(2010) 12 KL CK 0145

In the High Court Of Kerala

Case No : Income Tax A. No. 84 of 2009

Midas Polymer Compounds (P) Ltd. APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:
Income Tax Act, 1961 — Section 32A, 80IB

Citation : (2011) 1 ILR (Ker) 330 : (2011) 1 KLJ 589 : (2011) 197 TAXMAN 481

Hon'ble Judges : P.N. Ravindran, J;C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Full Bench

Advocate : S. Ganesh and Joseph Kodianthara and Terry V. James, for the Appellant; Jose Joseph, S.C. for Income Tax, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—This is an appeal filed by the Assessee challenging the order of the Income Tax Appellate Tribunal confirming disallowance of it''s claim for deduction u/s 80IB of the Income Tax Act. When the appeal was taken up before the Division Bench, Assessee relied on another Division Bench judgment of this Court in Commissioner of Income Tax Vs. Forbes Ewart and Figgis P. Ltd., , and contended that the said decision, though rendered in the context of Assessee''s entitlement for investment allowance u/s 32A of the Act, is applicable for considering eligibility for deduction u/s 80IB of the Act and so much so, appeal should be allowed by following the said decision. However, the Division Bench prima facie doubted whether processing of goods done for another party by the Assessee could be treated as manufacture or production of any article or thing for the purpose of deduction u/s 80IB of the Act. Accordingly, for a detailed consideration of correctness of the said decision, the matter was referred to the Full Bench. We have heard senior counsel, Sri S. Ganesh appearing along with Advocate Sri Joseph Kodianthara for the Assessee, and standing counsel appearing for the Respondent-revenue.

2. The Assessee is engaged in manufacture of precured tread rubber and is also

engaged in the job work of mixing of rubber with chemicals, process oil, etc. to make compound rubber for tyre manufacturing companies. The compound rubber is packed and sent to tyre companies for use in manufacture of tyres. The Assessee claimed deduction u/s 80IB at 25% of the profit earned from the industry wherein rubber mixing work was done as a job work for tyre manufacturing companies. The assessing officer held that the job work done by the Assessee by mixing rubber with chemicals, process oil, etc., to make compound rubber does not amount to "manufacture or production of any article or thing" within the meaning of Section 80IB and so much so Assessee is not entitled to any deduction. The disallowance was confirmed in two level appeals, and against the Tribunal''s order, the Assessee has filed this appeal.

3. The Assessee''s counsel mainly relied on the decision of the Division Bench of this Court in Commissioner of Income Tax Vs. Forbes Ewart and Figgis P. Ltd., ; and several other decisions, particularly that of the Supreme Court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, ; and Commissioner of Income Tax Vs. Sesa Goa Ltd., ; and contended that these decisions support the claim of the Assessee. Standing counsel appearing for the Respondent on the other hand submitted that decision of this Court relied on by the Assessee is in respect of investment allowance u/s 32A and the decisions of the Supreme Court relied on by the Assessee are also not in the context of Section 80IB of the Act.

4. The only question to be considered is whether production of compound rubber on job work for the tyre manufacturing companies by the Assessee amounts to "production of an article or thing" qualifying for deduction u/s 80IB of the Act. The Division Bench decision of this Court above referred is clearly on the point, though in the context of investment allowance u/s 32A, because Assessee in that case also was engaged in making of compound rubber for tyre manufacturing companies. This Court held that compound rubber is an article or thing produced by the Assessee in their factory entitling it for investment allowance. We notice that Section 80IB is worded in the same way as Section 32A and therefore the Division Bench decision of this Court squarely applies to the facts of this case also. It is also seen from the two decisions of the Supreme Court that Supreme Court has given a wide meaning to the expressions "manufacture or production of any article or thing", occurring in Sections 32A, 80IB, etc. In the Sesa Goa Ltd.''s case, the Supreme Court held that processing of iron ore amounts to manufecture or production of any article or thing. In N.C. Budharaja and Co.''s case, the Supreme Court held as follows:

The word "production" or "produce" when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. it also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods.

What is made clear by the Supreme Court is that even production of intermediary products is sufficient to entitle the Assessee for deduction available to new industrial unit. Compound rubber produced by the Assessee on job work for the tyre manufacturing companies is an intermediary from which tyre is manufactured. If processing of iron ore which is only raw material for producing iron therefrom, amounts to manufacture or production of any article or thing, then we see no reason why compound rubber cannot be treated as an article produced by the Assessee though for the tyre manufacturing company under contract In other words, there is nothing in the Section to indicate that article or thing produced or manufactured should be final product in itself. So much so, the activity of the Assessee in their new industrial unit, which is mixing rubber with chemicals, process oil, etc., making compound rubber, is covered by Section 80IB of the Act. We notice that the Tribunal has disallowed the claim by following the decision of the Supreme Court in Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair, . What was considered in that case was Assessee''s entitlement to treat processing charges received as part of export profit for the purpose of deduction u/s 80HHC of the Act. We do not think the said decision has any application to the facts of this case. We therefore hold that Assessee is entitled to deduction u/s 80IB in respect of profit derived by the industrial unit where compound rubber is made.

5. Assessee has raised another issue that is whether interest earned by the new industrial unit qualifies for deduction u/s 80IB of the Act Deduction u/s 80IB is admissible on the profit earned by the new industrial unit. Even though it is stated that interest received is from the tyre manufacturing companies for belated payment of charges for job work done, details are not placed before us. If interest is assessable as business income then only it qualifies for deduction u/s 80IB of the Act as part of profit earned. On this issue, we feel the decision of the Supreme Court in K. Ravindranathan Nair''s case referred above applies. We therefore remand this issue for the assessing officer to reconsider the same with reference to the facts and court decisions.

In the result appeal is allowed as stated above.