
(1992) 02 CAL CK 0037

In the Calcutta High Court

Case No : Income-tax Reference No. 329 of 1987 in C.A. No. 372/ (Cal) of 1987

Commissioner of Income Tax

APPELLANT

Vs

Tribeni Tissues Ltd.

RESPONDENT

Date of Decision : 06-02-1992

Acts Referred:

Income Tax Act, 1961 — Section 32A, 43(1)

Citation : (1994) 119 CTR 476 : (1994) 206 ITR 92 : (1994) 74 TAXMAN 26

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : D. Pal and M. Seal, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Commissioner of Income Tax, West Bengal-H, the Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, and on a correct interpretation of the provisions of Section 32A of the Income Tax Act, 1961, the Tribunal was justified in law in holding that motors, electrical installations, underground cables, overhead cables and air-conditioning machines were part and parcel of the plant and machinery used for manufacturing tissue paper and in that view in allowing investment allowance on the said items of assets ?"

2. Shortly stated, the facts relating to the question are that the assessee in relation to assessment year 1978-79 claimed investment allowance on motors, electrical installations and underground cables, overhead cables, air-conditioning machines, tubewells and weighing machines to the correct value of Rs. 1,23,62,683. The Assessing Officer did not allow the investment allowance on the items on the ground that the electrical machines are in the nature of additional equipment and accessories which were not used in the actual manufacturing process. The Commissioner of Income Tax (Appeals), however, allowed the allowance holding that these items were plant and machinery for the purpose of

manufacture of tissue paper by the assessee. It was indicated that paper manufacturing is an integrated continuing process. The plant and machinery in question installed in the factory function as integral parts of the chain of the manufacturing process and, therefore, he directed the Inspecting Assistant Commissioner to allow investment allowance to the assessee.

3. Before the Tribunal, the Departmental representative urged that unless on facts it is established that these articles were part and parcel of the plant and machinery, the assessee could not be allowed investment allowance. The Departmental representative further particularly referred to the investment allowance on tubewells and the weighing machines and indicated that the tubewell and the weighing machines could not be considered as plant within the meaning of Section 32A. It was further indicated by him that if air-conditioning machines were installed in the office, it could not be said that the services were wholly used for the purpose of the business of the assessee. Accordingly, it was urged that the finding given by the Commissioner of Income Tax (Appeals) on this issue should be modified.

4. Counsel for the assessee, on the other hand, very strongly supported the order of the Commissioner of Income Tax (Appeals) on this issue and urged that the assessee was manufacturing tissue paper and the articles are part of the plant and machinery and, therefore, the Commissioner of Income Tax (Appeals) was justified in allowing investment allowance. He further indicated that the tubewell of the assessee was not an ordinary one. It was a deep-sunk tubewell. The water is essential for the manufacture of tissue paper and, therefore, the tubewell also can be considered as plant. He also indicated that the weighing machine is necessary for production and, therefore, there could not be any objection for the investment allowance to the weighing machine.

5. The Tribunal held that the assessee was manufacturing tissue paper. Most of the items enumerated above were essential parts of the machines which were required for the manufacture of tissue paper. The motor or the electrical installation or the underground cable itself independently cannot work unless this becomes part and parcel of the machine. Under the circumstances, there could not be any dispute on the facts regarding the investment allowance to the assessee on motors, electrical installations, underground cables, overhead cables and air-conditioning machines. However, the assessee was not entitled for allowance of relief on tubewell and weighing machines. The tubewells and weighing machines could not be considered as plant and machinery within the meaning of Section 32A of the Act. Even after considering the nature of use of tubewell and weighing machines, the assessee could not be allowed investment allowance and consequently the relief allowed on these items by the Commissioner of Income Tax (Appeals) was withdrawn.

6. Before us, Dr. Pal, learned counsel for the assessee, canvassed the same arguments as were urged by him before the Tribunal. The cardinal point in his argument is that the plant and machinery in question are functionally integrated

into the manufacturing process. Paper manufacture is an integrated continuing process. The plant and machinery in question installed in the factory actually function as integral parts of the chain in the manufacturing process. There can be no room for dispute on the facts regarding the investment allowance on motors, electrical installations, underground cables, overhead cables and air-conditioning machine.

7. Learned counsel for the Revenue, however, urged that the basic premise that the items in question formed part and parcel of the plant and machinery of the assessee for the purpose of production of paper remains to be established. It was also stressed that air-conditioning machines were installed in the office and were not, therefore, eligible for the allowance. The Revenue also questioned the factum of the air-conditioning services being wholly used for the purpose of business of the assessee.

8. Dr. Pal, learned counsel for the assessee, however, opposed this line of argument of the Revenue. He pointed out that there could not be a dispute on the facts regarding the use of the items for the purpose of business. The Tribunal has found as a fact that the items in question were installed and used for the purpose of manufacturing tissue paper. The said finding being one of fact and the finding not having been challenged by a specific question, it cannot be raised or referred to this court at this stage.

9. We have considered the rival contentions. The Tribunal has found that motors, electrical installations, underground cables and overhead cables and air-conditioning machines are used for the purpose of business. The only question that remains is whether these items could be plant and machinery to qualify for the investment allowance. The expression "plant" is in fact not defined. The definition that is available in Section 43(1) is merely an inclusive one and not exhaustive, but the courts have given the expression a meaning of the widest amplitude. It includes whatever apparatus is used by a businessman for carrying on his business not being his stock-in-trade. It can thus encompass all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. The Supreme Court in *Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh*, has quoted with approval the observations to this effect of Lindley L. J. in *Yarmouth v. France* [1887] 19 QBD 647 as approved by the House of Lords in *Hinton v. Maden and Ireland Ltd.* [1960] 39 ITR 357 ; [1959] 38 TC 391, 412 to 414.

10. Dr. Pal also pointed out that the items in question here are already treated as machinery and plant for the purpose of depreciation. For this purpose, he drew our attention to the depreciation charge in Appendix I to the Income Tax Rules, setting out the Table of rates at which the depreciation is admissible on plant and machinery.

11. Part III deals with machinery and plant. Part III(ii)(A)(2) refers to overhead cables and wires, and Part (III)(ii)(B)(2) refers to air-conditioning machinery

including room air-conditioners. Below the illustration given at page 553 of Part II of Palkhivala's Law and Practice of Income Tax, Seventh edition, the rules provide that no extra shift allowance is to be allowed in respect of machinery set out in items Nos. (1) to (10). Item No. (10) refers to weighing machines. Therefore, in respect of those items normal depreciation will be allowed only as plant and machinery as they have been specifically referred to as plant and machinery.

12. Thus it cannot be a matter of controversy whether or not the items for which the investment allowance is claimed are machinery or plant. It is, however, to be noted that the Assessing Officer did not allow the investment allowance on the items on the ground that the items are in the nature of additional equipment and accessories which were not used in the actual manufacturing process. From the draft of the language used by him it appears that he does not contest that the machines and the equipment were not used for the purpose of business, but he had made a demarcation as between machines and equipment used directly in the manufacturing process and machines and equipment used in the accessory part of the manufacturing process. So the manufacturing process itself has been split into two parts : the actual manufacturing process and the accessory manufacturing process.

13. In our opinion, such division, of the manufacturing process does not stand to reason or practicality. One may or may not conceive of certain parts or stages of the process as principal process and the rest as accessory process, but that makes no difference to the fact that all processes taken together constitute an indivisible integral process. As a matter of fact, all machinery and equipment that are necessary to make the assessee's manufacturing unit in a state of operational integration pertain to its manufacturing process because there cannot be any manufacture unless this operational integration is achieved after installation of the plant and the plant goes operational. Therefore, any machinery or plant having a link, however minor, in the total process of the operational integration should be taken as machinery or plant pertaining to the manufacturing process.

14. For the reasons aforesaid, we answer the question in the affirmative and against the Revenue and in favour of the assessee.

15. There will be no order as to costs.

Shyamal Kumar Sen, J.

16. I agree.