
(1979) 10 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Income Tax Reference No's. 170 of 1978 and 2 and 3 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Jai Drinks (P.) Ltd.

RESPONDENT

Date of Decision : 10-10-1979

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 32, 43(3)

Citation : (1980) 125 ITR 662

Hon'ble Judges : C.M. Lodha, C.J.;Mahendra Bhushan, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; N.M. Ranka and N.K. Jain, for the Respondent

Judgement

C.M. Lodha, C.J.—Since common points of fact and law between the same parties are involved in all the three cases, we propose to dispose of them by a single order. The Income Tax Reference Case No. 170 of 1978 is in respect of the assessment year 1971-72, Income Tax Reference Case No. 2 of 1979 pertains to the assessment years 1970-71, and Income Tax Reference Case No. 3 of 1979 is in respect of the assessment year 1969-70.

2. M/s. Jai Drinks (P.) Ltd. (hereinafter to be referred to as "the assessee"), used to manufacture and sell soft drinks, coca cola, etc. The products of the assessee were supplied in marked bottles. The assessee made a claim in respect of bottles and shells on actual breakage and deficiencies between the cost price and the rates fixed for charging refundable security deposits from the dealers in order to ensure the return of bottles and shells by valuing the bottles and shells at the end of the year at such deposit rates and adjusting the deficiency or excess to the profit and loss account.

3. In the first assessment, the ITO allowed the claim of actual breakage but rejected the claim regarding the deficiency on the ground that bottles and shells represented capital expenditure or capital assets. But the AAC, in appeal, held that the assessee was not a dealer in empty bottles, which could be said to

constitute stock-in-trade of the assessee but the ownership of the bottles vested in the assessee. When the assessments for the assessment years 1969-70 and 1970-71 were taken up, the assessee made a claim only regarding actual breakage. Since the assessee had taken up these assessments in appeal before the AAC, it made a claim for the first time before the AAC that the ITO had erred in not allowing depreciation on bottles and shells as they constituted " plant " in the hands of the assessee, in view of the department's finding that they were capital assets. After giving an opportunity to the ITO to represent his point of view in the matter, the AAC held that the intention of the Legislature was to give a wide meaning to the word " plant ". He admitted the claim of the assessee holding that the bottles and shells constitute "plant" as defined in Sub-section (3) of Section 43 of the Income Tax Act, 1961 (hereinafter to be referred to as " the Act "). Thereupon, the revenue took up the matter in appeal before the Income Tax Appellate Tribunal (hereinafter to be referred to as " the Tribunal ") and the Tribunal upheld the view taken by the AAC allowing depreciation and development rebate on the bottles and shells as constituting " plant " owned by the assessee.

4. Aggrieved by the decision of the Tribunal, the Commissioner, Rajas-than, filed an application u/s 256(1) of the Act requiring the Tribunal to refer certain questions of law arising out of the consolidated order dated February 7, 1977, passed by the Tribunal in Income Tax Appeals Nos. 26, 270 and 526 in respect of the assessment years under consideration. The Tribunal, however, declined to state the case. Consequently, the Commissioner has made this application u/s 256(2) of the Act before this court and has prayed that the Tribunal may be directed to refer the following question of law arising out of its order dated February 7, 1977, for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the bottles and shells constitute " plant " within the meaning of Section 43(3) of the Income Tax Act and as such depreciation and development rebate be allowed ?"

5. The applications have been opposed by Shri N. M. Ranka on behalf of the assessee. It has been contended by him that no substantial question of law arises out of the order of the Tribunal. It is argued that the answer to the question is self-evident on account of a series of decisions by the Supreme Court on the point.

6. Having heard learned counsel for the parties, we have come to the conclusion that a mixed question of fact and law undoubtedly arises out of the order of the Tribunal. The AAC as well as the Tribunal have arrived at certain findings of fact regarding the use of bottles and shells in the process of manufacture of soft drinks by the assessee and have drawn therefrom certain inference. But, at the same time, it has to be decided with reference to the definition of "plant" given in the Act whether bottles and shells constitute " plant ". Shri Ranka also candidly conceded that the question arising in the case cannot be said to be one

of pure fact but it is a mixed question of fact and law.

7. The term " plant" has been defined in Sub-section (3) of Section 43 of the Act as follows :

" 43. (3) " plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession. "

8. There is no gainsaying the fact that the definition extracted above is only illustrative and not exhaustive and, therefore, it has to be decided in the facts and circumstances of each case whether a particular article comes within the definition of the term " plant ". Shri Ranka has cited before us a number of authorities to illustrate as to what is a "plant", but we are unable to accept his contention that the answer to be furnished in the present case is self-evident. It is, no doubt, true that if no substantial question of law is involved and if the answer to a certain question is self-evident, then it will be a futile exercise to call for a reference. If an authority is needed on the point, reference may be made to Commissioner of Income Tax, Punjab Vs. Chander Bhan Harbhajan Lal, wherein the Supreme Court was pleased to observe that where the question of law raised is not substantial and the answer to the question is self-evident, the High Court is not bound to require the Tribunal to refer the question. There is no decided case brought to our notice on the point whether bottles or shells or, for the matter of that, any type of containers used in the manufacture and for sale of any liquid, constitute "plant". The point of law is substantial and requires a full dress debate and a survey of precedent based on analogies for coming to a correct conclusion. We are, therefore, of opinion that a case for calling for a statement has been made out.

9. Accordingly, we allow all the three applications and direct the Tribunal to state a case and refer the following question of law to this court :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the bottles and shells constitute " plant " within the meaning of Section 43(3) of the Income Tax Act and as such depreciation and development rebate was rightly allowed ? "

10. It will be open to the Tribunal to make one consolidated reference in all the three cases. There will be no order :LS to costs.

11. The statement may be submitted within three months of the receipt of this order by the Tribunal.