
(1999) 06 BOM CK 0062

In the Bombay High Court

Case No : Income-tax Reference No. 343 of 1987

Commissioner of Income Tax

APPELLANT

Vs

Jaypee Dyeing House

RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Income Tax Act, 1961 — Section 32

Citation : (1999) 239 ITR 418

Hon'ble Judges : Ranjana Desai, J;B.P. Saraf, J

Bench : Division Bench

Advocate : R.V. Desai and P.S. Jetley, for the Appellant; S.M. Lala and V.H. Patil, for the Respondent

Judgement

Ranjana Desai, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this court for opinion at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the allowance of depreciation on the assessee's machinery at 15 per cent. for the assessment years 1979-80 and 1980-81 is right in law ?"

2. Briefly stated the material facts are as under ;

The assessee is a partnership firm carrying on the business of dyeing, bleaching and printing of art silk cloth. The assessment years involved are 1979-80 and 1980-81 for which the previous year ended on June 30, 1978, and June 30, 1979, respectively. The claim of the assessee before the Income Tax Officer was that since the assessee was engaged in processing of artificial silk cloth, it was entitled to higher depreciation at the rate of 15 per cent. on the machinery used by it. The Income Tax Officer did not accept the assessee's claim for depreciation at the higher rate because, in his opinion, the assessee was not doing processing work but was mainly doing the work of blending and bleaching of the cloth. He allowed depreciation at the rate of 10 per cent. only.

3. When the matter came up before the Commissioner of Income Tax (Appeals), he accepted the contention of the assessee and directed the Income Tax Officer to allow depreciation at a higher rate, i.e., at the rate of 15 per cent.

4. Aggrieved by this order, the Revenue preferred an appeal to the Income Tax Appellate Tribunal. After perusing the licence of the assessee issued by the Central Excise Department, the Tribunal came to the conclusion that the assessee was processing artificial silk in its factory. The Tribunal also referred to paragraph 2 of the assessment orders of both the years, where the Income Tax Officer had mentioned :

"The assessee continued the business of dyeing, bleaching and printing of art silk cloth."

5. In the opinion of the Tribunal, the assessee was, therefore, entitled to higher rate of depreciation, i.e., at the rate of 15 per cent. Hence, the present reference.

6. We have heard at length Mr. Desai, learned counsel for the Revenue, and Mr. Lala, learned counsel for the assessee. There is no dispute about the fact that the assessee is engaged in the business of dyeing, bleaching and printing of art silk cloth. Therefore, the machinery is only used for the above purpose. Learned counsel for the assessee has drawn our attention to the Table found in Part I of Appendix I to the Income Tax Rules, 1962, which gives the rates at which depreciation is admissible. For machinery mentioned in Sub-clause (ii) of Clause III of the said Appendix, special rates are provided. Reliance is placed on item 3 in Clause III(ii) B of the Appendix, which is "artificial silk manufacturing machinery and plant except wooden parts". For this type of machinery depreciation at the rate of 15 per cent. is shown as admissible. Learned counsel for the assessee contends that since the assessee is processing artificial silk, the machinery used by him falls in the aforementioned category and hence the assessee is entitled to depreciation at the rate of 15 per cent.

7. We are unable to accept this submission of learned counsel for the assessee. The assessee is merely doing bleaching and printing of art silk cloth which is already manufactured by some other person. Admittedly, he is not manufacturing the said silk cloth. By the process of dyeing, printing or bleaching carried out by him, the silk cloth on which the processing is done does not cease to be a textile. No doubt, the silk cloth undergoes some chemical changes but it still retains the characteristics and/or properties of a textile. The artificial silk cloth, printed, bleached or dyed by the assessee cannot be said to have been manufactured by it. Therefore, the machinery used for the purpose of dyeing, bleaching and printing of silk cloth obviously does not fall in the category of "artificial silk manufacturing machinery and plant except wooden parts" for which the higher rate of depreciation is admissible.

8. This conclusion of ours is supported by the decision of this court in Commissioner of Income Tax Vs. Fashion Prints Limited, , where while considering a somewhat similar fact situation, it is held that it was not possible to

hold that the assessee by applying the process of printing or dyeing on the grey cloth admittedly manufactured by others carried on the business of manufacture or production within the meaning of Section 32(1)(vi) of the Act.

9. In view of the above, the question referred to us is answered in the negative, i.e., in favour of the Revenue and against the assessee. Reference is disposed of accordingly with no order as to costs.