
(1981) 04 GUJ CK 0024

In the Gujarat High Court

Case No : Income-tax Reference No. 94 of 1977

Commissioner of Income Tax, Gujarat-I

APPELLANT

Vs

Satellite Engineering Ltd.

RESPONDENT

Date of Decision : 03-04-1981

Acts Referred:

Income Tax Act, 1961 — Section 80

Citation : (1982) 136 ITR 607

Hon'ble Judges : Thakkar, J;R.C. Mankad, J

Bench : Division Bench

Advocate : N.U. Raval, for the Appellant; J.P. Shah, for the Respondent

Judgement

Thakkar, J.—Unhappy as it makes us, we are obliged to decline to answer the question of law referred to us and to remit the matter to the Income Tax Appellate Tribunal for reasons which will become evident presently. An important question as to whether the assessee-company was a priority industry within the meaning of the relevant entry in Sch. VI to the I.T. Act, 1961, as it stood at the material time in the concerned assessment year (1970-71) was decided against the assessee-company by the Commissioner of Income Tax, who did so on an interpretation of the relevant entry of the Schedule and in the light of the material placed before the competent authority by the assessee. Oblivious of these two crucial dimensions and without evincing any awareness thereof, the decision was reversed by the Income Tax Appellate Tribunal on totally irrelevant consideration by its order dated June 19, 1976, as per annex. C. That is why we will not be in a position to answer the two question referred to us as per statement of case dated March 4, 1977. We will have to adopt the course which was adopted by the Supreme Court in COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD., , and will have to remit the matter to the Tribunal for a fresh decision in the light of the opinion expressed by us in the course of this judgment.

2. The two questions which have been referred to us turn on the interpretation of

item No. (17) of the Schedule in the context of the benefit available under s. 80I of the Act, as it stood at the material time. They are :

"1. Whether, on the facts and in the circumstances of the case, the assessee is a priority industry within the meaning of item No. (17) of the Fifth and Sixth Schedules to the Income Tax Act, 1961, and as such entitled to the allowance of the claim for the deduction u/s 80I of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the assessee is entitled to the development rebate at a higher rate on the basis that it is a priority industry within, the meaning of item No. (17) of the Fifth and Sixth Schedules to the Income Tax Act, 1961 ?"

3. The ITO assumed that the items manufactured by the assessee-company, namely, fluorescent starters and glow lamp switches were covered by item No. (17) of the said Schedule as it stood at the material time. The said item No. (17) runs as follow :

"(17) Electronic equipment, namely, radar equipment, computers electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components, such as valves, transistors, resistors condensers, coils, magnetic materials and microwave components."

4. The Commissioner approached the question as regards the right to claim the benefit under s. 80I read with Sch. VI with a focus on the interpretation of the aforesaid entry. The Commissioner has analysed item No. (17) and has taken the view that the item concerned has a restricted converge as is obvious from the circumstance that the expression "electronic equipment" is followed immediately by the term "namely" indicating that the items enumerated thereafter are the items falling within the sweep of the expression preceding the term "namely". The Commissioner has enumerated the electronic equipments specifically named in item (17) and has further proceeded to observe that the basic components referred to in the second part of item No. (17) must be the basic components of the electronic equipment as specified in the first part of item No. (17). In this view of the matter, he came to the conclusion that the ITO was in error in granting relief under s. 80I of the Act. In order to overturn the decision of the Commissioner, the Tribunal was of necessity required to examine the validity of the logical basis and the reasoning adopted by the Commissioner. If the Tribunal came to the conclusion that any error of fallacy had crept into the reasoning underlying the decision, the Tribunal had undoubted jurisdiction to reverse it. But before doing so, the basic premises on which the decision was erected and the validity of the propositions formulated by him had to be examined. Only thereafter in case an error was detected in the reasoning, the finding could have been reversed after demolishing the structure of the basis of the Commissioner's reasoning. The Tribunal also failed to do what was incumbent on it to do in order to reverse the decision of the Commissioner. The Tribunal shut its eyes to the basic reasoning and structure of the decision of the Commissioner, refused to

look at it or counter it by a rational process, but instead, built its decision on an altogether irrelevant circumstance on which nothing turned. It is a good illustration of non-nexus between the irrelevant circumstance and the conclusion. The conclusion is of the nature of non sequitur. The Tribunal, saying so with respect, made an altogether unwarranted and unrealistic approach. The Tribunal felt obsessed by the circumstance that the assessee-company had supplied its articles mainly to (1) Philips India Ltd., (2) Bajaj Electronics, and (3) Greaves Cotton. The Tribunal appears to have been overawed by the impression (may be a justified one) that these well-known companies manufacture sophisticated electronic goods. From these two postulates the Tribunal frog leaped to the impossible conclusion that items manufactured by the assessee-company, namely, fluorescent lamp starters and glow lamp switches, would fall under item No. (17) of Sch VI and would be eligible for relief under s. 80I of the Act. We can do no better than for the sake of fitness) to quote the reasoning of the Tribuna :

"We have examined the material on record along with the explanation, furnished by the assessee in response to the show-causes notice. We have also inquired of the assessee as to the parties to who the major sales are affected. We were informed that the sales are mainly made to Philips India Limited, Bajaj Electronics as well as Graves Cotton. These parties are said to manufacture sophisticated electronic goods. On examination of the material on record, and the technical details failed before us, we are satisfied that the assessee's case clearly fell within item No. (17) of the Fifth and Sixth Schedules and as such allowance of the claim for the deduction u/s 80I of the Act as well as the development rebate at a higher rate by the Income- tax Officer was in order."

5. Two points emerge from the aforesaid passage. The Tribunal has assumed, (1) that whatever is sold to these three companies would ipso facto clearly fall under items No. (17) of Sch. VI, (2) that the material on record and the technical details placed before the Tribunal by the assessee were sufficient to satisfy that the items manufactured by the assessee in respect of which relief was claimed fell within item No. (17) Who were the purchases was, saying so with respect, altogether irrelevant. The only relevant factor was as regards the nature and character of the articles manufactured by the assessee-company and the consequential question as to whether such an articles would fall within the parameters of item No. (17), as truly interpreted. The Tribunal has altogether failed to interpret item No. (17) though the interpretation of the entry and examination of its scope was the basis of the order of the Commissioner. We shall presently point out that the Commissioner was perfectly justified in taking the view which he had taken. But before we do so we must stress with emphasis, at the cost of repetition, that the question as to the parties to whom the articles manufactured by the assessee were sold was an altogether irrelevant question. What was material was to ascertain the exact nature of the articles manufactured by the assessee-company and to ascertain whether these articles manufactured by the assessee-company and to ascertain whether these articles fell within the specified named items in respect of which relief was granted by the Legislature

under s. 80I read with item No. (17) of Sch. VI Again, the Tribunal has altogether failed to examine, analyse or critically consider the material placed on the record by the assessee. The Tribunal has merely made a bold assertion without discussion how such material went to support the claim of the assessee for relief. The Judgment of the Tribunal is then altogether unsatisfactory in view of the aforesaid basic infirmities.

6. So far as the question of interpretation of item No. (17) is concerned, we have no manner of doubt that the interpretation placed by the Commissioner is the only possible interpretation that can be placed thereon. Item No. (17) opens with the specification of the articles in respect of which relief is being granted in a general way. It refers to electronic equipment. Having used the expression "electronic equipment", the Legislature has proceeded to enumerate the equipments which are, meant to be covered by the said expression "electronic equipment" and that is why the Legislature has used the expression "namely". When the Legislature used the expression "electronic equipment" and then proceeded to state which specified articles would fall within the sweep of that expression by using the word "namely" only by enumerating and identifying different types of equipment such as radar equipment, computers, electronic accounting and business machines, electronic control instrument, it is clear that the legislature wanted to grant relief in respect of these items of manufacture which fall within the expression "electronic equipment". In other words, item No. (17) contains the dictionary to the expression "electronic equipment" which is enumerative and exhaustive. The second part of item No. (17) relates to the basic components. In respect of the second part, the legislature has proceeded to illustrate the components which it has in mind by using the expression "such as". The Legislature says that the basic components, such as valves, transistors, resistors, condensers, coils, magnetic materials and microwave components, would qualify for exemption. In other words, even if there is a basic component which is not enumerated therein, if it is a basic component, such as the specified component, it would qualify for exemption. But the seminal question is-basic component of what ? On a true reading of item No. (17) the expression "basic component" is referable to the expression "electronic equipment" adverted to in the first part of item No. (17) and the specified items of electronic equipments enumerated by using the expression "namely" after the expression "electronic equipment" on the head thereof.

7. Learned counsel for the assessee called our attention to the principle laid down in *The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others*, , in support of his submission that in regard to the interpretation of a clause like the present one, we must, notwithstanding the scope of the entry, place and elastic interpretation so that "any" electronic component can be treated as falling within the scope of the aforesaid item No. (17). We do not think that we would be justified in doing so. In a matter of tax relief it is for the Legislature to decide which particular industry deserves to be encouraged and which particular industry producing which particular articles needs a special

treatment by way of special benefits. In such a matter it would not be possible for us to place an elastic interpretation and enlarge the scope of the entry, for we would be legislating in fiscal sphere and granting relief which the Legislature did not expressly grant by a process of interpretation. In other words, we, in the discharge of judicial function, would be granting relief in a way by amending the entry in such a manner that its visage is changed in the name of the nebulous elastic interpretation theory. We do not think that we have the jurisdiction to do so. Under the circumstances, we cannot accede to the submission of the learned counsel for the assessee in this behalf.

8. It was then argued that the list of priority industries in the Schedule to the I.T. Act should be read along with the list of priority industries as specified in Appendix. I to the volume of Import Trade Control Policy for the relevant year (popularly known as "Red Book") with an eye on achieving conformity. Now, the scope of the concept of priority industries for the purposes of import trade control in the Red Book, issued by the Ministry of commerce, is altogether different. The concept of priority industries has been introduced in para. 22 onwards in the Red Book. Sub-head (i) pertains to import of spare parts by priority industries, and sub-head (ii) pertains to import of raw materials and components by priority industries. Paragraph 37 relates to export effort by priority industries. The perspective in the concept of priority industries for the purposes of licensing in connection with the Import Trade Control Policy by the Ministry of Commerce is altogether different. Besides, App. I which enumerates the list of priority industries, contains as many as 59 items. As against this Sch. VI to the I.T. Act, which has been adverted to in s. 80I, mentions only 28 items. On a comparison of the two lists, it is evident that in the Red Book many more industries are treated as priority industries. A comparison of the two lists further shows that items at S. Nos. 3, 6, 14, 19, 21, 22, 25, 27, and 28 do not find place in the list of priority industries contained in the Red Book. Thus, it would be futile to contend that the list contained in the Red Book should be read along with the list embodied in Sch. VI. As these two lists have been prepared with an eye on different goals and from altogether incomparable standpoints it will be illogical to make a comparison. Even so we will advert to the argument advanced in this context. Our attention was called to item No. 24 of App. I of the Red Book, which reads as under :

"24. Electronic components".

9. In our opinion, we cannot read the description contained in entry 24 in place of item No. (17) which is altogether differently worded. Item No. (17) is mainly concerned with the "Electronic equipment" of the specified nature and the basic components thereof. Entry 24 in the Red Book pertains to "Electronic components" which will not cover the industry pertaining to "electronic equipment" of the specified nature. The expression "electronic equipment", which is specified in item No. (17), is a much wider expression. By no known principle or canon of interpretation we can substitute item No. 24 from App. I of the Red

Book in place of item No. (17) of Sch. VI of the I.T. Act. We are, accordingly, unable to countenance the submission urged by learned counsel for the assessee in this behalf. The Income Tax Appellate Tribunal had unfortunately not addressed itself to the question as to whether or not the articles manufactured by the assessee-company fall within the four corners of item No. (17) read with s. 80I as it then stood. Nor has the Tribunal considered the material on record in the light of the aforesaid item. And that is the reason why we are unable to answer the two question which have been referred to us. The answer must depend on whether or not the items manufactured by the assessee-company fall within the expression "basic components" specified in item No. (17) as interpreted by us. This question will have to be deduced on the basis of the material placed on record by the assessee. This has not been done by the Tribunal, and therefore, the matter will have to be remitted to the Tribunal for a fresh decision in accordance with law in the light of the interpretation placed by us in regard to item No. (17) having regard to the material placed by the assessee on the record, as was done in the case of COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD., .

10. We, therefore, decline to answer the question referred to us and remit the matter to the Tribunal for a fresh decision in accordance with law in the light of the observations made hereinabove. There will be no order as to costs.

11. Order accordingly.