
(1984) 05 BOM CK 0001

In the Bombay High Court

Case No : I. T. APPEAL NO. 1979 (BOM.) OF 1982

Income Tax OFFICER

APPELLANT

Vs

DHANRAJ MILLS (P.) LTD.

RESPONDENT

Date of Decision : 18-05-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1986) 17 ITD 457

Hon'ble Judges : S. N. Rotho, A.M.

Bench : Division Bench

Judgement

Per Shri S. N. Rotho, Accountant Member - This appeal has been filed by the department against the order dated 2-3-1982 of the Commissioner (Appeals) relating to the assessment year 1978-79, the previous year of which ended on 30-9-1977.

2. The assessee is a limited company deriving income from business in the processing of textile as well as in warehousing and constructional activities.

3. The first ground in this appeal states that the Commissioner (Appeals) erred in allowing deduction of Rs. 27,975 which was paid by the assessee as penalty to the municipal corporation. Shri D. Agarwala, the learned departmental representative urged before us that the Commissioner (Appeals) erred in his decision. On the other hand, Shri Desai, the learned representative for the assessee, supported the action of the Commissioner (Appeals).

4. We find that the Commissioner (Appeals) has followed the order dated 29-9-1981 of the Tribunal in IT Appeal No. 2830 (Bom.) of 1980 wherein a similar point has been decided in favour of the assessee. Respectfully following the aforesaid decision, we uphold the action of the Commissioner (Appeals) on this point and reject this ground.

5. The only other ground in this appeal states that the Commissioner (Appeals) erred in deleting the addition of Rs. 6,0262 and Rs. 4,160 being retrenchment

compensation and gratuity respectively paid by the assessee to its employees. In the directors report for the earlier assessment year the directors stated that the proceeding business carried on by the assessee was a losing proposition and was not economical and so, that business was being tapered off with a view to close down the same ultimate. In the directors report for the year under consideration, it has been stated as pointed out in the last years report, the process house working was not economical and this was proved by the figures and facts and the management has gradually slackened down the activities of the process of which have been utilised towards reduction of the companys liabilities under the scheme. On the closing of warehousing business, the assessee become liable to pay retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947 and gratuity under the Payment of Gratuity Act, 1972. It is to be noted that the assessee continued to carry on the other business activities. It is also apparent from the report of the directors that the processing business was closed during the year under consideration which implies that it was carried on at least for some time during this year. The assessee claimed the sums of Rs. 6,062 and Rs. 4,160 as deductible expenses while computing its profits. The ITO disallowed the claim on the only ground that the processing business was closed, and so the expenses could not be allowed because they related to a closed business.

6. The assessee appealed to the Commissioner (Appeals) and reiterated its claim. The Commissioner (Appeals) found that the assessee closed only one department, but carried on the business in other departments. He also found that the reason for closing the processing business was to prevent loss which was in the interest of the business which was continued. He referred to the decision in the case of Ambala Cantt. Electric Supply Corporation Ltd. Vs. Commissioner of Income Tax, for the proposition that phrase for the purpose of the business used in section 37 of the Income Tax Act, 196, has a wide import. According to him the purpose for which the payments were made were actually incidental to and were incurred in the interest of the business, that was still carried on. In this view of the matter, he allowed the claim of the assessee.

7. Shri D. Agarwala, the learned representative for the department, argued before us that the decision of the Commissioner (Appeals) was erroneous. He stated that it was not clear as to whether the processing business was closed during the previous year under consideration. Secondly, he urged that the proceedings business was entirely different from the other business activities, and, so, the expenses relating to the former could not be allowed while computing the profits of the latter. He relied on the decision in the cases of Commissioner of Income Tax, Kerala Vs. Gemini Cashew Sales Corporation, Quilon, and L.M. Chhabda and Sons Vs. Commissioner of Income Tax, Gujarat, in support of his contention. He also referred to the decision in the case of Ritz Continental Hotels Ltd. Vs. Commissioner of Income Tax, Central-II, in this connection.

8. Shri Desai, the learned representative for the assessee, on the other hand,

supported the order of the Commissioner (Appeals). He stated that the processing business was carried on for some time during the year under consideration, as has been stated in the directors report of the year under consideration. He urged that all the business activities carried on by the assessee were interlinked and interlaced with a common management and control, and that they were not independent business activities. He relied on the decision in the case of Commissioner of Income Tax, Delhi Vs. Delhi Safe Deposit Company Limited, in support of his contention.

9. We have considered the contentions of both the parties as well as the facts on record. As stated earlier in this order, there is no evidence to hold that the processing business was closed before the commencement of the previous year under consideration. On the other hand, the directors report shows that the business was closed only during the year under consideration which means that the expenses under consideration were claimed while computing the income of another business. Further, there is force in the contention raised by the assessee that the processing business was not an independent one, but was so interlinked with the other activities carried on by the assessee as to be regarded as a part of the same business, though in a different department. Hence, we agree with the conclusion of the Commissioner (Appeals) that the expenses incurred because of the closure of the processing business had to be allowed as a deduction while computing the business income of the assessee for the year under consideration.

10. We have considered the decision in the case of Gemini Cashew Sales Corpn. (supra), but we find that the facts of that case were different. That was a case where the expenses were incurred u/s 25FF and not u/s 25FF of the Industrial Disputes Act. It is stated as below :

"As already observed, that the liability to pay retrenchment compensation arose for the first time after the closure of the business and not before. It arose not in the carrying on the business, but on account of the transfer of the business. During the entire period that the business was continuing, there was no liability to pay retrenchment compensation. The liability which arose on transfer of the business was not of a revenue nature...." (p. 649)

In that case there was a transfer of the business and the business was entirely closed by the assessee-firm which ceased to exist after the transfer. In the case before us, there is no transfer of business, and the same assessee continued to do the business, even after the closure of one of the department of its business. Hence, the decision in the case of Gemini Cashew Sales Corpn. (supra) is not applicable to the facts of the case. Similarly, the decision in the cases of L. M. Chhabda (supra) and Ritz Continental Hotels Ltd. (supra) relate to cases where one independent business is closed and the expenses relating thereto was claimed against the income of another business. We have already found that the assessee before us was claiming the expenses against another business which was closed during the year, and not against another business. Hence, these two cases are also of no help to the department.

11. On the other hand, we find support for the above conclusion of ours by the decision of the Supreme Court in the case of Delhi Safe Deposit Co. Ltd. (supra), wherein it has been held that -

"The true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trader" (p. 760)

We find that the expenses under consideration have been incurred for keeping the other business activities going and making them pay, and so, the ratio of the aforesaid decision applies to the facts of this case. Similarly, in the case of Sassoon J. David and Co. Pvt. Ltd., Bombay Vs. Commissioner of Income Tax , Bombay, , the Supreme Court has observed as below :

"... It is too late in the day now, whatever may have been the position about two decades ago, to treat the expenditure incurred by a management in paying reasonable sums by way of gratuity, bouns, retrenchment compensation or compensation for termination of service as not business expenditure. Such expenditure would ordinarily fall within the scope of section 10(2) (xv) of the Act...." (p. 271)

The above observation of the Supreme Court directly supports the decision of the Commissioner (Appeals).

12. For the above reasons, we uphold the order of the Commissioner Appeals) on this point and reject this ground also.

13. In the result, the appeal is dismissed.