

(1986) 01 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 215 of 1983

Mittal Ice and Cold Storage

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 07-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 32A, 32A(2)

Citation : (1986) 52 CTR 123 : (1986) 159 ITR 18 : (1986) 25 TAXMAN 1

Hon'ble Judges : K.L. Shrivastava, J;G.G. Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar and D.D. Vyas, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in rejecting the assessee's claim for investment allowance u/s 32A(2)(b) of the Income Tax Act, 1961, by holding also that the definition of the word "manufacturing process" i.e., undergoing a change as a result of cold storage operation, given in Section 2(k) of the Factories Act, 1948, will not be imported for the purpose of allowing investment allowance to the assessee ?"

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee is a registered firm deriving its income by operating a cold storage plant. For the assessment year 1979-80, the assessee filed a return disclosing loss of Rs. 19,250 by claiming deduction of Rs. 92,639 by way of investment allowance, under the provisions of Section 32A of the Act. The Income Tax Officer rejected that claim on the ground that the plant and machinery of a cold storage plant were not used for the purpose of manufacture or production of any article or thing and, hence, the assessee was not entitled to deduction of any

investment allowance u/s 32A of the Act. The appeal preferred by the assessee in that behalf was, however, allowed by the Appellate Assistant Commissioner who held that the assessee was entitled to the investment allowance, as provided by Section 32A of the Act. Aggrieved by the order passed by the Appellate Assistant Commissioner, the Department preferred an appeal before the Tribunal. The Tribunal held that the plant and machinery of a cold storage plant were not used for manufacturing or producing any article or thing and, hence, the Appellate Assistant Commissioner was wrong in holding that the assessee was entitled to claim deduction on account of investment allowance, as provided by Section 32A of the Act. Aggrieved by the order passed by the Tribunal, the assessee sought a reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

3. It was initially contended on behalf of the assessee that the process undertaken in a cold storage plant was a process of treating the goods or articles with a view to preserve them for sale and, hence, it was a manufacturing process. It was also contended that in any event, the operation of a cold storage plant resulted in the manufacture of cool air and the assessee must, therefore, be held to be carrying on the business of manufacturing cool air. Reliance was placed on the decision in Commissioner of Income Tax Vs. Yamuna Cold Storage, . In reply, the learned counsel for the Revenue contended relying on The Delhi Cold Storage (P) Ltd. Vs. The Commissioner of Income Tax, B Delhi-1, New Delhi, that operation of a cold storage plant did not result in manufacture or production of any article or thing.

4. Before we proceed to appreciate the contentions advanced on behalf of the parties, we have to bear in mind that for substantiating a claim for deduction of any sum by way of investment allowance, the assessee has to satisfy that the conditions prescribed by Section 32A of the Act are satisfied. In the instant case, the controversy centres round the question as to whether the plant and machinery installed by the assessee for its cold storage plant could be held to be one, for the purpose of business of manufacture or production of any article or thing, as envisaged by Clause (b)(ii) of Sub-section (2) of Section 32A of the Act. The question that arises for consideration in this case did not directly arise for consideration in Commissioner of Income Tax Vs. Yamuna Cold Storage, and The Delhi Cold Storage (P) Ltd. Vs. The Commissioner of Income Tax, B Delhi-1, New Delhi, . In Commissioner of Income Tax Vs. Yamuna Cold Storage, the question for consideration was whether the cold storage building was a "factory building" qualified for depreciation allowance under the Act. In that case, reference was made to the definition of the terms "factory" and "manufacturing process" occurring in the Factories Act, 1948, and it was held that the expression "manufacturing process" embraced the process of treating the goods in a cold storage plant with a view to preserve them for their use or sale. In The Delhi Cold Storage (P) Ltd. Vs. The Commissioner of Income Tax, B Delhi-1, New Delhi, it was held that a company engaged in the running of a cold storage plant could not be held to be an industrial company u/s 2(7)(c) of the Finance Act, 1973, In

the instant case, as already observed, the main question that arises for consideration is whether the operation of a cold storage plant by the assessee amounts to carrying on the business of manufacture or production of any article or thing.

5. Now, the words "manufacture" and "production" are not defined in the Act, It has been held by the Supreme Court in *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, that it is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. The Tribunal was, therefore, right in holding that the definition of the words "manufacturing process" in the Factories Act, 1948, could not be imported into Section 32A of the Act. It is well settled that when any Act does not define a word used in that Act, the Legislature must be taken to have used that word in its ordinary dictionary meaning (See *South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others*, .

6. In common parlance, the words "make", "manufacture" and "produce" are all used as synonyms and they relate to the turning out of finished products by the shaping or combination of raw materials or parts. "Make" is the most general and informal word and can apply to any process of construction. "Manufacture" is narrower in scope while "produce" approaches the generality of "make" and stresses the neutral aspect of "manufacture". It emphasises the amount of a product turned out, without necessarily implying a process of mass production, as would be the case with "manufacture".

7. As held by the Supreme Court in *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Now, these words occur in Clause (b)(ii) of Sub-section (2) of Section 32A of the Act, which provides that deduction for investment allowance is admissible to an assessee if the conditions laid down in that provision are fulfilled. One of those conditions, which is relevant for the purpose of our enquiry, is that the plant and machinery should have been used by the assessee in a small scale industrial undertaking for the purposes of business of "manufacture" or "production" of any article or thing. The context in which the words "manufacture" and "production" occur goes to show that that which is manufactured or produced in the industrial undertaking is marketable, capable of being passed on from hand to hand as a commercial commodity. In this connection, it would be useful to refer to certain decisions, which throw light on the meaning of the word "manufacture" in the absence of any definition of that word in the relevant Act. In *G.R. Kulkarni Vs. The State*, a Division Bench of this court observed that though the word "manufacture" has got various shades of meaning, the essence of manufacture is the changing of one object into another for the purpose of making it marketable. In *Union of India (UOI) Vs. Delhi Cloth and General Mills*, it has been held that "processing" cannot be equated with "manufacturing" and that the word "manufacture", used as a verb, is generally understood to mean as "bringing into existence a new substance". In

that case, the Supreme Court approved the following passage quoted in Permanent Edition of Words and Phrases, volume 26:

"Manufacture implies a change, but every change is not manufacture and yet every change, of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation, a new and different article must emerge having a distinctive name, character or use."

8. In *Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo*, the question for consideration was whether the preparation of mixture of drugs by a medical practitioner amounted to a manufacture of medicines. The Supreme Court held that when a mixture of different drugs is prepared by a medical practitioner for the use of his patient/that mixture is normally incapable of being passed on from hand to hand as a commercial commodity and the medical practitioner cannot be held to have manufactured the mixture. It is true that the aforesaid decisions do not deal with the provisions of the Income Tax Act and the decisions rendered with reference to construction of one Act cannot be applied with reference to the provisions of another Act, when the two Acts are not in *pari materia*. But, as already observed, the aforesaid decisions merely throw some light on the meaning of the word "manufacture", in the absence of any definition of that word in the relevant Acts.

9. There is also another principle of construction of statutes that when a word is not defined in an Act, assistance may be taken from the use of that word in other parts of the Act to discover in what sense it has been used therein (see *Bhogilal Chunilal Pandya Vs. The State of Bombay*, . In this connection, reference may be made to the following proviso to Section 80J(1) of the Act :

"Provided that in relation to the profits and gains derived by an assessee, being a company, from an industrial undertaking, which begins to manufacture or produce articles or to operate its cold storage plant or plants after the 31st day of March, 1976, or from a ship which is first brought into use after that date, or from the business of a hotel, which starts functioning after that date, the provisions of this sub-section shall have effect as if for the words "six per cent.", the words " seven and a half per cent" had been substituted."

10. The aforesaid proviso goes to show that the expression "to manufacture or produce articles" does not take in the operation of a cold storage plant.

11. It is, thus, clear that as the words "manufacture" and "production" used in Clause b(ii) of Sub-section (2) of Section 32A of the Act are not defined in the Act, these words have to be understood in the context as meaning bringing into existence a new and distinct commercial commodity. Accordingly, it must be held that the provisions of Section 32A of the Act could not be invoked by the assessee as the operation of a cold storage plant does not result in bringing into existence any new and distinct marketable commodity. The articles or goods preserved in a cold storage plant remain the same as they were prior to such preservation. There is no manufacture or production of "cool air" as was urged

on behalf of the assessee because no marketable product is brought into existence by the operation of a cold storage plant. In our opinion, therefore, the Tribunal was justified in holding that the assessee was not entitled to claim investment allowance in respect of machinery of a cold storage plant operated by the assessee. The Tribunal, in our opinion, was also right in holding that the definition of the words "manufacturing process" in the Factories Act, 1948, could not be imported into the provisions of Section 32A of the Act.

12. For all these reasons, our answer to the question referred to this court by the Tribunal, is in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.