(1996) 03 KL CK 0010

In the High Court Of Kerala

Case No : Original Petition No. 11216 of 1995-S

Commissioner of Income Tax — APPELLANT

Vs

Midas Rubber (P) Ltd. — RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:
Income Tax Act, 1961 — Section 32A, 80I

Citation : (1996) 222 ITR 314

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; Joseph Markose, for the Respondent

Judgement

V.V. Kamat, J.—The Revenue prays for a reference, u/s 256(2) of the Income Tax Act, 1961, of the following questions :

"1. (i) Whether, on the facts and in the circumstances of the case, is the assessee 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 80-I ?"

2. The assessee is a company in which public are not substantially interested and is mainly engaged in mastication of rubber. In regard thereto there is a claim as regards investment allowance and deduction u/s 80-I. The Assessing Officer held that the claim is not justified as the assessee cannot be considered an industrial company.

3. The appellate authority considered the decision of the Supreme Court in Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, to find that that the test that is required to be applied is to ascertain whether the processing of the original commodity brings into existence a commercially

different and distinct commodity. In the process the appellate authority placed reliance on the earlier order dated August 7, 1986, for the assessment year 1983-84, whereby deduction u/s 80-I was granted in favour of the assessee. The Tribunal in paragraph 3 of the order also relied on its earlier order for the years 1983-84 and 1984-85 having been passed on December 16, 1992, to contend that the assessee would be entitled to deduction u/s 80-I of the Act.

4. Therefore as it is on its intrinsic strength the question would require consideration and it is plain that the question would be one of law, to find out on the facts and in the circumstances as to whether the assessee would be entitled to claim investment allowance u/s 80-I. It appears that this court in Superintendent of Central Excise Vs. Ancher Treads Pvt. Ltd., had an occasion to ascertain the process of mastication, to rule that it is only a semi-processed material arising in the course of manufacture of rubber tyres, not marketable and not to be considered as goods manufactured, for the purposes of imposition of excise duty. Going through the judgment it is seen that the view of the authorities would be required to be reconsidered, in view of the position, in the light of the test laid down by the decision of the Supreme Court (supra), as also the contention as to whether any application to the provisions of the Central Excises and Salt Act, 1944, the conclusion reached can bodily govern the question involved being one under the Income Tax Act, 1961. The question is a question of law and also of importance.

5. The Income Tax Appellate Tribunal, Cochin, is directed to prepare a detailed statement of case and then remit the two questions specified hereinabove on a reference to this court within a period of three months.

6. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin, for passing consequential orders.