**(2013) 03 CAL CK 0049**

**In the Calcutta High Court**

**Case No :** WPTT No. 15 of 2012

Naffar Chandra Jute Mills Ltd. APPELLANT

Vs

State of West Bengal and Others RESPONDENT

**Date of Decision :** 05-03-2013

**Acts Referred:**

West Bengal Sales Tax Act, 1954 — Section 43(3), 43(5), 43(6)

**Citation :** (2013) 63 VST 104

**Hon'ble Judges :** Tarun Kumar Das, J;Girish Chandra Gupta, J

**Bench :** Division Bench

**Advocate :** J.P. Khaitan and Nirmalya Biswas, for the Appellant;Abhrathosh Majumder and Soumitra Mukherjee, for the Respondent

## Judgement

1. The undisputed facts and circumstances of the case are as follows:

In or about 1989 a reference was made to the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. By an order dated April 1, 1991 a rehabilitation scheme was sanctioned. On the basis of the prayer of the company the Board passed an order dated March 13, 1996 holding that the company had ceased to be a sick industrial company.

Mr. Khaitan, learned senior advocate appearing for the petitioner-company submitted that the company had really ceased to be sick in February 1995 and on that basis the prayer was made but the consequent order was passed by the BIFR on March 13, 1996. Prior to March 13, 1996 the company had been enjoying the benefit of deferment of payment of tax under the old Act. After the West Bengal Sales Tax Act, 1994 was introduced and the remission was made available to the jute industry u/s 43 thereof, the petitioner-company applied and obtained such benefit pursuant to an order dated August 31, 2001 for the period of five years commencing from July 30, 1995.

2. The company filed a revision petition against the order dated 31st August, 2001 which did not succeed. The company as such applied for review which was

dismissed on the merits. The company thereafter approached the Tribunal. The learned Tribunal rejected the contention of the company by its judgment and order dated June 11, 2010 which is now under challenge before us by the company.

3. Mr. Khaitan submitted that the authorities made a mistake in calculating the gross value of fixed capital assets for the purpose of making available the benefit of remission u/s 43 of the West Bengal Sales Tax Act, 1994. In support of his aforesaid submission he drew our attention to sub-section (3) of section 43 of the West Bengal Sales Tax Act and contended that the Legislature by a fiction has provided for treating a revived sick industrial unit as a newly set up industrial unit.

4. He drew our attention to the Explanation of sub-section (6) of section 43 of the West Bengal Sales Tax Act and contended that it was not the intention of the Legislature to take into account the depreciated value of the fixed capital assets. If that were the intention there was no reason why the provision under sub-section (3) of section 43 should have provided that a revived sick industrial unit will be treated as a newly set up industrial unit.

5. He then drew our attention to sub-section (5) of section 43 of the West Bengal Sales Tax Act and contended that in the event it is held that it is only the depreciated value of the fixed capital assets which shall be taken into account and the benefit already enjoyed by way of deferment under sub-section (3) of section 40 shall be deducted, in that case the position will be that what is sought to be given by the right hand is taken away by the left hand. He therefore contended that the gross value of the fixed capital assets has to be ascertained on the basis of the actual investment made by the company and not the depreciated value. He in support of his submission relied on a judgment in the case of Bhai Jaspal Singh and Another Vs. Assistant Commissioner of Commercial Taxes and Others, , wherein the following view was taken (page 465 in 35 VST):--

... A reading of the rule or the notification would not even suggest that while calculating the value of plant and machinery, depreciation of those equipment will have to be taken into consideration in computing the valuation of the plant and machinery. In our view, in computing the valuation of plant and machinery, only the cost price/purchase price of the equipment invested by the asses-see will have to be taken into account. The expression ''investment'' in plant and machinery is not subject to the impact of depreciation in the value of plant and machinery. Since the assessee''s investment is more than Rs. 5 lakhs before the periods in question and since the investment continues to remain unchanged, the assessee is not entitled to exemption from payment of sales tax either under the Rules or under the notification.

6. He also drew our attention to a judgment in the case of Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., wherein the apex court opined that a liberal construction was necessary. To be precise Mr. Khaitan

 

drew our attention to these lines from the penultimate paragraph of the report at page 434.

... It is necessary to remember that when a provision is made in the context of a law providing for concessional rates of tax for the purpose of encouraging an industrial activity, a liberal construction should be put upon the language of the statute...

7. Mr. Majumder, learned advocate appearing for the State submitted that the method for valuation has succinctly been laid down in the Explanation appended to section 43 and there is no scope for any construction far less a liberal construction. He added that the court should not be unmindful of the fact that there are industrial units who are not enjoying any of these benefits. They also have to survive and to compete with these units who are enjoying the benefit. Therefore an unhealthy situation in the market should not be created. He finally submitted that the valuation has been made on the basis of the facts and figures disclosed by the petitioner itself. The dispute was sought to be raised at a later stage by way of an afterthought in order to extract more benefit than permissible under the law.

8. We have considered the rival submissions advanced by the learned advocates appearing for the parties. It is not in dispute that the depreciated value of the fixed capital assets was disclosed by the petitioner itself for the purpose of availing of the benefit. It is also not in dispute that at the later stage they applied for revision of the value of the fixed assets which was not permitted by any of the authorities whosoever was approached. Speaking for ourselves we are of the opinion that it is the depreciated value of the fixed capital assets which could only have been taken into account and that was the reason why the petitioner itself had applied on that basis. In order to appreciate the issues involved it would be proper to set out section 43 of the West Bengal Sales Tax Act, 1994 in extenso which reads as follows:--

43. Deferment of payment of tax and remission of tax for sick industrial units.-- (1) A registered dealer in respect of such industrial unit in West Bengal as the State Government may, by general or special order, declare as a sick unit shall, subject to the other provisions of this section, be eligible for deferment of payment of tax or remission of tax according to the provisions of section 40 or section 41, as the case may be, where such unit is rehabilitated or revived by such dealer himself on or after the appointed day under any scheme approved by the State Government.

(2) The benefit of deferment of payment of tax u/s 40 or remission of tax u/s 41 shall be available to a new owner of the business relating to such unit if:--

(a) the ownership of such business is taken over by, and is transferred to, the new owner who:--

(i) is deemed to be registered as a transferee u/s 99, or

 

(ii) has been registered dealer prior to such transfer, or

(iii) gets himself registered on a date subsequent to such transfer, and

(b) such unit is rehabilitated or revived by such new owner on or after the appointed day under any scheme approved by the State Government in this behalf.

(3) A sick unit, after being rehabilitated or revived, shall be deemed to be a newly set up industrial unit in West Bengal, and the part of the eligible period, if any, for which the dealer availed of the benefit before the rehabilitation or revival, shall not be reckoned for computation of the eligible period for the dealer or transferee-dealer, as the case may be, after such rehabilitation or revival.

(4) The amount of tax or the aggregate of the amounts of tax payable by, or due from the dealer, upon rehabilitation or revival of such unit by the dealer himself or upon rehabilitation or revival by the new owner on transfer of the ownership of business relating to such unit under sub-section (2), shall be such percentage of the gross value of fixed capital assets on the date (on which the tax becomes payable for a return period in respect of sales of goods manufactured) in such unit following the rehabilitation or revival as prescribed u/s 40 or section 41, as the case may be.

(5) The amount of tax or the aggregate of the amounts of tax that such dealer, upon rehabilitation of such unit by the dealer himself or upon rehabilitation on transfer of the business relating to such unit under sub-section (2), is entitled to deferment under sub-section (3) of section 40 or remission of tax u/s 41, as the case may be, shall be reduced by the amount of tax in respect of which the dealer has enjoyed the benefit of deferment of payment of tax u/s 40 or remission of tax u/s 41, as the case may be, before rehabilitation or revival of the unit.

(6) A sick unit which, after being rehabilitated or revived on or after the 1st day of April, 1993 and before the appointed day, has enjoyed, or has been entitled to enjoy, the benefit of deferment of payment of tax or remission of tax in respect of such unit under the provisions of section 10-I of the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act VI of 1941) or section 8K of the West Bengal Sales Tax Act, 1954 (West Ben. Act IV of 1954), as the case may be, as they stood on the day immediately before the appointed day, shall continue to enjoy or to be entitled to enjoy such benefit in accordance with such provisions of the said Act.

Explanation.--The expression ''gross value of fixed capital assets'', in relation to a sick industrial unit, shall, for the purposes of section 40 or section 41, mean the value of the land, freehold or leasehold, office building excluding residential portion, factory shed, plant and machinery including productive equipments, and pollution control equipments, as stood on the date of rehabilitation or revival of such sick industrial unit, and the cost of new plant and machinery including productive equipments, and pollution control equipments, if any, purchased and installed by a dealer (after rehabilitation and revival of) in such sick industrial unit.

9. It would appear from the Explanation noticed above that the gross value of the fixed capital assets as stood on the date of rehabilitation/revival of a sick unit and the cost of new plant and machinery purchased and installed have to be taken into account. Therefore with respect to a new plant and machinery purchased and installed it is not difficult to find out the extent of investment because actual price paid can be taken into account. But with regard to the existing machinery or fixed capital assets the value which can be taken into account is the value which stood on the date of rehabilitation or revival of the sick unit.

10. Mr. Khaitan contended that the value of the machinery is that at which the machinery was purchased, the value of the land is the cost at which the land was purchased, which would also appear from the balance sheet. He submitted that the depreciated value cannot be taken into account because that was not the intention of the Legislature. If that were so the Legislature could have provided that the depreciated cost of the fixed capital assets shall be taken into account. The Legislature has not done so. We are not inclined to accept this submission for the following reasons:--

(a) Admittedly the fixed capital assets were purchased long before the relevant date.

(b) Admittedly the value of those capital assets had depreciated on the date of rehabilitation or revival.

(c) Admittedly the depreciated value was indicated in the balance sheet as on the date of rehabilitation or revival of the unit.

(d) Admittedly it is on the depreciated value of the fixed capital assets that the benefit was initially claimed by the petitioner.

(e) Before the learned Tribunal the following submissions were made:--

The applicant it is argued by the learned Senior Advocate, disclosed the value of fixed assets on land, buildings, machinery (general and electrical) at Rs. 6,12,75,085 as they stood on March 31, 1994 but such valuation, asserts the learned senior advocate, was made as per audited accounts and not as per requirement of section 43 of the 1994 Act.

(f) Admittedly in paragraph 2 of the application for revision against the order dated August 31, 2001, the following averments were made:--

That gross value of fixed capital assets was determined wrongly at Rs. 6,70,37,618 instead of Rs. 10,60,61,024.

11. The intention of the Legislature was to give the benefit in consonance with the capital outlay. The capital outlay as on the date of rehabilitation or revival

 

was the depreciated value of the capital assets and not the value at which they were purchased at one point of time. That was the reason why the Legislature used the expression "as stood on the date of rehabilitation or revival". No other meaning or construction can be given without adding or subtracting word or words from the language used by the Legislature. The judgments cited by Mr. Khaitan have no manner of application to the facts and circumstances of the case. The question for consideration in the case of Bhai Jaspal Singh and Another Vs. Assistant Commissioner of Commercial Taxes and Others, was the meaning of the word investment. In the case of Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., their Lordships opined in favour of liberal construction and not a strained construction.

12. We are as such of the opinion that no interference with the order of the Tribunal is called for. The writ petition is, as such, dismissed.

13. Parties shall bear their own costs. Urgent Xerox certified copy of this judgment, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

 