
(1992) 12 BOM CK 0019

In the Bombay High Court

Case No : Income-tax Reference No. 50 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Standard Batteries Ltd.

RESPONDENT

Date of Decision : 03-12-1992

Acts Referred:

Income Tax Act, 1961 — Section 80(I), 80B(7)

Citation : (1993) 201 ITR 977

Hon'ble Judges : U.T. Shah, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Jahangir Mistri, for the Appellant; G.S. Jetley, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961 ("the Act"), made at the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law to this court for opinion :

"Where, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that mining safety lamps were mining machinery within the meaning of item No. (4) of the Sixth Schedule to the Income Tax Act, 1961, and allowing the assessee-company relief u/s 80-I of the said Act in respect of its income arising from the manufacture of miner's cap lamp ?"

2. The assessee is a public limited company. The business of the assessee is to manufacture automobile ancillaries, equipments for generation of electricity, etc. The relevant assessment year is 1972-73. The controversy relates to disallowance of a part of claim of the assessee u/s 80-I of the Act. In its original return, the assessee claimed relief u/s 80-I to the extent of Rs. 15,396 which was subsequently revised to Rs. 10,467. The relief was claimed in respect of 3 items, namely, (i) equipment from generation of electricity and components thereof; (ii) equipment for earth moving and tractors; and (iii) manufacture of miner's safety cap lamps, spare-, mining batteries and components. The Income Tax Officer allowed the claim in respect of the first two items but disallowed the

claim in respect of the third item as, in his opinion, this item was not covered by any of the items of the Sixth Schedule to the Act. The claim under this head was Rs. 2,153 only.

3. Aggrieved by the order of the Income Tax Officer, the assessee went in appeal to the Appellate Assistant Commissioner ("the AAC") and contended that these items were included in mining machinery which is specified in item No. (4) of the Sixth Schedule. Reliance was placed on a report of assessment made by the Coal Council Sub-Committee in respect of requirements of underground mining machinery and equipment of a standard unit of certain production capacity. Relying on the said assessment of the Coal Council Sub-Committee and following his own order in respect of earlier year, the Appellate Assistant Commissioner decided the controversy in favour of the assessee. Against the order of the Appellate Assistant Commissioner, the Revenue went in appeal to the Tribunal. It was contended by the Revenue before the Tribunal that mine safety cap lamps, mining batteries and components were not covered by the Sixth Schedule as they cannot be said to be major items of specialized equipment, namely, "mining machinery". Reliance was placed by the Revenue on an earlier order of the Tribunal in the case of the assessee itself for the assessment year 1971-72, wherein it had considered this question in the context of item No. (4) of the Fifth Schedule to the Act in connection with the grant of development rebate at higher rate and held that these items though means for the purpose of mining cannot be said to be major items of specialised equipment, namely mining machinery. In that case, the Tribunal was also of the view that the items appearing in the list of items prepared by the Coal Council Sub-Committee were equipment of underground mining machinery and other equipment required for a standard unit which is a much broader category, the items specified their are not confined to major items of specialised equipments such as mining machinery. The Tribunal also did not agree with the view expressed by it in its earlier order. On the other hand, it referred to the order of the Appellate Assistant Commissioner in the case of the assessee itself in respect of some earlier years where such items were held to fall within item No. (4) of the Fifth Schedule to the Act, which is identical to item No. (4) of the sixth Schedule. The Tribunal, referring to the said order, affirmed the order of the Appellate Assistant Commissioner and rejected the appeal of the Revenue on this ground. The Revenue applied for a reference u/s 256(1) of the Act and the Tribunal on being satisfied that a question of law did arise from its order, has referred the same to this court.

4. For a proper appreciation of the controversy before us, it may be expedient to refer to the relevant provisions of section 80-I and the Sixth Schedule to the Act. Section 80-I deals with deduction in respect of profits and gains from priority industries in the case of certain companies. Sub-section (i) thereof, which is relevant for the present purpose, provides :

"(1) In the case of a company to which this section applies, where the gross total income included any profits and gains attributable to any priority industry, there

shall be allowed, in accordance with the subject to the provisions of this section a deduction from such profits and gains of an amount equal to five per cent. thereof, in computing the total income of the company."

5. The expression "priority industry" has been defined in clause (7) of section 80B in the following terms :

"'priority industry' means the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Sixth Schedule or the business of any hotel where such business is carried on by an India company and the hotel is for the time being approved in this behalf by the Central Government."

6. The Sixth Schedule contains the list of articles and things referred to in sections 80B(7) and 80-I of the Act. Item No. (4) of the said Schedule which is relevant for our purpose, is in the following terms :

"(4) 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 (65 of 1951)."

7. From item No. (4) of the Sixth Schedule set out above, it will be evident that the industrial machinery referred to in this item is restricted to those 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 said Act refers to industries engaged in the manufacturing or production of any of the items mentioned under the various heads or sub-heads specified therein. Item No. (8), which has been incorporated by reference in item No. (4) of the Sixth Schedule, is as below :

"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

(2) Jute machinery

(3) Rayon machinery

(4) Sugar machinery

(5) Tea machinery

(6) Mining machinery

(7) Metallurgical machinery

(8) Cement machinery

(9) Chemical machinery

(10) Pharmaceuticals machinery

(11) Paper machinery

B. General items of machinery used in several industries, such as the equipment required for various "unit processes" :

(1) Size reduction equipment-crushers, all mills, and the like

(2) Conveying equipment - bucket elevators, skip hoists, cranes, derricks and the like.

(3) Size separation units - screens, classifiers and the like

(4) Mixers and reactors - Kneading mills, turbo mixers and the like

(5) Filtration equipment - filter presses, rotary filters and the like

(6) Centrifugal machines

(7) Evaporators

(8) Distillation equipment

(9) Crystallises

(10) Driers

(11) Power-driven pumps - reciprocating, centrifugal, and the like

(12) Air and gas compressors and vacuum pipes (excluding electrical furnaces)

(13) Refrigeration plants for industrial use

(14) Fire-fighting equipment and appliances including fire engines

C. Other items of industrial machinery :

(1) Ball, roller and tapered bearings

(2) Speed reduction units

(3) Grinding wheels and abrasives.

8. The item relevant for the present controversy is item No. (6) under the sub-heading "A". Heading 8 has been set out in full only with a view to see the context and setting in which this item appears. From the arrangement of heading 8, its division in three sub-headings A, B and C with a view to specifying separately, (i) the major items of specialised equipment used in specific industries, (ii) general items of machinery used in several industries, and (iii) other items of industrial machinery, it is evident that the classification has been made by the Legislature minutely with utmost care with the object of restricting the list of machinery falling under the particular sub-head to those specifically

included in the list of machinery set out therein. To understand the true content of item No. (6) of subheading "A" of heading 8, the said item may be set out independently of other items. So separated, it reads :

"8. Industrial Machinery :

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

(6) Mining machinery."

9. The question that arises for consideration is where on a proper and conjoint reading of section 80-I, item No. (4) of the Sixth Schedule and item No. (6) of sub-heading "A" of heading 8 of the First Schedule to the Industries (Development and Regulation) Act, mining safety lamps can be held to be "mining machinery" within the meaning of item No. (4) of the Sixth Schedule to the Income Tax Act as set out above. If the answer is in the affirmative, the assessee would be entitled to relief u/s 80-I otherwise not.

10. We have carefully considered the relevant provisions set out above. The scheme of section 80-I is clear. It intends to give some special deduction to a company by way of incentive in computation of its income in respect of its profits and gains attributable to any priority industry. Priority industry has been defined in clause (7) of section 80B to mean, inter alia, the business of manufacture or production of any one or more of the articles or things specified in the Sixth Schedule to the Act.

11. The item manufactured by the assessee-company in the instant case is the miner's safety cap lamp. The case of the assessee is that it is "mining machinery" falling under item No. (4) of the Sixth Schedule. The stand of the Revenue is that the product of the assessee cannot be held to be "mining machinery" even in the ordinary sense. We have given our careful consideration to the controversy. We find it difficult to accept the submission of the assessee for more than one reason. Firstly, item No. 8 of the First Schedule has restricted the various items enumerated under sub-head A thereof to "Major items of specialised equipment used in specific industries" and below this sub-head, it enumerated the various machinery falling under this sub-head which includes "mining machinery". The meaning of the expression "machinery" came up for consideration before the Supreme Court in COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., . The Supreme Court referred with approval to the definition of machinery given by the Privy Council in Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipality reported in ILR [1922] Cal 190 which was in the following terms (at page 53 ITR) :

"The word "machinery" when used in ordinary language prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter-dependent operation of their respective parts generate power, or evoke, modify,

apply or direct natural forces with the object in each case of effecting so definite and specific a result."

12. The Supreme Court reiterated the observation of the Privy Council that the word "machinery" "must mean something more than a collection of ordinary tools". It was held that the meaning given by the Privy Council to the word machinery, though given in a case which was not a tax case, should prevail in the Income Tax Act also unless there is something in the context. Applying the aforesaid test laid down by the Privy Council and approved by the Supreme Court to the facts of the present case, it is clear that mining safety lamp cannot be held to be mining machinery. At the most, it may be termed as an article or tool required for use in mining industry.

13. Learned counsel for the assessee submitted that in the instant case the facts necessary to decide whether these mining safety cap lamps are machinery or not, are not available, and, as such, this court should call for the supplementary statement of the case from the Tribunal. We do not find any force in this submission. The controversy in this case is regarding interpretation of an item of day-to-day use which is a pure question of law. No further facts are needed in this case to apply the test laid down by the Supreme Court in COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., and to decide whether the article "miner's safety cap lamps" can be termed as machinery or not.

14. In view of the foregoing discussions, we hold that the Tribunal was not correct in law in holding that mining safety lamps were mining machinery within the meaning of item N. (4) of the Sixth Schedule to the Income Tax Act and allowing the assessee-company relief u/s 80-I of the Act in respect of its income arising from the manufacture of such lamps. Accordingly, we answer the question referred to us by the Tribunal in the negative and in favour of the Revenue.

15. In view of the facts and circumstances of the case, we make no order as to costs.