
(1992) 05 CAL CK 0029

In the Calcutta High Court

Case No : Income-tax Reference No. 124 of 1991

Pieco Electronics and Electricals Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-05-1992

Acts Referred:

Income Tax Act, 1961 — Section 154, 32A

Citation : (1994) 205 ITR 469

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Shyamal Kumar Sen, J.—Pursuant to the direction of this court u/s 256(2) of the Income Tax Act, 1961, the following questions were referred by the Tribunal :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that a plain and bare reading of item No. 12 of the Eleventh Schedule shows that electric bulbs and fittings are covered by the said item and that there cannot conceivably be two opinions in the matter ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that machinery used for manufacture of electric bulbs and fittings is not entitled to investment allowance u/s 32A of the Act ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that grant of investment allowance in the original assessment in respect of machinery used for manufacture of electric bulbs and fittings was a mistake apparent from the records which could be rectified u/s 154 of the Act ?"

2. The facts, briefly stated and as appear from the statement of case, are that the original assessment in this case for the assessment year 1978-79 was made on June 26, 1981. In the original assessment, investment allowance as claimed by the assessee was allowed. Subsequently, the Inspecting Assistant Commissioner (Assessment) proposed rectification of the original assessment on the grounds, inter alia, that the investment allowance was wrongly granted in

respect of machinery installed at Loni factory, Kalwa Factory, Industrial Complex, Instruments Factory at Pimpri, Calcutta factory and Luminaire factory at Calcutta. A notice was issued u/s 154 informing the assessee that excessive relief was allowed to it in the original assessment. The Inspecting Assistant Commissioner (Assessment), after hearing the authorised representative of the assessee, held that, in the assessment order there was a mistake apparent from the record. The Inspecting Assistant Commissioner (Assessment) withdrew the investment allowance in respect of various plant and machinery at factories at (i) Loni, (ii) Kalwa Factory Industrial Complex, (iii) Industrial Factory at Pimpri, (iv) Instrument Factory Division, (v) Calcutta factory and (vi) Luminaire factory.

3. Against the said order of the Inspecting Assistant Commissioner (Assessment) u/s 154, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) who was of the view that the machinery used for manufacturing bulbs and electric fittings is not entitled to investment allowance. He, however, upheld the contention advanced on behalf of the assessee that the issue relating to investment allowance on machinery for manufacture of bulbs and electric fittings is a debatable one and that any amendment in the original order is merely due to a change of opinion and, therefore, beyond the ambit of Section 154. He further held that the provisions of Section 154 could not have been invoked for rectifying the assessment order on the point. Both the parties, feeling aggrieved by the order of the Commissioner of Income Tax (Appeals), came up in appeal before the Tribunal.

4. The Tribunal, after considering the facts and circumstances of the case and after hearing the parties, held that electric bulbs and fittings are clearly domestic electrical appliances as they are normally used in households and also in hotels, restaurants, hostels, offices, etc. The Tribunal further held that, in view of Explanation to item No. 12 of the Eleventh Schedule which defines "domestic electrical appliances", no interpretation of the aforesaid expression or of the word "appliance" is involved. It was further held that a plain and bare reading of item No. 12 shows that electric bulbs and fittings are covered under this item with the result that machinery for manufacture of electric bulbs and fittings falling under item No. 12 are not entitled to investment allowance in view of the clear provisions contained in Sub-clause (iii) of Clause (b) of Section 32A(2). In this view of the matter, it was further held by the Tribunal that, in the original assessment wherein investment allowance was allowed on the aforesaid machinery, there was a mistake apparent from the record and such a mistake was rectifiable u/s 154. The Tribunal further expressed the opinion that the matter is not debatable. It was finally held by the Tribunal that the Inspecting Assistant Commissioner (Assessment) was empowered u/s 154 to rectify the assessment order on this point by withdrawing investment allowance on the aforesaid machinery.

5. Although three questions have been referred, they turn upon the issue as to whether electric bulbs and fittings are covered by item No. 12 to the Eleventh

Schedule and in any event whether the order passed by the Income Tax Officer allowing investment allowance u/s 32A of the Act on the plant and machinery used for the manufacture of electric bulbs and fittings can be rectified in a proceeding u/s 154 of the Income Tax Act, 1961.

6. It has been submitted on behalf of the assessee that the decision of the Tribunal is not sustainable in law. The submissions of the assessee are as follows :

7. Section 32A of the Act allows investment allowance on the plant and machinery owned by an assessee and is wholly used for the purpose of business carried on by him. Section 32A(2) of the Act lays down, inter alia, that plant and machinery which are entitled to investment allowance shall be used for the purposes of the business of construction, manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule. The case of the Revenue is that electric bulbs and fittings fall under item No. 12 of the Eleventh Schedule. Item No. 12 of the Eleventh Schedule runs as follows:

" Domestic electrical appliances, not falling under any other item in this list."

8. The question, therefore, arises whether electric bulbs and fittings fall under item No. 12 of the Eleventh Schedule to the Act. In this connection, it may be pointed out that the assessee had all along submitted that it has manufactured at its Kalwa Industrial Complex, electrical lighting bulbs, fluorescent lighting tubes and components, fluorescent powder, high wattage lamps for industrial and public light (e.g., mercury vapour lamps, halogen lamps), infra ray medical apparatus, photographic lamps and other special purpose lamps.

9. The assessee also had submitted that, at its Luminaire factory, the assessee manufactures electric light fittings. The said factual position is not controverted by the Revenue. Therefore, it is not correct to say that, at the Kalwa Industrial Complex, the assessee uses the plant and machinery only for the purposes of electric bulbs and fittings.

10. On these facts, the question arises as to whether these articles can be treated as domestic electrical appliances falling under item No. 12 of the Eleventh Schedule. Item No. 12 of the Eleventh Schedule to the Act, in its Explanation, defines "domestic electrical appliances" to mean, electrical appliances normally used in households and similar appliances used in places, such as, hotels, restaurants, hostels, offices, educational institutions and hospitals. The word "appliance", according to the Random House Dictionary, means, "an instrument, apparatus or device for a particular purpose or use ; a piece of equipment, usually operated electrically, especially for use in houses or for performance of domestic chores such as refractory, washing machines, toaster, electric shaver, electric stove, electric oven, etc.

11. In this connection, our attention was drawn to the judgment and decision of

the, Madhya Pradesh High Court in the case of Commissioner of Income Tax Vs. Kalpana Lamp Components Pvt. Ltd., . It was held that fluorescent tubes manufactured by the assessee are articles of general use not necessarily confined to domestic use. It was further held that it cannot be held that the said article is used for performing the routine task of a house-keeper or of a person in charge of hotels, restaurants, offices, educational institutions, hostels, etc. The High Court, therefore, allowed investment allowance on plant and machinery used in the manufacture of electric tubes.

12. It was submitted on behalf of the assessee that, in view of the ratio of the said decision, electric bulbs and fluorescent tubes are not domestic electrical appliances. Such articles are of general use and not necessarily confined to domestic use.

13. In this connection, reference may be made to the provisions of Section 32A(2A) of the Act. The said section provides that the deduction under Sub-section (1) of Section 32A of the Act shall not be denied in respect of any machinery or plant installed and used mainly for the purposes of the business of manufacture or production of any article or thing, not being an article or thing specified in the list in the Eleventh Schedule, by reason only that such machinery or plant is also used for the purposes of the business of manufacture or production of any article or thing specified in the said list.

14. It has further submitted that, in Kalwa Industrial Complex, the assessee manufactures not only electrical lighting bulbs and fluorescent lighting tubes but also components thereof and also manufactures fluorescent powder, high wattage lamps for industrial and public lighting, infra and medical apparatus, photographic lamps and other special purpose lamps. These articles cannot, in any event, be treated as domestic electrical appliances and plant and machinery used for the manufacture of such articles are entitled to investment allowance as such articles, by any stretch of imagination, cannot fall under item No. 12 of the Eleventh Schedule.

15. In any event, the fittings which are manufactured by the assessee in its Luminaire factory cannot be treated as domestic electrical appliances. Hence, investment allowance on plant and machinery used in the manufacture of electric light fittings (at Luminaire factory) cannot be denied.

16. It was further urged that, when two views are possible, the view which favours the taxpayer should be accepted.

17. Our attention was also drawn to the judgment and decision in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , wherein it was held that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record.

18. The judgment and decision in the case of Commissioner of Income Tax Vs. Purtabpore Co. Ltd., was also relied upon by the learned advocate for the assessee in support of his contention. In that case, the assessee owned and ran a sugar mill on a seasonal basis. During the accounting year relevant to the assessment year 1963-64, the sugar mill was run for 132 days. In the original assessment, which was completed in March, 1968, the Income Tax Officer allowed the assessee extra shift allowance for the whole year. In May, 1968, the High Court held in Ganesh Sugar Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, III, , that the extra shift allowance for seasonal factories had to be allowed in proportion to the actual number of days for which the plant and machinery had worked extra shift. In March, 1969, the Income Tax Officer passed an order of rectification withdrawing the excess depreciation allowed. The Tribunal held that, in the absence of a Supreme Court decision on the point, it could not be said that the issue was free from doubt and, hence, the order, of rectification was not valid.

19. On a reference, it was held that the validity of the action of the Income Tax Officer must be judged on the facts as they were at the time when the action was taken. When the said rectification was made in March, 1969, no decision of any other High Court taking a contrary view was referred to the Income Tax Officer or for that matter to the Appellate Assistant Commissioner or the Tribunal. All the High Courts had since held uniformly that extra shift allowance for seasonal factories had to be allowed in proportion to the actual number of days for which the plant and machinery had worked extra shift. The language of the provision was also unambiguous. After the decision of the High Court, there was a mistake apparent from the record of the assessment. The order of rectification was, therefore, valid.

20. Considering the facts and circumstances of the case before us, it appears that the question whether electric bulbs and fittings fall under item No. 12 of the Eleventh Schedule to the Act is highly debatable, especially when the assessee has also manufactured, apart from electric bulbs and fittings, fluorescent lighting tubes and components, fluorescent powder, high wattage lamps for industrial and public light infra ray medical apparatus, photographic lamps and other special purpose lamps.

21. Under such circumstances, it cannot be definitely said that, at the Kalwa Industrial Complex, the assessee uses the plant and machinery only for the purposes of electric bulbs and fittings. Taking into consideration the several decisions cited and also on the facts on record, it does not appear to us that there is any apparent error or mistake which calls for interference u/s 154. We are of the view that the issue relating to investment allowance on machinery for manufacture of bulbs and electric fittings is highly debatable. Any amendment of the original order in such a case is thus merely a change of opinion and is, therefore, beyond the ambit of Section 154.

22. All the aforesaid questions are, therefore, answered in the negative and in

favour of the assessee and against the Revenue.

23. There will be no order as to costs.

Ajit K. Sengupta, J.

24. I agree.