(1997) 02 MAD CK 0176

In the Madras High Court

Case No : Tax Case No. 538 of 1984 (Reference No. 480 of 1984)

Commissioner of Income Tax APPELLANT

Vs

O.G. Textiles (P.) Ltd. RESPONDENT

Date of Decision : 04-02-1997

Acts Referred:
Income Tax Act, 1961 — Section 28

Citation : (2000) 245 ITR 820 : (2001) 116 TAXMAN 215

Hon'ble Judges : N.V. Balasubramanian, J;Abdul Hadi, J

Bench : Division Bench

Advocate : Deokinandan, S.V. Subramaniam and C.V. Rajan, for the Appellant; K.M.L. Majele and P.P.S. Janarthana Raja, for the Respondent

Judgement

N.V. Balasubramanian, J.—At the instance of the Revenue, the Appellate Tribunal has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal''s view that the assessee is an industrial company engaged in the manufacture of goods within the meaning of section 2(7)(c) of the Finance Act, 1979, and, consequently, entitled to lower rate of tax is sustainable in law ?"

2. The Income Tax Officer, in the course of assessment proceedings for the assessment year 1979-80, held that the assessee is not an industrial company, but a trading company. The above view was taken on the basis that the assessee purchases the yarn, dyes and chemicals and after dyeing, the yarn is given to weavers for weaving bed sheets and towels and the actual manufacturing activity was being done by the weavers and not by the assessee which cannot be regarded as an industrial company within the meaning of section 2(7)(c) of the Finance Act, 1979. On appeal, the Commissioner of Income Tax (Appeals) held that the assessee, after dyeing the yarn, gave the same to the weavers and they in turn manufactured the articles in accordance with the specifications given by the assessee and the weavers were working under the direction of the assessee-

company. He, therefore, came to the conclusion that there was a supervisory control or direction by the assessee over the weavers and so, the assessee should be regarded as an industrial company and eligible to lower rate of tax, which is applicable for an industrial company. The Revenue preferred a further appeal to the Tribunal, which following an order of its own in Annai Jayabarathi and Others in W.T.A. Nos. 340 to 346 (Mad) of 1977-78 order dated July 10, 1980, held that even in a case where the raw material is got manufactured or processed in a mill belonging to others, the assessee should be regarded as engaged in the manufacture or processing of the goods, within the meaning of the Explanation to section 2(7)(c) of the Finance Act, 1979. The Tribunal, therefore, held that the assessee should be regarded as an industrial company engaged in the manufacturing or processing of goods. This order of the Appellate Tribunal is the subject-matter of this reference.

3. Mr. S. V. Subramaniam, learned senior counsel for the Department, submitted that the assessee was not engaged in the manufacture of goods and what the assessee did was merely dyeing the yarn and giving it to the weavers and, hence, the assessee cannot be considered to be engaged in the manufacture or processing of the goods. Mr. Janarthana Raja, learned counsel appearing for the assessee, on the other hand, brought to our notice the finding of the Tribunal where the Tribunal has held that after purchase of the yarn and chemicals by the assessee, the assessee got the yarn dyed and the dyed yarn was given to the weavers and the weavers had to work under the supervision and control of the assessee. He, therefore, submitted that there was a "processing" involved by the assessee and the assessee should, therefore, be regarded as an "industrial company".

4. The expression, "industrial company" is defined u/s 2(7)(c) of the Finance Act, 1979, and it reads as under :

"''industrial company'' means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining."

5. The provision contemplates that an industrial company should either manufacture or process the goods. The Tribunal, as a finding of fact, has clearly found that the assessee purchased yarn, dyed it and gave it to the weavers, and the weavers, under the supervisory control and direction of the assessee, wove the bed sheets and towels and as such, the activity of the assessee would amount to "processing" attracting the provision of section 2(7)(c) of the Finance Act, 1979. Section 2(7)(c) of the Finance Act, 1979, makes a distinction between the manufacture and the processing of the goods. The action of the assessee in dyeing the yarn would amount to processing of the goods. Hence, we are of the opinion that the assessee is engaged in the activity of processing of the goods and so, the assessee is entitled to be regarded as an "industrial company" as defined u/s 2(7)(c) of the Finance Act, 1979. We do not find any infirmity in the

order of the Appellate Tribunal. Accordingly, we answer the question in the affirmative and against the Department. No costs.

