
(1997) 12 MAD CK 0186

In the Madras High Court

Case No : Tax Case No"s. 289 and 290 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Salem Textiles Ltd.

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Income Tax Act, 1961 — Section 147, 33, 33(1), 33(1A)

Citation : (1999) 237 ITR 662

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; K. Ramagopalan, for the Respondent

Judgement

N.V. Balasubramanian, J.—The assessee is a public limited company. We are concerned with two assessment years, viz. 1974-75 and 1975-76 and the question raised is whether the assessee is entitled to claim higher development rebate in respect of generators, trolley and diesel tanks installed by the assessee and used for the purpose of its business. In the original assessment made for the said assessment years, the assessee was granted development rebate at the rate of 25 per cent in respect of generators, trolley and diesel tanks. The ITO reopened the assessment under s. 147(b) of the IT Act, 1961 (hereinafter to be referred to as "the Act"), and held that development rebate is not admissible in respect of trolley and diesel tanks, but in respect of generators, the development rebate would be admissible at the rate of 15 per cent. The CIT(A) in an appeal preferred by the assessment against the orders of the reassessment held that the development rebate is admissible at the rate of 25 per cent on the actual cost of the generators, trolley and diesel tanks. The view of the CIT(A) was confirmed by the Tribunal on the ground that those items of machineries were used in the manufacture or production of articles specified in the Fifth Schedule to the Act. The Revenue has sought for a reference and on its failure to get a reference, this Court in T.C.P. Nos. 489 and 490 of 1983, dt. 16th April, 1984, directed the Tribunal to state a case and the Tribunal has referred the following

question of law for our opinion :

"Whether the Tribunal is justified in law in directing the ITO to grant higher development rebate in respect of generators, trolley and diesel tanks on the ground that they form part of the "textile machinery" ?"

2. Mr. C. V. Rajan, learned counsel for the Revenue submitted that the Tribunal was not correct in holding that the assessee would be entitled to depreciation (sic-development rebate) in respect of generators. He also submitted that the development rebate is not admissible for the diesel tanks as well as for the trolley.

3. Mr. Ramagopal, learned counsel for the assessee, on the other hand, submitted that all the items for which development rebate at the rate of 25 per cent claimed by the assessee are eligible for development rebate at the rate of 25 per cent of the actual cost of the machineries as they were used for the manufacture or production of articles specified in the Fifth Schedule to the Act.

4. We have carefully considered the submissions of the learned counsel for the representative parties. There are three items in dispute and the claim of the assessee is that the assessee would be entitled to claim development rebate in respect of all three items at the rate of 25 per cent of the actual cost of the plant under sub-cl. (i) of cl. (b) of sub-s. (1) of s. 33 of the Act on the ground that all the three items were installed for the purpose of manufacture or production of the articles specified in Entry 32 of the Fifth Schedule to the Act and the relevant entry reads as under :

"Textiles including those dyed, printed or otherwise processed made wholly or mainly of cotton, including cotton yarn, hosiery and rope".

5. Before considering the claim of the assessee for development rebate at the rate of 25 per cent of the actual cost of the plant and the rejection of the claim by the ITO, it is necessary to point out that s. 33 of the Act was enacted with an object of promoting industrial development in the country. The main aim of s. 33 is that there should be a quick and fast industrial growth in this country and to achieve that laudable object, the assessees were granted certain development rebate and in the case of certain priority industries, the assessees were also granted higher development rebate. The provisions of s. 33 of the Act have to be construed purposefully and beneficially to achieve the object behind the s. 33 of the Act and it cannot be construed in a restricted or mechanical manner. The provision should be construed with commonsense so that unnecessary difficulties are not created against the assessee in claiming development rebate if it was otherwise due to the assessee.

6. This Court in Commissioner of Income Tax Vs. Chitram and Co. Pvt. Ltd., held that the benefit of higher development rebate is available to a machinery or plant installed by the assessee for the purpose of manufacture or production of any one or more of the articles mentioned in the Fifth Schedule, and the mere fact

that the articles manufactured are used as components for any other products manufactured would not render the manufacture of the component parts anytheless the manufacture or production of the items specified in the Fifth Schedule. The emphasis that was given by this Court is that the articles manufactured or produced though not directly marketed, when used as components for other articles manufactured by the assessee are still be eligible for development rebate. The Supreme Court in *Commissioner of Income Tax, Haryana Vs. M/s. Krishna Copper Steel Rolling Mills, Jagadhri etc. etc.*, has taken more or less the same view and held that incentive concession or a relief granted under s. 33 of the Act has to be construed in a broad and comprehensive manner so as to cover all manufacturing activities legitimately pertaining to the specified core industry with no limitation save what may be called for by the wordings of the particular entry.

7. With this background, we have to examine the facts of the case. Insofar as the generators are concerned, it is a common knowledge that generators are used as stand-by in the case of power failure and they are installed to ensure that there is a continuous and uninterrupted supply of power for the manufacture of the goods. Therefore, the generators cannot be regarded as not eligible for higher development rebate, merely on the ground that the occasion for the use of generators will arise in the case of power failure. The assessee has installed the generators with a view to ensure that there is no stoppage in the production of the goods by continuous power supply and when that is the object behind the installation of the generators, we are of the view that the assessee is entitled to higher development rebate. The machineries used are spinning machineries and the assessee is, admittedly, a manufacturer of yarn, and during the course of manufacture of yarn, if the power supply is disrupted for any reason, the entire production will come to a grinding halt and the assessee may not achieve the target of production. It is a common knowledge that a continuous supply of power is essential and necessary for the manufacture of any article, particularly yarn and, therefore, the view of the officer that the assessee is not entitled to higher development rebate on the generators is not justifiable one. Further, the generators are used for the manufacture or the production of yarn and the expression, "machinery or plant" installed for the purpose of business of manufacture of articles or things specified in the Fifth Schedule cannot be confined to textile machinery alone, but, extends to the machineries needed and employed for the manufacture or production of the things or articles specified. The view of the officer that it should be confined to the textile machinery alone is not warranted and if such a restricted meaning is given, it will affect the very object behind the grant of development rebate under s. 33 of the Act.

8. The Kerala High Court in the case of *Commissioner of Income Tax Vs. Heaveacrub Rubber (P.) Ltd.*, held that the depreciation and development rebate at the higher rate would be allowable in the case of an assessee running a rubber factory, where it was found that the water supply system and the miscellaneous equipments were parts of the machineries normally used in the

rubber factories. The Court found that the supply of water is necessary for the rubber factory and, therefore, the machineries installed for supply of water were held to be entitled to higher depreciation. Following the said decision of the Kerala High Court, we hold that the continuous supply of electricity is essential for the manufacture of yarn and the generators are meant to supply the power continuously and uninterruptedly, which is necessary for the proper and efficient running of the machineries and, therefore, the assessee is entitled to claim higher development rebate on the generators installed by the assessee. That apart, frequent power-cuts in this part of the country is a common knowledge and to ward off such contingencies resulting from power failure, the assessee had installed generators and we find no reason to restrict the grant of development rebate only to these textile machineries installed for the manufacture of yarn. In our view, generator is a plant and installed for the efficient and smooth running of the machineries and it would also qualify for higher development rebate.

9. Insofar as the trollies are concerned, the ITO has taken a view that trolley is a transport vehicle and, therefore, the assessee is not eligible to claim development rebate on trolley. The CIT(A) held that the trolley cannot be regarded as road transport vehicle as it was used only for the transport of the materials within the factory premises. The view of the CIT(A) was confirmed by the Tribunal on the ground that the trolley was used within the factory premises and it cannot be regarded as a road transport vehicle. We are of the view that the trolley cannot be regarded as road transport vehicle within the meaning of cl. (b) of sub-s. (1A) of s. 33 of the Act. It is a common knowledge that the trolley is meant for carriage of the goods from one place to another in the factory premises and it is used either for carriage of the raw materials or the finished products. The trolley is meant for facilitating easy and quick transport of the materials from one place to another within the factory premises and, therefore, though it has wheels, it cannot be regarded as a transport vehicle. Since the trolley is used for the transportation of the materials from one place to another, that too within the factory premises, we are of the view that the trolley is an essential item employed for the ultimate manufacture or for the production of the articles or things mentioned in s. 33 of the Act and the trollies are not *liques* (sic) also be regarded as road transport vehicle within the meaning of s. 33 of the Act. In *Kalinga Tubes Ltd. Vs. Commissioner of Income Tax, Central and Another*, , the Orissa High Court held that the railway sidings used for transport of the goods manufactured in the factory which were essential for the transport of the goods can be regarded as a machinery or a plant and the company is entitled to development rebate. Following the said judgment, we hold that the trolley employed by the assessee should be considered as a plant and is used for the purpose of transport of the goods manufactured by the assessee within the factory premises. Therefore, the trolley cannot be regarded as a road transport vehicle, falling within the exclusionary cl. (b) of sub-s. (1A) of s. 33 of the Act.

10. Insofar as the other item, namely, diesel tank is concerned, we are of the

view that the CIT(A) as well as the Tribunal was correct in holding that the diesel tank can be regarded as a plant and cannot be regarded as buildings. The diesel tank is used for the purpose of carrying on the business and it cannot be regarded either as stock-in-trade or an item which is not needed for the business purpose. The diesel tanks are installed and used for the business of the assessee. Both the CIT(A) and the Tribunal were correct in holding that the diesel tank is a "plant" eligible for the development rebate under s. 33 of the Act. The finding of the CIT(A) is that the diesel tank is a metal storage tank for diesel oil from which the generators draw the fuel required to run them and the mere circumstances that it is imbedded in the earth would not permit their classification under the head, "buildings". It is seen that the diesel tank had been installed only to provide diesel for the efficient running of the generator and though it is fixed to the earth, we are of the view, that diesel tank has to be regarded as a plant to qualify for development rebate under s. 33 of the Act. In this view of the matter, we hold that the Tribunal was correct in holding that the assessee is entitled to higher development rebate in respect of generators, trolley and the diesel tank.

11. In fine, we answer the question of law referred do us in the affirmative and against the Revenue. However, in the circumstances, of the case, there will be no order as to costs.