
(1978) 03 CAL CK 0016

In the Calcutta High Court

Case No : Income-tax Reference No. 293 of 1975

Griffon Laboratories (P.) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-03-1978

Acts Referred:

Finance Act, 1966 — Section 2(7)
Income Tax Act, 1961 — Section 147

Citation : (1979) 119 ITR 145

Hon'ble Judges : Sudhindra Mohan Guha, J; Deb, J

Bench : Division Bench

Advocate : S.R. Banerjee and S.N. Mukherjee, for the Appellant; Ajit Sengupta and Prabir Majumdar, for the Respondent

Judgement

Deb, J.—In this reference u/s 256(1) of the I.T. Act, 1961, we are concerned with the following questions of law :

" 1, Whether, on the facts and circumstances of the case, the Tribunal was justified in upholding the reopening of the assessment u/s 147(b)?

2. Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the assessee was not a company engaged in the manufacture or processing of goods and was, therefore, not entitled to the concessional rates of tax under the respective Finance Acts ? "

2. The assessee is a private limited company and is engaged in pharmaceutical business. The assessment years are 1965-66 and 1966-67 and the relevant accounting years are calendar years 1964 and 1965, respectively.

3. In the assessment proceedings, the assessee was treated as a manufacturing concern and was taxed at concessional rates under the Finance Acts of 1965 and 1966, respectively. Thereafter, the Comptroller and Auditor-General of India raised certain objections in the audit report regarding the assessments. The ITO, after applying his mind to the said audit report, reasonably believed that the

income had escaped assessments in both the years and, accordingly, he reopened the assessments.

4. In the reassessment proceedings for the accounting year 1964, the ITO held that the assessee was not a manufacturer of those goods. He found that in the accounting year 1965, the assessee started a factory and incurred a net loss of Rs. 2,27,620 in the manufacturing activity. Accordingly, the ITO held that the assessee was not an industrial company in the accounting year 1965 and was, therefore, not entitled to the concessional rate. In those circumstances, the business income of the assessee was taxed by the ITO at the general rates in both the assessment years.

5. The assessee filed appeals. The AAC held that the assessee was not engaged in any manufacturing activities. He also held that the reopening was justified and dismissed the appeals.

6. The assessee filed further appeals. The Tribunal held that the reopening was justified. It was admitted on behalf of the assessee before the Tribunal that in the accounting year 1964, the assessee did not own or possess any plant or machinery and it entered into a manufacturing agreement with Messrs. Smith Stainstreet & Co. Ltd., under which the said company manufactured and produced medicines, cosmetic goods, etc., for the assessee, which the assessee, in turn, marketed.

7. It was argued before the Tribunal by the assessee's representative that the assessee was entitled to the concessional rate although it did not own or possess any plant or machinery for manufacturing those goods in the accounting year 1964. It was submitted on its behalf that by reading the aforesaid manufacturing agreement as a whole, it was clear that the overall control and management of the products manufactured by the said company was in the hands of the assessee and, accordingly, it should be held that the assessee was a manufacturer of those goods in the accounting year 1964. Reliance was also placed on its behalf on certain licences and certificates issued by the Government departments to show that the assessee was the manufacturer of those goods.

8. The Tribunal, however, held that the assessee was not a manufacturer of those goods as it did not own or possess any plant or machinery and caused those goods to be manufactured by the said company in the accounting year 1964. The Tribunal also sustained the order of the ITO for the assessment year 1965 and dismissed both the appeals.

9. Mr. S. R. Banerjee, learned counsel for the assessee, argues before us that the Tribunal was not justified in upholding the reopening, but in view of the decision of the Supreme Court in the case of R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), , his contention must fail and we return our answer to question No. 1 in the affirmative and against the assessee.

10. Now, briefly speaking, the Finance Act, 1965, provides that the concessional

rate of tax is payable by a company which is wholly or mainly engaged in the manufacture or processing of certain types of goods and the Finance Act, 1966, provides that the concessional rate of tax is payable by an industrial company. Section 2(7) of the Finance Act, 1966, inter alia, reads as follows:

" For the purposes of this section and the First Schedule,--...

(d) "industrial company" means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

Explanation.--For the purposes of this clause, a company shall be deemed to be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, if the income attributable to any of the aforesaid activities included in its total income for the previous year is not less than fifty one per cent. of such total income;... "

11. The Supreme Court has held in *Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo*, , that a manufacturer is a person by whom or under whose direction or control the goods are manufactured. In *Addl. Commissioner of Income Tax Vs. A. Mukherjee and Co. (P.) Ltd.*, , this court has held that a manufacturer need not possess any manufacturing plant or machinery.

12. A manufacturer may hire a plant or machinery and employ hired labour and manufacture the goods. But to earn the benefit of the concessional rate of tax a company must mainly engage itself in the manufacture or processing of goods specified in the aforesaid provisions either personally or by someone under its supervisory control or direction.

13. The Tribunal has, therefore, erred in holding that the assessee must own or possess the manufacturing plant or machinery before it can be said to be a manufacturer of goods. In the assessment year 1965-66, the Tribunal has not gone into the question as to whether the assessee caused those goods to be manufactured under its actual supervisory control or direction. Question No. 2, therefore, so far as it relates to the assessment year 1965-66, cannot be answered by us in the absence of any finding of the Tribunal of the fact indicated above. Accordingly, the Tribunal, after giving a reasonable opportunity to both the parties of being heard, shall ascertain the fact, namely, whether those goods were manufactured under the actual supervisory control or direction of the assessee by the aforesaid company and determine as to whether the assessee was mainly engaged in the manufacture and processing of those goods and was entitled to the concessional rate of tax in the assessment year 1965-66.

14. Now, as to the assessment year 1966-67. We are unable to accept the contention of Mr. Banerjee that the assessee is an industrial company. Though the assessee started a factory in the accounting year 1965, its manufacturing

activity resulted in a net loss of Rs. 2,27,620. Therefore, it cannot be said that the assessee was an industrial company in view of the Expln. to Section 2(7)(d) of the Finance Act, 1966, inasmuch as the income attributable to the aforesaid activity included in its total income for the accounting year 1965 was less than 51 per cent. of such total income. That apart, the assessee did not place any material before the Tribunal in support of its claim, namely, that it was mainly engaged in manufacture or processing of those goods in the accounting year 1965. In the premises, we return our answer to question No. 2 in the affirmative and against the assessee for the assessment year 1966-67. There will be no order as to costs.

Sudhindra Mohan Guha, J.

15. I agree.