(1990) 11 CAL CK 0005

In the Calcutta High Court

Case No : IT Reference No. 132 of 1987 & Income-tax Reference No. 132 of 1987

Commissioner of Income Tax APPELLANT

Vs

Shaw Wallace and Co. Ltd. RESPONDENT

Date of Decision : 19-11-1990

Acts Referred:
Finance (No. 2) Act, 1977 — Section 2(7)(c)
Finance Act, 1984 — Section 2(7)(c)
Income Tax Act, 1961 — Section 256(1), 32A(1)(b), 32A(2)(b), 32A(2)(b)(iii), 33

Citation : (1993) 70 TAXMAN 126

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the income tax Act, 1961 (''the Act) for the assessment year 1979-80, the following question of law has been referred to this Court: Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the business carried on by the assessee in its Computer Divisions with the aid of Computer System is an industrial undertaking which satisfies the conditions contained in section 32A(2)(b)(iii) of the income tax Act, 1961?

Shortly stated, the facts are that the assessee-company claimed investment allowance on new plant and machinery installed in the Computer Division of the assessee-company. A sum of Rs. 99,006 consisting of Rs. 89,762 being the investment allowance, was claimed in respect of Madras Computer Centre and Rs. 9,244 relating to the machinery installed in the Calcutta Computer Division. The ITO following the assessment order for the assessment year 1975-76 held that the computer being in the nature of an office appliance is not entitled to the investment allowance u/s 32A(2)(b) of the Act. The Commissioner (Appeals) while agreeing with the ITO that the computer being in the nature of office appliance also held that the Computer Division of the assessee-company is not an industrial undertaking and that the conditions prescribed by section 32A(2)(b)

(iii) have not been fulfilled.

2. The Tribunal found that the Computer Division of the assessee-company was a factory registered under the relevant law, that is, under the Factory Act. It was further contended that the data which are fed into the computer are transformed into instructions and computations through a series of programmes and processing which in the end leads to an end-product in the shape of printed materials and statements that are entirely distinct and separate from the inputs that were fed into the computer. The Tribunal accepted the contention that the computer is not in the nature of an office appliance. In coming to the said conclusion, the Tribunal relied upon the decision of the Bombay High Court in the case of Commissioner of Income Tax, Bombay City-I Vs. I.B.M. World Trade Corporation, and also the decision in Commissioner of Income Tax Vs. International Computers Ltd., .

3. Regarding the question as to whether the assessee-company is an industrial undertaking for the purpose of business of manufacturing or production of any article or thing, not being an article or thing specified in the Eleventh Schedule, the Tribunal held that before the ITO the assessee stated that the Computer Division of the assessee was a profit-earning centre. It rendered services to outside customers. It was registered as a factory under the relevant law.

On the aforesaid facts, the Tribunal held that the services which the assessee rendered in the Computer Division are in relation to a profitable venture and as such it was an industrial undertaking. The Tribunal records its finding that it cannot be disputed that the computations and statements that a computer brings about after processing of the technical and commercial data which are fed into the computer as inputs are entirely different in content from such inputs. The Tribunal, therefore, came to the conclusion that the business carried on by the assessee in its Computer Division with the aid of computer system is industrial undertaking which satisfies the conditions contained in section 32A(2)(b)(iii).

Before us the contentions which were raised before the Tribunal have been reiterated. In support of the contentions the learned counsel for the assessee has relied on several decisions to which we shall presently refer.

4. In Commissioner of Income Tax Vs. Datacons (P.) Ltd., . the Karnataka High Court held that where a company is engaged in processing the data furnished by its customers by using IBM Unit Record Machine Computer, i.e., the vouchers and statements of accounts received from its customers, and converts them into balance sheets, stock accounts, sales analysis, etc., and are printed as per the requirements of the customers, the assessee, in all these activities, has to play an active role by co-ordinating the activities and collating the information. Such activities amount to ''processing'' of goods. The assessee in such circumstances was, therefore, held to be an industrial company which has been defined u/s 2(7)(c) of the Finance (No. 2) Act, 1977, to mean, a company which is mainly engaged in the business of generation and distribution of electricity or any other

form of power or in the construction of ships or in the manufacture of processing of goods or in mining. In view of the above decision of the Karnataka High Court, the assessee-company can be said to be an industrial undertaking which is engaged in the manufacture or production of articles or things not specified in the Eleventh Schedule of the Act.

5. The word ''production'' has not been defined in the Act. A dictionary meaning has to be preferred. The Supreme Court in Chrestien Mica Industries Ltd. v. State of Bihar [1961] 12 STC 150 adopted the meaning assigned to the word ''production'' in the Oxford English Dictionary. The expression ''production of an article'' means, among other things that which is produced, a thing that results from any action, process or effort, a product, a product of human activity or effort.

6. The final end-products, viz., printed materials and the statements are entirely different articles or things from the data which are fed into the computer and are transformed into instructions and computations through a series of programmes and processing and the same amounts also to manufacture of an article or thing.

7. The word ''manufacture'' has not been defined in the Act. However, in connection with an industry or an industrial undertaking two shades of meaning are important. The Bombay High Court in Commissioner of Income Tax, Bombay City I Vs. Tata Locomotive and Engineering Co. Ltd., observed that the word ''manufacture'' has a wider and also a narrower connotation. In the wider sense it simply means to make, or fabricate or bring into existence an article or a product either by physical labour or by power, and the word ''manufacturer'' in ordinary parlance would mean a person who makes, fabricates or brings into existence a product or an article by physical labour or power. The other shade or meaning, which is the narrower meaning, implies transforming raw materials into a commercial commodity or a finished product which has an entity by itself, but this does not necessarily mean that the materials with which the commodity is so manufactured must lose their identity. Thus, both the words ''manufacture'' and ''produce'' apply to the bringing into existence of something which is different from its components.

8. The expression ''manufacture'' means bringing into existence a new substance. As held by the Supreme Court in Union of India (UOI) Vs. Delhi Cloth and General Mills, the expression ''manufacture'' is generally understood to mean as bringing into existence a new substance and does not mean merely to produce some changes in a substance. Whether one takes into account the wider or narrower meaning of the word ''manufacture'', the expression ''manufacture'' means ''bring into existence a new substance''.

9. The pamphlet or the balance sheet or the share certificate is an article quite different from the raw materials, paper and ink, from which it is made, the use of which would be different from the use of the raw materials used in producing it. Similarly the printed materials and the statements would give rise to an article

which is totally different from the raw data which is fed in the computer and would amount to ''manufacture''.

10. In M/s. Narne Tulaman Manufacturers Pvt. Ltd., Hyderabad Vs. Collector of Central Excise, Hyderabad, the Supreme Court observed that manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having distinctive name, character or use.

Judged by the above test, the computations and statements that a computer brings out after processing technical and commercial data which are fed into the computer as inputs are entirely different in content from the inputs fed into the computer.

11. In Addl. Commissioner of Income Tax Vs. A. Mukherjee and Co. (P.) Ltd., this Court held that printing and publishing of books amounted to manufacture.

12. In Commissioner of Income Tax, Gujarat Vs. Ajay Printery Private Ltd., the Gujarat High Court held that the business of printing balance sheets, profits and loss accounts, dividend warrants, pamphlets, share certificates, etc., required by companies is a business which consists wholly of manufacture of goods.

13. In Commissioner of Income Tax, Bombay Vs. Tiecicon Pvt. Ltd., the respondent- company supplied cool, filtered and chilled air through air-conditioning apparatus to other lessees in the same building. The Tribunal on a consideration of the facts held that the assessee-company was an industrial company which is engaged in the manufacture or processing of goods. The Supreme Court rejected the application for special leave on the ground that the finding of the Tribunal as to whether it was an industrial company engaged in the manufacture or processing of goods was a finding of fact.

In this case also the finding of the Tribunal is that the assessee-company is an industrial company engaged in the manufacture of article or thing which is a finding of fact and the Court should not ordinarily interfere with the finding in the absence of any question raising the perversity of the finding.

14. The question as to whether computer is an office appliance within the meaning of section 32A(1)(b) has been considered by the Bombay High Court in International Computers Ltd.''s case (supra).

In that case data processing machinery was let out to Indian subsidiary by foreign company. Indian subsidiary hired out the said machinery to customers in India. It was held that the data processing machines were not office appliances and were entitled to the benefit of development rebate.

15. In IBM World Trade Corpn.''s case (supra), the Bombay High Court held that data processing machine is a complicated machinery which could not be easily operated by laymen and special training for a period which may cover three

months in some cases and a much longer period in others is necessary in order to equip a person with the knowledge and art of operating these machines. The installation and operation of the machines is on a scientific basis and even for the purposes of installation, certain special conditions have to be provided in the form of air-conditioning or a particular temperature. The purposes for which such machines which can be described as computers are used are well known and in highly scientifically developed systems, they have their own roles to play and they cannot be equated with office appliances which would be of a much simple nature.

16. In Commissioner of Income Tax Vs. IBM World Trade Corporation, the Bombay High Court has again reiterated, following the decision in IBM World Trade Corpn.''s case (supra) that data processing machines are not office appliances and are entitled to development rebate u/s 33 of the Act.

17. Our attention has been drawn to an unreported decision of this Court in CIT v. Peerless Consultancy Services (P.) Ltd. [IT Reference No. 23 of 1985 dated 9-1-1990]. The Division Bench held that the assessee-company in that case who carried on business of providing technical and industrial consultancy on the basis of computers and who also undertook electronic data processing was an industrial company within the meaning of section 2(7)(c) of the Finance Act, 1984.

18. Investment allowance is admissible in respect of machinery or, plant installed in any industrial undertaking for the purpose of business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule. There is no dispute that the data processing or computer is not mentioned in the Eleventh Schedule. If, as held by the Division Bench in Peerless Consultancy Services (P.) Ltd.''s case (supra) the assessee-company is an industrial company, there is no reason why such a company will not be entitled to the benefit of the investment allowance. Investment allowance will not be admissible in respect of office appliances. In our view, having regard to the nature and function of the computer and the data processing system, it cannot be said that they are office appliances. An industrial company is a company engaged in the manufacture or processing of goods. ''Data processing'' means the converting of raw data to machine-readable form and its subsequent processing (as storing, updating, combining, rearranging or printing out) by a computer. ''Computer'' means ''one that computes; specifically a programmable electronic device that can store, retrieve, and process data''. There cannot be any doubt that raw data cannot be equated with the result derived. It is different in form and substance.

19. We are. therefore, of the view that the computer division is an industrial undertaking which satisfies the conditions mentioned in section 32A(2)(b)(iii). For the reasons aforesaid, the question in this reference is answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

I agree.