

(1997) 04 MAD CK 0084

In the Madras High Court

Case No : Tax Case No. 1515 of 1984 (Reference No. 1104 of 1984)

Commissioner of Income Tax

APPELLANT

Vs

Rajalakshmi Textile Processors Ltd.

RESPONDENT

Date of Decision : 15-04-1997

Acts Referred:

Income Tax Act, 1961 — Section 33

Citation : (1999) 235 ITR 778

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthanaraja, for the Respondent

Judgement

N.V. Balasubramanian, J.—Pursuant to the directions of this court, the Appellate Tribunal has stated a case and referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for our opinion :

"Whether, on the facts and in the circumstances of the case and having regard to item No. 32 of the Fifth Schedule to the Income Tax Act, 1961, the Appellate Tribunal was right in holding that the assessee would be entitled to development rebate at the enhanced rate of 25 per cent. in respect of certain machineries installed in the factory ?"

2. The assessee is a company engaged in bleaching and finishing of raw cloth as well as dyeing and finishing of cloth and yarn. In the original assessment for the assessment year 1974-75, the Income Tax Officer allowed initial depreciation as well as development rebate on the ground that the assessee was engaged in the production and manufacture of textiles. The Income Tax Officer, however, reopened the assessment on the basis of an audit report and in the reassessment proceedings, he held that the assessee could not be considered to be engaged in the production of goods found in item No. 21 of the Ninth Schedule as well as item No. 32 of the Fifth Schedule. Ultimately, the matter

came before the Tribunal. The Appellate Tribunal, following its earlier order rendered in the assessee's own case for the subsequent assessment year 1975-76, held that the assessee was engaged in the manufacture and production of textiles and therefore, was entitled to development rebate. The Appellate Tribunal also found that the facts in the present assessment year are in no way different from the facts found for the assessment year 1975-76. In this view of the matter, the Appellate Tribunal held that the assessee was entitled to development rebate and the assessee was engaged in the manufacture of goods described in item No. 21 of the Ninth Schedule and item No. 32 of the Fifth Schedule. It is this order that is the subject-matter of the present tax case.

3. Mr. C. V. Rajan, learned counsel appearing for the Revenue, submitted that the earlier order of the Tribunal for the assessment year 1975-76 was the subject-matter of a tax case reference before this court in T.C. No. 697 of 1984 and this court by judgment dated June 17, 1996. (Commissioner of Income Tax Vs. Rajalakshmi Textile Processors Ltd. (No. 1),) held that the assessee was not entitled to initial depreciation and higher development rebate. Mr. Janarthana Raja, appearing for the assessee, submitted that the assessee was engaged in the manufacture of textiles by converting unbleached cloth or yarn into dyed cloth or dyed yarn and, therefore, the process employed by the assessee would amount to manufacture of dyed cloth or dyed yarn.

4. We have carefully considered the rival contentions of the parties. It is seen from the order of the Appellate Tribunal that the facts in the present case are in no way different from the facts found for the assessment year 1975-76. As already seen, the earlier order of the Appellate Tribunal in I.T.A. No. 1066 of 1979 for the assessment year 1975-76 was the subject-matter of a tax case reference before this court, and this court in T.C. No. 697 of 1984, by judgment dated June 17, 1996 (Commissioner of Income Tax Vs. Rajalakshmi Textile Processors Ltd. (No. 1),) held that the assessee was not entitled to claim initial depreciation and higher development rebate on the ground that the assessee was not either manufacturing or producing textiles. Since the factual situation appearing in the present tax case is the same as found in T.C. No. 697 of 1984 (Commissioner of Income Tax Vs. Rajalakshmi Textile Processors Ltd. (No. 1),), we have to hold that the assessee is not entitled to claim development rebate at the enhanced rate of 25 per cent. on the machinery installed in the factory. Therefore, the view of the Appellate Tribunal that the assessee is entitled to higher development rebate at the enhanced rate of 25 per cent. in respect of certain machineries installed in its factory is not sustainable in law after the decision of this court in T.C. No. 697 of 1984 dated June 17, 1996, Commissioner of Income Tax Vs. Rajalakshmi Textile Processors Ltd. (No. 1),) Following the earlier judgment, we answer the question of law referred to us in the negative and in favour of the Revenue. No costs.