(1996) 06 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 255 of 1993

Commissioner of Income Tax — APPELLANT

Vs

M.S.J. Construction (P.) Ltd. — RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 263, 80HHA, 80J

Citation : (2001) 116 TAXMAN 299

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant;

Judgement

A.R. Tiwari, J.—At the instance of the department, the Tribunal has stated the case and referred the undernoted question of law, on the applications registered as R.A. Nos. 70 and 101 (Indore) of 1992 for the assessment years 1982-83 and 1984-85, arising out of the order of the Tribunal dated 27-1-1992, passed in IT Appeal No. 797 (Indore) of 1988 and C.O. No. 40 (Indore) of 1989 for the assessment year 1982-83 and order dated 29-1-1992, passed in IT Appeal No. 439 (Indore) of 1987 for the assessment year 1984-85 u/s 256(1) of the income tax Act, 1961 (''the Act'') : Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in law in cancelling the order of the Commissioner of income tax u/s 263 holding that the assessee is an ''industrial undertaking'' engaged in manufacture or production of articles or things and that the assessee is, accordingly, entitled to deduction under sections 80HHA and 80J of the income tax Act, 1961?

Briefly stated, the facts of the case are that the assessee is a private limited company. The years of assessment involved are 1982-83 (previous year ending 30-11-1981) and 1984-85 (previous year ending 30-11-1983). The assessee carried on the business of engineering contractor, undertaking and executing contract work with manufacturing of piles for construction of buildings. For that purpose, the assessee employed a special process known as ''pressure piling''.

The assessee, therefore, claimed that the process of pressure piling amounted to manufacture and, as such, made it entitled to deductions under sections 80J and 80HHA of the Act as an industrial company. The ITO negatived the claim. The assessee then filed the appeal before the Commissioner (Appeals) who accepted the claim of the assessee and held that the assessee was an industrial undertaking for the assessment year 1982-83. The ITO allowed the claim of the assessee for the assessment year 1984-85. The said assessment was considered erroneous and prejudicial to the interest of the revenue by the Commissioner. He, therefore, revised the order u/s 263 of the Act and directed the ITO to make a fresh assessment in conformity with law after examining the nature of business for the assessment year 1984-85. Aggrieved by the order of the Commissioner (Appeals) relating to the assessment year 1982-83, the revenue came in appeal before the Tribunal. Dissatisfied by the order of the Commissioner u/s 263 for the assessment year 1984-85, the assessee came in appeal before the Tribunal. The Tribunal held that the assessee was entitled to be considered as an industrial undertaking and was, thus, entitled to deductions under sections 80HHA and 80J of the Act. The Tribunal, therefore, dismissed the appeal of the revenue for the assessment year 1982-83 and allowed the appeal of the assessee for the assessment year 1984-85 and demolished the order passed by the Commissioner u/s 263 (Annexures E and F). The department then filed the applications u/s 256(1) of the Act. On these applications, the Tribunal stated the case and referred the aforesaid question of law for our consideration.

2. We have heard Shri D.D. Vyas, the learned counsel for the applicant. None appeared for the non-applicant despite issuance of SPC for today.

3. Shri Vyas submitted that in view of the decision in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, and the order passed by this Court on 4-4-1996, in Miscellaneous Civil Case No. 143 of 1993 - Commissioner of Income Tax Vs. P.D. Agrawal and Co., , the aforesaid question merits to be answered in favour of the department and against the assessee.

4. Section 80HHA permits deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas. Section 80J permits deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases.

5. In the aforesaid decision of Shankar Construction Co.''s case (supra), it is held as under:

So far as the decision of the High Court under appeal is concerned, it appears to have concentrated more upon the meaning of the word ''industrial undertaking'' and answered the question in favour of the assessee, holding that the assessee is an industrial undertaking within the meaning of the said sub-clause. Unfortunately, it has not adverted to the other requirement of the said sub-clause even though the Tribunal had referred to this aspect and had disagreed with the view taken by the Orissa High Court in Commissioner of Income Tax Vs. N.C. Budharaja and Company, . It must be remembered that the sub-clause is attracted only if all the requirements therein are satisfied besides the other requirements in the other provisions of the section.

6. We are satisfied that the process of pressure piling did not amount to manufacture and that the requirements of law are not satisfied in the instant case to hold that the assessee was an industrial undertaking within the meaning of the provisions of the Act.

7. In view of the factual matrix and legal position, we are satisfied that the Tribunal was not justified in law in holding that the assessee was an industrial undertaking engaged in manufacture or production of articles or things. It is held by the Apex Court that the activity of construction of the dam could not be characterised as manufacture or production of an article within the meaning of the Act. The Tribunal, therefore, committed an error in allowing the benefit of deduction under sections 80HHA and 80J. It is settled law that the construction of buildings, roads and dams, etc., does not amount to manufacture or production of articles or things as envisaged under the Act. It is also clear that the process of piling also does not amount to manufacture and does not make the assessee an industrial undertaking. Consequently, we answer the aforesaid question in the negative, i.e., in favour of the department and against the assessee. This miscellaneous civil case is, thus, disposed of as above with no orders as to costs against the non-applicant as it did not choose to appear and contest the case. Counsel''s fee for the applicant is, however, fixed at Rs. 750, if certified.