

(1990) 01 BOM CK 0005
In the Bombay High Court
Case No : IT APPEAL NO. 238 (PUNE) OF 1988

SECOND Income Tax OFFICER

APPELLANT

Vs

BANDEKAR ENGINEERS.

RESPONDENT

Date of Decision : 29-01-1990

Acts Referred:

Finance Act, 1966 — Section 2(7)(d)
Income Tax Act, 1961 — Section 80HH

Citation : (1990) 33 ITD 680

Judgement

Per Bench - This is an appeal by the revenue which is directed against the order of the CIT (A) wherein he held that the assessee who designed, manufactured and erected the cyclone system was eligible for deduction u/s 80HH as the activity of the assessee amounted to manufacture as the end-product was different from the raw materials used. Reliance was placed on the decision of the Orissa High Court in the case of CIT v. N. C. Budharaja & Co. [1980] 121 ITR 213. Revenue has taken grounds to urge that the CIT (A) erred in his decision on the ground that the said judgment was not accepted by the department and the activity of the assessee only amounted to processing and not manufacturing.

2. The assessee is a registered firm. The original assessment for the assessment year 1980-81 was made on 16-2-1983 but it was set aside by the CIT in his revisional order with direction to consider and give clear finding as to whether the assessee was entitled to relief u/s. 80HH in accordance with the provisions of law. The ITO made consequential order. He noticed that the assessee had obtained contract from M/s. Hindustan Copper Ltd. for designing, fabricating, installation and supply of cyclone system. After referring to various authorities on the question of definition regarding "manufacture". The ITO concluded that the activity of the assessee at best be termed as only processing and certainly not manufacturing. Therefore, he held that the assessee was not eligible for deduction u/s. 80HH.

3. On appeal, the CIT (A) held that the activity of the assessee amounted to manufacture as the end product was different from the raw materials used.

Consequently, the assessee was entitled to relief u/s. 80HH, in view of the ratio of the decision of the Orissa High Court in the case of N. C. Budharaja & Co. (supra).

4. At the time of hearing, the learned departmental representative, reiterated the grounds and relied on the decision of the Bombay High Court in the case of Commissioner of Income Tax Bombay City-I Vs. N.U.C. Private Ltd., and the decision of the Bombay High Court in the case of CIT v. Shah Construction Co. Ltd [1983] 142 ITR 696.

5. The learned counsel for the assessee, on the other hand, relied on the decision of the Bombay High Court in the case of Commissioner of Income Tax, Bombay City I Vs. Tata Locomotive and Engineering Co. Ltd., wherein it has been held that assembling of automotive bus or truck chassis from imported parts in a knocked down condition would give rise to an article which is totally different from the parts and would amount to manufacture. He also submitted that there was no civil construction involved, but the assessee is an engineering contractor and what is manufactured by the assessee was sold as such and therefore, the assessee was entitled to the relief allowed by the CIT (A).

6. We have duly considered the rival submissions. At the outset, we have to point out that section 80HH requires that there should be profits and gains derived from an "industrial undertaking" or business of a hotel. Therefore, the criterion is whether the undertaking of the assessee amounted to industrial undertaking or not. The decisions cited by the learned departmental representative are not apt to the case before us, because the decision of the Bombay High Court in the case of N. U. C. (P.) Ltd. (supra) turned on the definition of "industrial company" as given in section 2(7) (d) of the Finance Act, 1966 and which definition was not applicable to the case of a company other than that engaged in construction of ships. In that case, the assessee was one which was engaged in the construction and repair of buildings and therefore it did not fit in with the definition of industrial company contained in the Finance Act. The Bombay High Court has duly noticed the decision of the Orissa High Court in the case of N. C. Budharaja & Co. (supra) and observed that, that decision was concerned with the expression "industrial undertaking" in section 80HH of the Income Tax Act, 1961 and has not dissented from it because of the circumstances in which that decision was rendered. The Bombay High Court has preferred to follow the definition of industrial company and therefore, concluded that the assessee who was engaged in construction and repairs of buildings was not an industrial undertaking, though it manufactured windows and door frames and concrete slabs and beams which related to the business of the company and which are done in the process of construction and repair of building. Therefore, this case law is not helpful to the department. The decision of the Bombay High Court in the case of Shah Construction Co. (supra) is also not helpful to the revenue as that case was concerned with rebate admissible under Finance Act, 1964 which is granted to an assessee who is engaged in manufacture or processing of goods,

but declined the relief on the finding of the Tribunal that though the assessee was required to carry out some processing activity such as mixing of certain materials to make it concrete, conversion of boulders into stones and so on, such processing activity was incidental or subsidiary to the main activity of construction. The requirement of section 80HH is manufacture or production of articles. The contention of the learned counsel for the assessee, at the time of hearing, was that the assessee did produce articles which were different from the components assembled and in view of the categorical decision of the Bombay High Court in the case of Tata Locomotive & Engg. Co. Ltd (supra), it was not necessary that the materials with which a commodity is manufactured should lose their identity. In fact, the definition of the word "manufacture" laid down by the Bombay High Court would apply with all force to the case of the assessee. The order of the CIT (A) came to the conclusion that this activity amounted to manufacture as the end product is different from the raw materials used. Consequently, he has held that the assessee was entitled to deduction u/s. 80HH following the judgment of the Orissa High Court in the case of N. C. Budharaja & Co. (supra) as the assessee satisfied all the conditions of section 80HH. Keeping in view of the ratio of the Bombay High Court in the case of Tata Locomotive & Engg. Co. Ltd. (supra), we uphold the order of the CIT (A) and reject the grounds taken by the revenue.

7. In the result, the appeal is dismissed.