

(2000) 08 GUJ CK 0031

In the Gujarat High Court

Case No : IT Ref. No. 7 of 1985 29 August 2000 A.Y. 1976-77 to 1978-79

MIHIR TEXTILE LTD.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 32A, 35B

Citation : (2001) 170 CTR 606

Hon'ble Judges : D.M. Dharmadhikari, C.J.;A.R. Dave, J

Bench : Full Bench

Advocate : J.P. Shah, for the Assessee and Manish R. Bhatt, for the Revenue, for the Appellant;

Judgement

By the court

This reference is at the instance of the assessee u/s 256(1) of the Income Tax Act. The following questions of law have been referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that payment for bank guarantee commission was an expenditure of capital nature ? (For assessment years 1976-77 to 1978-79).

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that expenditure due to exchange rate difference was an expenditure of capital nature ? (For assessment years 1976-77 to 1977-78).

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that export insurance and freight, export packing charges and export stitching charges were not eligible for weighted deduction u/s 35B of the Act ? (For assessment year 1978-79).

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the claim of the assessee for investment allowance u/s 32A with reference to electric installation, electrification in workshop and extension of

cable trench ? (For assessment year 1978-79).

5. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that expenditure in connection with issue of bonus expenditure (sic-shares) was expenditure of capital nature and not deductible in computation of total income ? (For assessment year 1978-79).

2. Learned counsel appearing for the assessee and revenue do not dispute that the questions Nos. 1,2,3, and 5 are covered by the decisions of the Supreme Court and High Court.

3. The question No. 1 is answered in favour of the assessee to be concluded by the decision of the Supreme Court in Commissioner of Income Tax Vs. Siwakami Mills Ltd., .

4. The question No. 2 is concluded against the assessee by the decision in New India Industries Ltd. Vs. Commissioner of Income Tax, and Mihir Textiles Ltd. Vs. Commissioner of Income Tax, .

5. The question No. 3 for weighted deduction u/s 35B of the Income Tax Act for export insurance, freight is concluded against the assessee by decision in Commissioner of Income Tax Vs. Official Liquidator of Ahmedabad Mfg. and Calico Ptg. Co. Ltd., and so far as export stitching charges is concerned, it is concluded against the assessee by the decision in Isabgul Export Corporation Vs. Commissioner of Income Tax, .

6. The question No. 5 is also concluded against the assessee by the decision of the Supreme Court in Brooke Bond India Limited Vs. Commissioner of Income Tax, West Bengal-III, Calcutta, .

6A. The only question that survives for being answered by us is question No. 4 which is as under :

"4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the claim of the assessee for investment allowance u/s 32A with reference to electric installation, electrification in workshop and extension of cable trench ? (For assessment year 1978-79)."

At the outset, learned counsel did not press his claim for investment allowance u/s 32A for cable trench as the amount involved is very small. On behalf of the assessee, however claim for investment allowance u/s 32A with reference to electric installation and electrification in workshop has been pressed.

7. As is pointed out by the learned counsel for the assessee in the assessment order, the assessee had claimed a sum of Rs. 15,492 as investment allowance for electric installation in loom shed and Rs. 30,843 for electrification in mechanical workshop. The said claim for investment allowance has been disallowed. The Commissioner (Appeals) maintained the disallowance by observing :

"22.2. Regarding items No. 5, 6 and 7, these are electric installation and unless it

is established that they are part and parcel of the plant and machinery then only investment allowance is admissible. The description given does not indicate that these can be treated as part and parcel of the machinery and plant. These are electrical installation supplying power to the plant and machinery. The Income Tax Officer is right, therefore, in rejecting the claim of the assessee investment allowance on these items."

The Tribunal maintained the disallowance by observing in its order thus :

"31. After hearing both the parties, we are of the opinion that the assessee's claim was rightly rejected insofar as electrification work is concerned. So far as cost of trolley is concerned the assessee's claim must succeed as it would be a part of the plant used in the process of manufacture of textiles. The claim in this regard is, therefore, allowed. The assessee has claimed investment allowance in respect of the following items :

Rs.

1.

Duplicating machine

11,655

2.

Electric calculating machine for the factory

5,625

3.

Typewriter in the factory

3,903

4.

Internal telephone installed in the factory

1,618

5.

Electric installation in loom shed

15,492

6.

Electrification in mechanical workshop

30,843

7.

Extension of cable trench

2,416

The authorities below rejected the claim of the assessee on the ground that (sic) such items of machinery which are purchased by the assessee and used in the production or manufacture of articles or things. Since the aforesaid items did not fulfil above test the claim of the assessee was not tenable. In our opinion the assessee's claim has been rightly rejected except in regard to item No. 4 relating to internal telephone. So far as this item is concerned in view of the decision in Commissioner of Income Tax Vs. Mohan Meakin Breweries Ltd., the assessee's claim in regard to the said item must succeed."

8. Learned counsel for the assessee placed reliance on Division Bench decision of Calcutta High Court in Commissioner of Income Tax Vs. Tribeni Tissues Ltd., and in the Division Bench decision of the Bombay High Court in Zenith Steel Pipes Ltd. (No. 1) (Now Zenith Ltd.) Vs. Commissioner of Income Tax, . The taxing authorities have disallowed the claim for investment allowance u/s 32A by holding that electrification and electrical installation were not investment for the plant.

9. For the purpose of availing investment allowance u/s 32A of the Act, the equipments or installations even though not directly used in the manufacturing process should be necessary for it. The Division Bench decision of the Calcutta High Court in the case of Tribeni Tissues Ltd. (supra) rejecting the similar contention of the revenue, held as under, with which we find ourselves in respectful agreement :

"that the assessing officer had made a demarcation as between machines and equipment used directly in the manufacturing process and machines and equipments used in the accessory part of the manufacturing process and did not stand to reason or practicality. One may or may not conceive of certain parts or stages of the process as principal process and the rest as accessory process but that makes no difference to the fact that all processes taken together constitute an indivisible integral process. As the matter of fact, all machinery and equipment that is necessary to make the assessee's manufacturing unit in a state of operational integration pertain to its manufacturing process, because there could not be any manufacture unless this operational integration was achieved after installation of the plant and the plant goes operational. Therefore, any machinery or plant having a link, however minor, in the total process of the operational integration should be taken as machinery or plant pertaining to the manufacturing process. Therefore, the assessee was entitled to investment allowance u/s 32A on motors, electric installations, underground cables, overhead cables and air-conditioning machines."

From the judgment of the Tribunal, we find that item No. 14 i.e., claim for investment allowance for telephone installation in the sum of Rs. 1,680 was allowed on the decision Sivakami Mills Ltd. Vs. Commissioner of Income Tax, .

Having thus allowed telephone installation charges as investment allowances, it is rather surprising that the Tribunal did not accept the claim of the assessee for investment allowance so far as the electrical installations and electrification in the electrical installations and electrification in mechanical workshop. It is not difficult to see that the electrical installations and electrification in mechanical workshop were necessary for the manufacturing processes in the plant. The decision of the Division Bench of the Bombay High Court in the case of Zenith Steel Pipes Ltd. (supra) also fully supports the contention advanced on behalf of the assessee.

10. For the reasons discussed above, in our opinion, the question No. 4 on the claim of the assessee for investment allowance u/s 32A of the Act with respect to electrical installation and electrification in mechanical workshop has to be allowed. The question No. 4 is answered in favour of the assessee. The reference application is accordingly disposed of with no orders as to costs.