(1989) 11 BOM CK 0004

In the Bombay High Court

Case No : IT APPEAL NO. 1851 (BOM.) OF 1986

FIRST Income Tax OFFICER — APPELLANT

Vs

QUALITY CINE LABORATORIES (P.) LTD. — RESPONDENT

Date of Decision : 15-11-1989

Acts Referred:
Income Tax Act, 1961 — Section 32A

Citation : (1990) 33 ITD 496 : (1990) 37 TTJ 282

Judgement

1. In this appeal the revenue challenges the decision of the Commissioner of Income Tax (Appeals) holding that the assessee company is entitled to investment allowance in respect of machinery and plant installed by it for the purpose of its business of processing and printing of cinematograph films.

2. The assessee is a private limited company engaged in the business of processing and printing of cinematograph films. This appeal arises from its Income Tax assessment for assessment year 1982-83 for which the previous year ended on 30-9-1981. The assessee had claimed a sum of Rs. 76,520 as investment allowance on account of new machinery installed in its business for the purpose of processing and printing of cinematograph films, amounting to Rs. 3,06,080. The Income Tax Officer disallowed the assessees claim for said investment allowance in the following words in the assessment order :

The assessee had claimed investment allowance of Rs. 76,520 on account of purchase of certain machineries. The assessee has submitted the details of purchase of machineries. On the scrutiny of the same it is found that the assessee has purchased machinery in processing and printing of cinematograph films amounting to Rs. 3,08,080 and has claimed 25% of the same being Rs. 76,520 as investment allowance. Investment allowance is not admissible to the assessee as the assessee is not engaged in manufacturing of any article or not even though it is a case of Small Scale Industrial Undertaking within the meaning of Section 32A of the I. T. Act. The assessee has also hired out the machines purchased and has not used the machineries for production of any article or thing for his own business. Hiring out of machineries has been separately treated as not business income of the assessee but income from other sources. Hence investment allowance is not admissible to the assessee and same is disallowed."

3. Aggrieved by this order the assessee preferred an appeal and contended before the CIT (A) that the machinery in question are three in number viz. Takita Optical Sound Reduction Printer, Punch & Notcher and a set of projectors, that these machines had been used by it for its own business and that the assessee had actually earned revenue by way of processing and printing to the extent of about Rs. 7 lakhs and that these machineries were not hired as assumed wrongly by the Income Tax Officer. It was pointed out that it had hired to sister concern M/s. Shortprints, some other machines which were different from the new machinery which was purchased and used by the assessee for its own business of processing and printing and that it was only in respect of this new machinery used for its own business, the assessee had claimed investment allowance. It was further argued that the assessee received raw films from the producers and produced release prints therefrom for supply to producers. It was submitted that for this purpose the raw prints were taken through printing machine, processing machine and the use is made of developer, fixer, bleacher and stabiliser. The release print is utilised for exhibition of the picture in the theatre. The assessee contended that this business carried on by the assessee amounted to manufacture or production of an article or thing. In support of this submission the assessee relied on definition of manufacture given in Corpus Juris Secundum and also on the decision of the Punjab and Haryana High Court in the case of Raghbir Chand Som Chand v. Excise and Taxation Officer [1960] 11 STC 149. On the strength of these authorities the assessee contended that a new and different article was produced by it from the negative films, namely the release prints. It was contended that the raw films had undergone various changes on account of recording of sound, voice, synchronising the different facts, as also taking into consideration the legal aspects of the censor etc. and that it was only when the release prints are prepared, that the same could be used for exhibition of the film in the theatres. The assessee therefore contended that it was engaged in the manufacture of articles which is totally different from the raw film from which it is produced, having different characteristics as well as different and distinct physical existence and that therefore its claim for investment allowance ought to have been granted by the ITO.

4. The Commissioner of Income Tax (Appeals) examined these contentions and found that there are two stages through which the assessees business was carried on. Firstly the raw films which is exposed by the cameraman is taken through various solutions like developers, fixer, etc., and after this stage a negative film is prepared. However, this negative film cannot be exhibited on the screen but only the final release print prepared therefrom can be exhibited. In this stage the original raw film which is used by the film producers with the necessary picture or image of the objects is only transformed into a negative film with the help of the solutions. The CIT (A) therefore held that during this stage

the assessees activities were only of processing and that the assessee could not be said to have produced or manufactured any article or thin when it prepares the negative films.

5. During the second stage, the Commissioner found that the negative film is used to prepare the release prints on the basis of work print, as it is only with reference to the work print that the necessary formalities of Censor Board, etc., are completed and the editing, dubbing or any other activities, are carried on. He pointed out that after this, the assessee prepares as many number of final release prints as are required by the producers and that thus in the second stage the appellant can be said to have manufactured or produced a release print which is physically and materially different from the negative film which is used for this purpose. He pointed out that once a negative film is prepared, thereafter the release print can be manufactured therefrom, that sometime the assessee receives negatives only for production of final release prints and that only release prints can be exhibited in the theatre in the form of a picture. The Commissioner therefore held that to the extent the assessee prepares the release print in the second stage as described above the assessee could be said to have produced or manufactured the article or thing within the meaning of sec. 32A of the Act. He further held that since the machinery in question namely Takita Optical Sound Reduction Printer was used during the second stage, the assessee was entitled to investment allowance on the cost thereof. He accepted the assessees plea that this machinery was not hired by the assessee to the others but was actually used for the purpose of its own business and that further the machinery actually hired was different and its description had been separately given in the assessment order by the ITO himself. The Commissioner also held that even on the basis of this argument, the ITO cannot reject the assessees claim in respect of machinery used in the second stage, described above in the manufacture of release prints, whose cost amounted to Rs. 3,06,080.

6. In support of his conclusion the CIT (A) relied on the following decisions :

1. Amiya Kumar Tarafdar v. ITO [1985] 14 ITD 172 (Cal.)

2. Anwar Khan Mehboob Co. v. State of Bombay [1960] 11 STC 698

3. A. Hajee Abdul Shakoor and Company Vs. State of Madras,

4. State of Madras Vs. Swastik Tobacco Factory, Vedaranyam,

5. Commissioner of Income Tax, Gujarat Vs. Ajay Printery Private Ltd., .

The Commissioner therefore finally held that the exposed raw films in the first stage only undergoes a change or it alternates its form before the conversion of raw films into negative film and that it amounts only to processing but that in the second stage with the help of the negative, the assessee prepares further prints on different films and these are final products for exhibition in the theatres. He held that since the assessees machinery was used in the second stage for the manufacture of release prints the assessee is entitled to investment allowance on the machinery. He further pointed out that the assessee had created the necessary investment allowance reserve. He also referred to the assessment order brought to his notice by the assessee in the case of its sister concern Quality Cine Labs (Karnataka) Pvt. Ltd., which carried on similar business, where such investment allowance was allowed by the ITO Co. Circle III for the assessment year 1981-82 and 1982-83. The CIT (A) therefore allowed the assessees appeal. It is this order of the CIT (A) which is being objected to by the revenue before the Tribunal.

7. Shri A. A. Makhija, the learned departmental representative, strenuously contended that the findings recorded by the ITO showed that the assessee was not engaged in the business of manufacture or production of an article or thing as contemplated by section 32A (2) (b) (iii) of the Act that the decision of the Calcutta Tribunal in the case of Amiya Kumar Tarafdar (supra) related to the case of production of still photographs and hence not applicable to the facts of the present case. He further argued that the activities carried on by the assessee amounted to only processing but not manufacturing or production of article or thing. Shri Makhija contended that the CIT (A) having rightly held that in the first stage of its activity the assessee was only processing the raw films when it converted it into a negative, ought to have further held that the release prints obtained by the assessee was also the result of processing only and that it would not amount to either manufacturing or production of an article or thing. He further submitted that even though the ITO seemed to have accepted the assessees claim that it was a small scale industrial undertaking, yet the assessee would not be entitled to any relief as its case would be hit by the exclusion clause contained in section 32A (2) (b) (iii) since the assessee was producing cinematograph films specified in item No. 9 of the 11th Schedule which was excluded from the benefit of investment allowance. Shri Makhija therefore argued that the order of the CIT (A) was therefore erroneous and unsustainable and that the same should be reversed.

8. On behalf of the appellant Shri Shivram the learned counsel placed before me a paper book containing the materials placed before the CIT (A) and submitted that the assessees case was squarely covered by the decision of the Appellate Tribunal in the case of Amiya Kumar Tarafdar (supra). He argued that the production of release print involved a manufacturing process on raw films as held by the CIT (A) and then the CIT (A) rightly accepted the assessees claim for investment allowance Shri V. H. Patil, assessees learned counsel, further, submitted that this decision of the Calcutta bench of the Tribunal in Amiya Kumar Tarafdars case (supra) has been quoted with approval by the Special bench decision in Daks Copy Services (P.) Ltd. v. ITO [1989] 30 ITD 223 and therefore the assessee was entitled to succeed in the present appeal. The learned counsel further pointed out that the case before the Special bench related to photocopying of documents with the help of xerox machine and the Special Bench held that such machine would qualify for investment allowance u/s 32A (2) (b) (iii) of the Act. The learned counsel further submitted that the reference

by the learned departmental representative to section 32A (2) (b) (iii) as well as item 9 of the 11th Schedule was mis-conceived, as the assessees case squarely falls within the section of 32A (2) (b) (ii) of the Act which applies to a Small Scale Industrial Undertaking. The learned counsel pointed out that the exclusion clause in sub-clause (iii) would not apply to sub-clause (ii) which would apply to the assessees case and that the ITO had accepted as a fact the assessee is a small scale industrial undertaking. He therefore submitted that the order of the CIT (A) was correct both on facts and in law and that the same should be upheld.

9. On a careful consideration of the submission urged by both sides and in the light of the materials placed before me, I am of the considered view that the decision of the CIT (A) is correct and that the same has to be upheld. The revenue does not dispute any of the facts found by the CIT (A) regarding the business activity that is carried on by the assessee company. There is also no dispute that the assessee is a small scale industrial undertaking as has been held by the ITO. As rightly contended on behalf of the assessee by Shri Patil, only section 32A (2) (b) (ii) would be applicable to the assessees case and not section 32A (2) (b) (iii) of the Act as contended by the revenue. Therefore the exclusion clause with reference to item 9 of the 11th Schedule would be of no assistance to the revenue in the present case.

10. The next question for consideration is whether the assessee can be said to have manufactured or produced an article or thing as contemplated by sec. 32A (2) (b) (ii) of the Act. The answer to this question is provided in the Special Bench decision of the Appellate Tribunal Daks Copy Services (P.) Ltd.s case (supra). The question before the Special Bench was whether investment allowance is allowable on xerox and photocopying machines for the assessment years 1982-83 and 1983-84 u/s 32A of the Act and the Special Bench held that such investment allowance was allowable. In this decision the Special bench has examined in great detail all the authorities bearing on the subject and also quoted with approval the decision in the case of Amiya Kumar Tarafdar (supra). I am therefore unable to agree with any of the contentions urged on behalf of the department as all these have been considered in great detail by the Special Bench. I therefore respectfully follow the said decisions of the Tribunal and confirm the order of the CIT (A).

11. In the result, the appeal is dismissed.

