(1985) 10 BOM CK 0030

In the Bombay High Court

Case No : Income Tax R.C. No. 295 of 1975

Commissioner of Income Tax APPELLANT

Vs

Simac Group (India) Pvt. Ltd. RESPONDENT

Date of Decision : 24-10-1985

Acts Referred:
Companies (Profits) Surtax Rules, 1964 — Rule 1

Citation : (1986) 51 CTR 11 : (1987) 163 ITR 867 : (1986) 24 TAXMAN 389

Hon'ble Judges : Kania, Acting C.J.;Bharucha, J

Bench : Division Bench

Judgement

Kania, Actg. C.J.

1. This is a reference on a case stated by the Income Tax Appellate Tribunal u/s 256(1) of the Income Tax Act, 1961. The question referred to us for our determination is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the machinery for the manufacture of hand-knitting machines was entitled to higher development rebate of 35% ?"

2. We are concerned in this reference with the assessment year 1970-71 for which the corresponding previous year was the financial year ending March 31, 1970. The assessee mainly carries on business in the manufacture and sale of hand-knitting machines and water-filters. During the relevant previous year, it had installed and brought into use some new machinery for the manufacture of hand-knitting machines, and the dispute is as to whether development rebate admissible in respect of the said new machinery installed as aforesaid should be at the rate of 35% as claimed by the assessee. This claim was made on the footing that a hand-knitting machine was a piece of textile machinery covered by item 4 in the Fifth Schedule to the Income Tax Act, 1961, read with item 8, sub-item A(4) of the First Schedule to the Industries (Development and Regulation) Act, 1951 (referred to hereinafter as "the Industries Development Act"). The

Income Tax Officer concerned rejected the claim of the assessee to the higher development rebate at 35% and granted development rebate at the normal rate of 20% on the ground that the hand-knitting machines in question manufactured by the assessee were meant for the use of individuals and not in textile industry. On an appeal preferred by the assessee, the Appellate Assistant Commissioner disagreed with the Income Tax Officer and held that the assessee was entitled to the higher development rebate at 35% in respect of the aforesaid new machinery as claimed by the assessee. The Revenue preferred an appeal to the Income Tax Appellate Tribunal. The Tribunal pointed out that the only dispute between the assessee and the Revenue was whether the hand-knitting machines manufactured by the assessee fell within the list of articles or things specified in the Fifth Schedule to the Income Tax Act, 1961, and in particular item 4 of that Schedule. This item referred to item 8, sub-item A(4) in the First Schedule to the Industries Development Act. We shall set out the relevant portions of this provision hereinafter. Before the Tribunal, the Revenue contended that to be entitled to higher development rebate at 35%, it was not enough that the articles manufactured by the assessee, namely, hand-knitting machines, should be textile machinery, but it was also necessary that it should be specialised equipment used in a specific industry, that is, the textile industry. It was also contended before the Tribunal on behalf of the Revenue that the hand-knitting machines could not be called textile machinery. The Tribunal pointed out that the only material piece of evidence on the question whether hand-knitting machines could be regarded as textile machinery was the registration certificate issued by the office of the Textile Commissioner and a perusal of item 2 of that certificate shows that goods manufactured by the assessee, namely, hand-knitting machines, were regarded by the Textile Commissioner as textile machinery. Relying on this evidence, the Tribunal upheld the claim of the assessee to the higher development rebate. It is from this decision of the Tribunal that the aforesaid question has been referred to us for our determination.

3. Coming to the relevant provisions of law, it may be pointed out that section 33 of the Income Tax Act, 1961, deals with the grant of development rebate. Clause (a) of sub-section (1) of section 33 provides, inter alia, that development rebate would be granted in respect of machinery or plant installed and first put to use, that is, in respect of new machinery or plant installed. The relevant portion of section 33(1)(b)(B) runs as follows :

"33(1)(b) The sum referred to in clause (a) shall be - ......

(B) in the case of machinery or plant, -

(i) where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule,

(a) thirty-five per cent. of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(b) twenty-five per cent. of such cost, where it is installed after the 31st day of March, 1970."

4. The sum referred to in the opening portion of clause(b) referred to above is the sum allowable by way of development rebate. In the present case, it is an admitted position that the new machinery was installed prior to 1st April, 1970, with the result that in case the conditions of the aforesaid section 33(1)(b)(B)(i) are complied with, the development rebate permissible to the assessee in respect of new machinery would be 35%. Item 4 of the Fifth Schedule to the Income Tax Act, 1961, runs as follows :

"Industrial machinery specified under the heading ''8. Industrial machinery'', sub-heading ''A''. Major items of specialised equipment used in specific industries'', of the First Schedule to the Industries (Development and Regulation) Act, 1951 (LXV of 1951)."

5. Relevant portion of item or heading 8 of the First Schedule to the Industries (Development and Regulation) Act runs as Follows :

8. INDUSTRIAL MACHINERY :

A. Major items of specialised equipment used in specific industries :

(1) Textile machinery (such as spinning frames, carding machines, powerlooms and the like) including textile accessories......."

6. On an analysis of the aforesaid provisions, what emerges is that in order to obtain the benefit of the enhanced development rebate at the rate of 35%, the assessee has to show that the machinery installed by him was used for the manufacture of textile machinery, as contemplated under sub-item (1) of item or heading 8, sub-heading ''A'' of the First Schedule to the Industries Development Act. There is very little evidence to indicate one way or the other as to whether the hand-knitting machines produced by the assessee could be regarded as textile machinery as set out above. There is, however, one piece of evidence which has been strongly relied upon by the Tribunal, and that is the certificate given by the Textile Commissioner to the effect that the hand-knitting machines manufactured by the assessee were textile machinery. In the absence of any other evidence, we see no reason why this evidence should not be relied on and, in fact, the Tribunal, on the basis of this evidence, gave the finding that the hand-knitting machines manufactured by the assessee were textile machinery as contemplated under the First Schedule to the Industries Development Act. In our view, there is no ground on which the claim of the assessee could be rejected, and we are inclined to take the same as the Tribunal has adopted.

7. Mr. Jetly, learned counsel for the Commissioner, made two submissions. The first submission was that the hand-knitting machines manufactured by the assessee were not intended for use in the textile industry. It is impossible to accept this submission. There is no evidence on record which would suggest that the hand-knitting machines were not used in textile industry or were not

intended for use in the textile industry. In fact, the certificate which we have referred to earlier shows that the hand-knitting machines were regarded by the Textile Commissioner as textile machinery. The next submission of Mr. Jetly was that knit-wear produced or manufactured by the said hand-knitting machines could not be regarded as a textile. In our opinion, there is no substance in this submission either. In the first place, if on the evidence it is found that the hand-knitting machine is textile machinery, it is strictly not necessary to consider whether the product of that machine, namely, knit-wear, can be regarded as a textile. Secondly, there is no evidence led to show that in common parlance, knit-wear is not regarded as a textile. Finally, it appears to us that, even if the dictionary meaning of the term "textile" is to be considered, it is wide enough to cover knit-wear.

8. In the result, the submissions of Mr. Jetly must be rejected. The question referred to us is answered in the affirmative and in favour of the assessee. Looking to the facts and circumstances of the case, there Will be no order as to costs.

