the retrospective amendments of the definition

of ''manufacture'' in the Central Excises and Salt Act, 1944, so as to include processing was valid. The Court further held that the processes of

bleaching, dyeing, printing, sizing, shrink- proofing, water-proofing, rubberising and organdie processing carried on in respect of cotton or man-

made grey fabric amount to ''manufacture'' for the purpose and within the meaning of section 2(p of the Central Excises and Salt Act, 1944, even

prior to the amendment of the section by section 2 of the Central Excises and Salt and Additional Duties of Excise (Amendment) Act, 1980. While

so holding, the Constitution Bench approved the earlier decision of the Apex Court in the case of Empire Industries Ltd. (supra) that such

processes were not so alien or foreign to the concept of ''manufacture'' that they could not come within that concept. The word ''manufacture''

occurring in section 32A(2)(b) of the Act would, therefore, comprehend processing.

6. The processed article is the article that is produced as a result of such manufacture. The question referred to us, namely,

Whether, on the facts and in the circumstances of the case, the assessee is engaged in manufacture or production of an article as envisaged in

section 32A(2)(b)(iii) of the Income Tax Act and, consequently, entitled to investment allowance and relief u/s 80J of the Income Tax Act ?

is, therefore, answered in favour of the assessee and against the revenue.

