
(1999) 01 KL CK 0052

In the High Court Of Kerala

Case No : Income Tax R. No. 177 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Midas Rubber P. Ltd.

RESPONDENT

Date of Decision : 22-01-1999

Acts Referred:

Income Tax Act, 1961 — Section 80I

Citation : (1999) 155 CTR 79 : (1999) 237 ITR 250 : (1999) 103 TAXMAN 443

Hon'ble Judges : Om Prakash, C.J.;J.B. Koshy, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; Joseph Markos and Joseph Kodianthara, for the Respondent

Judgement

Om Prakash, C.J.—As directed by this court, the income tax-Appellate Tribunal, at the instance of the Revenue, referred the following questions relating to the assessment year 1985-86 for the opinion of this court :

"(i) Whether, on the facts and in the circumstances of the case, the assessee is engaged in manufacture or production of any article or thing and is not the above finding wrong and unreasonable ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to the claim of investment allowance and deduction u/s 80I ?"

2. The Assessing Officer found that the assessee is mainly engaged in mastication of rubber. The assessee claimed deduction u/s 80I of the Income Tax Act, 1961, (the "Act"), in respect of mastication charges collected from others. The Assessing Officer took the view that the assessee is not engaged in any manufacturing activity and, therefore, is not entitled to any deduction u/s 80I.

3. In appeal the Commissioner of Income Tax (Appeals) accepted the contention of the assessee and allowed deduction u/s 80I. The dispute was further carried in appeal before the Appellate Tribunal, who found as follows :

"7. The business of the assessee, it may be stated in this connection was in masticating of rubber. Such masticating process is carried on by the assessee on the materials received by it from other parties. The assessee used to get processing charges for the same. The masticating process involved a complicated procedure and the end-product that comes out after mastication process is commercially different from the material that was used as an input at the initial stage. In such circumstances, it cannot be said that the assessee is not engaged in the business of manufacture or production of an article. The Madras High Court had an occasion to decide an issue of this nature and the decision has been reported in CIT v. Madras Rubber Factory Ltd. 149 ITR 405. The court in that decision has held that the unit would be entitled to relief u/s 80J. We, in the light of this discussion, shall hold that the assessee would be entitled to relief u/s 80I, in respect of its profit from one of its units which started commencement of production or manufacture after April 1, 1981."

4. Learned standing counsel submits before us that from the finding as recorded by the Appellate Tribunal, it is clear that the assessee is engaged only in masticating of rubber. The masticating process is held manufacturing process by the Tribunal. To accept the contention of the assessee, the Tribunal relied on the decision of the Madras High Court in Madras Rubber Factory Ltd.'s case [1984] 149 ITR 405. We have carefully gone through the said decision. In that case, the question whether masticating process amounted to manufacture was not canvassed. The Madras High Court in Madras Rubber Factory Ltd. 149 ITR 405 found as follows (page 408) :

"Coming to the second question, it is seen that the assessee was previously procuring masticated rubber, which is a raw material for the manufacture of automobile tyres and tubes, from others without itself undertaking the process of masticating rubber in its factory at Thiruvottiyur. Subsequently, in the year 1969, the assessee started a new and separate venture for masticating rubber. This unit is found to be a self-contained, independent unit. This unit is engaged in the process of masticating rubber and sells the resultant product not only to the assessee-company, but also to outsiders. The Kottayam unit has not affected intrinsically or otherwise any of the operations in the existing unit at Thiruvottiyur. On these facts, we cannot agree with the contention of the Revenue that the establishment of the Kottayam unit is only an extension or enlargement of the activities of the old establishment at Kottayam or is a reconstruction of an existing establishment or business." (emphasis ours)

5. From a perusal of the above reproduced finding it is amply clear that the question for consideration before the Madras High Court was not the one whether the masticating process amounted to manufacturing, but the question which was agitated by the Revenue before the Madras High Court was whether establishment of the Kottayam unit was only an extension or enlargement of the activities of the old establishment at Kottayam or was a reconstruction of an existing establishment or business. The Madras High Court did not agree with the

submission of the Revenue that establishment of the Kottayam unit was merely an extension or enlargement of the activities of the old establishment at Kottayam or was a reconstruction of an existing establishment or business.

6. The question for consideration before the Appellate Tribunal was whether the masticating process amounted to manufacturing entitling the assessee to investment allowance u/s 80I of the Act. The submission of counsel for the assessee before us is that the assessee is not engaged only in the manufacture of masticated rubber simpliciter, but by resorting to the masticating process, several compounds are added and by virtue of that entirely a new end-product, that is, entirely a different item in commercial parlance, is produced. No clear finding has been recorded by the Appellate Tribunal as to what compounds are added by the assessee in the masticating process and what is precisely the end-product of the assessee. The Tribunal should have recorded a clear finding on both the counts.

7. We, therefore, without answering the questions, remit the matter to the Appellate Tribunal directing it to record clear findings as to what chemicals were added in the masticating process by the assessee and what is the precise nature of its end-product. After answering these questions, the Tribunal will record a clear finding whether the assessee was engaged in the manufacturing entitling it to the investment allowance u/s 80I of the Act.