

Ramakem (P.) Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jun-21-1991

Reported in : (1991)39ITD197(Mum.)

Judge : U Shah, Vice, M Ajinkya

Appellant : Ramakem (P.) Ltd.

Respondent : inspecting Assistant

Judgement :

1. In this appeal, the assessee is contesting the order passed by the IAC (Assessment) under Section 104 of the Act and raising additional tax of Rs. 8,01,524.

2. The assessee is a company. The assessment year is 1983-84 and the relevant previous year ended on 30th June, 1982.

3. As per the assessment framed under Section 143(3) of the Act, the status of the assessee was taken by the IAC as "Company (Industrial Co.

in which public are not substantially interested)". In the body of the assessment order, the IAC has observed that the business of" the assessee primarily consists of two activities, viz., (i) processing of intermediate dyestuffs at its factory in Kurla, Bombay and (it) trading in dyes manufactured by others.

4. During the relevant year, the assessee had declared dividend of Rs. 6,00,000. The IAC was of the view that since the assessee had declared dividend which was less than 60 percent (the statutory percentage) of distributable income, the assessee would be hit by the provisions of Section 104 of the Act. Further, the IAC noticed that the assessee should be treated as 'Trading Company' since the purchase of finished products amounting to Rs. 2,44,52,016 had been shown in the manufacturing account which otherwise should have been rightly debited to the Trading account. Viewed in this manner, the trading activities of the assessee would be more than 51 per cent. He, therefore, issued a notice on the assessee to show cause why the provisions of Section 104 of the Act could not be attracted in its case. The assessee resisted the action of the IAC on the ground that it was engaged in manufacturing/processing activity and that therefore the provisions of Section 104 of the Act would not be applicable to it by virtue of Sub-section (4) of Section 104 of the Act. In this connection, it was stated before the IAC that the assessee purchases standardised dyes which are further processed by drying pulverisation and standardisation to prepare dyes as per the special requirement of its customers. In doing so, the dyes so purchased are given special treatment of salt/soda to get different shades. It was further stated that even assuming for the sake of argument that the assessee is not carrying on 100 per cent manufacturing/processing activities, the products sold by it have to be bifurcated into the one which has undergone processing and the one which was simply procured and sold in the market.

Provisions of Section 104 of the Act would not be applicable in respect of the profits made on the sale of the processed dyes. Giving facts and figures in this regard, the assessee wanted to impress upon the IAC that the dividend declared by it was much more than it was statutorily required to declare and therefore the provisions of Section 104 were not applicable in its case. The IAC, however, overruled the contentions of the assessee and passed an order under Section 104 of the Act whereby he raised additional demand of tax of Rs. 8,01,524. The reasons given by the IAC for rejecting the assessee's claim have been summarised by the CIT(A) as under: (i) The appellant has shown purchases of finished products amounting to Rs. 2,44,52,016 in the manufacturing account which if rightly debited to trading account would take the trading activities of the

appellant to more than 51%.

(ii) The only plant and machinery owned by the appellant was 4 to 5 mixtures with varying capacity and two pulverisors. Apart from this the factory premises were used as a godown for storing dyes.

(iii) The appellant purchases the standardised dyes which are basically the finished products having undergone drying pulverisation and standardisation. It only carries out secondary formulation without changing its chemical computation and usage by mixing up of different finished products with special salt or soda or purely mixing up of different dyes in order to get its shades.

(iv) The appellant's purchases are of raw materials in the form of finished products on which even Excise duty was paid. These can also be used as dyes.

(v) From the bifurcation of statement of manufacturing trading and profit and loss account filed by the assessee, it is seen that the opening balance of finished products was Rs. 38,53,378. As against this, the opening finished products as shown in Balance-sheet Schedule 13, Note "Information pursuant to paras 3 and 4 (c) of Part-II of Schedule VI of the Companies Act, 1956, was shown at Rs. 3,81,771 under the head 'Actual Production in Kgs.'.

(vi) The appellant has shown licensed capacity and/or installed capacity as nil. If the appellant was manufacturing company it should have maintained the licensed and installed capacity.

5. Before the CIT(A), apart from reiterating the submissions which were made before the I AC, the assessee also submitted that since in the assessment framed under Section 143(3) of the Act, the Assessing Officer had treated it as an Industrial company, he ought not to have invoked the provisions of Section 104 of the Act. The assessee once again explained to the CIT(A) the activities carried on by it in the following manner: Two or more duty paid formulated, standardised and prepared dyestuffs bought from dyestuff manufacturers are further blended in a Ball Mill for 6 to 8 hours till satisfactory physical blending of the ingredients is achieved. If necessary this material is then pulverised in order to obtain a fine

powder. The dyestuff is packed in different packings according to the requirements of the customer before being sold. In this process, the dyestuffs which are used are excise duty paid dyestuffs and this process does not involve any chemical reaction hence it is exempted from excise duty.

and submitted that since it was engaged in processing activity, if not manufacturing activity, the provisions of Section 104 of the Act were not applicable to it. It was also stated before the CIT(A) that the Government of Maharashtra has issued registration/ licence to the assessee on the ground that it is carrying on manufacturing activity in its factory. Similarly the B.E.S.T. Undertaking also raises the electricity bill on the basis that the assessee owns a factory and carries on manufacturing activity. Reliance was also placed on a letter dated 22-11-1985 of the Chairman CBDT addressed to one Sri C.D. Patel, MP. The assessee had also produced a copy of the Registration Certificate granted under Section 22 of the Bombay Sales Tax Act wherein the assessee was treated as a manufacturer. Finally relying on the decision of the Hon'ble Supreme Court in the case of Chowgule & Co.

Ltd. v. Union of India [1981] 47 STC 124, it was submitted that even blending of various dyes and making a different marketable product would amount to "processing" and therefore, the provisions of Section 104 of the Act would not be applicable in its case. On the basis of the assessee's submissions, the CIT(A) had obtained the comments of the IAC wherein he stated that by blending dyes, there is no transformation of the existing dyes into a different distinctive dyes. The IAC also pointed out that in a letter dated 18-3-1986 addressed to the Collector of Central Excise by the Dyestuff Manufacturers Association of India, it was contended that the activities carried on by its Members could not be termed as "manufacturer".

In his order under appeal, after recapitulating the submissions of the rival parties and adverting to the aforesaid decision of the Hon'ble Supreme Court the CIT(A) upheld the action of the IAC in the following manner : Besides in the facts of that case there was blending of different qualities of ore whereas in the case of the appellant, all that the appellant was doing was to produce different shades. As

pointed out by the IAC in his order, the appellant is purchasing standardised dyes which are basically the finished products and it is carrying out only the secondary formulation without changing its chemical composition, usage. No new item is thus produced. Only shades whether light or hard as per special requirement are produced. It is pertinent to note that the appellant's association of which he is a member have themselves claimed before the Collector of Central Excise in their letter dated 18-3-1986 that they were not carrying on any such activity which could be termed as manufacture. The raw material which is purchased in the form of finished goods is such on which no excise duty is leviable. Lastly in the information given by the appellant themselves under the head licensed or installed capacity, the information has been indicated as nil by the appellant. The order under appeal also gives sufficient indication that the IAC has arrived at (he conclusion after conducting an enquiry in the factory premises of the appellant. I also do not see much in the appellant's contention that in the assessment order it had been mentioned as an industrial company. Apart from the fact that each proceeding is separate proceeding, Section 104(4) does not talk of Industrial company.

4. Above all the issue before me is clinched by referring to the word 'mainly' in Section 104(4). Even assuming therefore that the appellant was involved in processing of goods as claimed by them unless that activity is the main activity, it could not be given the benefit of Section 104(4). The word 'mainly' has been further defined in the Explanation which follows the said section. As per this definition if the income attributable to the activities related to the processing of goods included in the gross total income is not less than 51 % of such total income, only then the company could be taken to be engaged mainly in the activities of processing of goods. A reference to the P & L account of the appellant would show that the total sales are of the order of Rs. 11,47,46,843. The break-up of this has been given by the appellant themselves in Schedule-13 [Information pursuant to Paras 3 & 4(C) of Part-II of Schedule VI of Companies Act, 1956]. This is as follows :(a) Dyes (Trading) - Qnty. in kgs.

Rs. 6,95,530 Value in Rupees Rs. 8,24,92,807(b) Dyes (Manufacturing) Qnty. in kgs.

Rs. 4,27,391 Value in Rupees Rs. 3,22,54,036 5. It is obvious from the above that the main activities of the appellant are in the trading as per their own working. The appellant's case would therefore fail for the reason mentioned above as also for the reasons given by the IAC. The benefit of Section 104(4) was rightly denied'.

5A. Being aggrieved by the order of the CIT(A) the assessee has come up in appeal before the Tribunal. The learned counsel for the assessee, reiterated the submissions which were made before the IT authorities and strongly urged that the order passed by the IAC under Section 104 of the Act should be cancelled. Inviting our attention to pages 1 & 2 of his paperbook, containing Statement showing bifurcation of Trading, Profit & Loss account between Manufacturing & Trading Activity, the learned counsel for the assessee pointed out that the profit in the manufacturing account is 79.62% and that in the Trading account is 20.38%. Thereafter, he referred to page 6 of his Paper-book containing calculation of distributable income and additional tax payable under Section 104 of the Act and pointed out that the provisions of Section 104 would not be applicable in respect of profits attributable to manufacturing activity, However, in respect of the profits attributable to trading activity, the assessee was required to distribute 60% of the distributable profit of Rs. 4,21,884 which comes to Rs. 2,53,130, however, since the assessee has declared dividend of Rs. 6,00,000, there was no question of invoking the provisions of Section 104 of the Act. He also invited our attention to page 8 of the Paper-book containing the computations of Commercial profits and distribution of the same for the purposes of applicability of Section 104 of the Act and highlighted the fact that here also the assessee has declared large dividend than that required of it in respect of the trading profits.

5B. Relying on the aforesaid decision of the Hon'ble Supreme Court in the case of Chowgule & Co. Ltd. (supra), the learned counsel for the assessee strongly argued that the entire activities carried on by the assessee is nothing but processing activity and, therefore, the provisions of Section 104 of the Act would not be applicable in its case by virtue of Sub-clause (4) of that section. In this connection he also invited our attention to the decision of the Hon'ble Calcutta High Court in the case of G.A. Renderian Ltd. v. CIT[1984] 145 ITR 387 and pointed out that while interpreting the provisions of Clause 2(7)(c) of the Finance

Act, 1978, the Hon'ble High Court was pleased to hold that the assessee, engaged in mixing and blending different qualities of tea, was engaged in 'processing' and, therefore, entitled to be taxed at concessional rate. In doing so, the Hon'ble High Court had applied the ratio laid down by the Hon'ble Supreme Court in the case of Chowgule & Co. Ltd. (supra). Similarly, he relied on the decision of the Hon'ble Bombay High Court in the case of Shree Mulchand Co. Ltd. v. CIT [1986] 162 ITR 764 wherein, following the ratio laid down in the case of Chowgule & Co. Ltd. (supra) the Hon'ble High Court held that the assessee, in that case, engaged in purchasing raw-wool and converting into exportable wool after several operations of cleaning and blending undertaken by it, was engaged in "processing of goods".

Therefore, being an Industrial company, it was entitled to be taxed at the concessional rate of tax contemplated under Section 2(6)(c) of the Finance No. (2) Act of 1971. Relying on yet another decision of the Hon'ble Bombay High Court in the case of Hoechst Dyes & Chemicals Ltd. v. K.N. Anantharama Ayyar, CIT [1985] 151 ITR 713, the learned counsel for the assessee submitted that even assuming for the sake of argument that the assessee's case does not fall within the language of the Explanation to Sub-section (4) of Section 104 of the Act. The distributable profit of the assessee has to be allocated between manufacturing/processing activity and the trading activity in view of the provisions of Section 109 of the Act. The provisions of Section 104 would not be applicable in respect of the profits attributable to the manufacturing/processing activity. However, as regards the profits attributable to trading activity, provisions of Section 104 would be applicable. Since, in the instant case, the assessee has distributed dividend in excess of statutory percentage mentioned in respect of the profits attributable to the trading activity, there was no question of passing any order under Section 104 of the Act and raising additional tax.

Inviting our attention to pages 16 to 20 of its paper-book containing the order of the CIT(A) for the self-same year, in an appeal filed by the assessee, against the order of the IAC under Section 143(3)/147(b) of the Act, the learned counsel for the assessee pointed out that in the said order, the CIT(A) has held that the assessee is an industrial company for the purpose of applicability of the concessional rate of tax. He, however, was fair enough to state that the Revenue

has preferred an appeal against the said order of the CIT(A) which is pending in the Tribunal.

6. In view of the aforesaid submissions, the learned counsel for the assessee strongly urged that the orders passed by the IT authorities in the present proceedings should be set aside.

7. The learned representative for the department on the other hand, strongly supported the action of the IT authorities. In this connection, he invited our attention to the Schedule 13 of the Printed Accounts for the year 1981-82 and pointed out that against the licensed capacity and installed capacity under the head 'Dyes Manufactured' , there is a remark "N.A." which according to him, clearly shows that the assessee is not engaged in any manufacturing activity. He also referred to Schedule 5 containing list of Fixed Assets and pointed out that the assessee does not have any significant plant and machinery which would show that it is engaged in any manufacturing activity. Finally he invited our attention to Note No. 10 of the Auditor's report, namely, "according to the records of the Company, no by-products or significant saleable scrap are generated"; and urged that it is not possible to accept the stand taken on behalf of the assessee that it is engaged in manufacturing activity. Relying on the decision of the Hon'ble Madras High Court in the cases of CIT v. Buhari Sons (P.) Ltd. [1983] 144 ITR 12 and CIT v. Vasan Publications (P.) Ltd. [1986] 159 ITR 381, the learned representative for the Department submitted that it is a well-known principle of interpretation that the meaning given to "a definition/ expression in one statute cannot automatically be applied to another statute. In this view of the matter, he strongly urged that in deciding the point at issue as to whether the assessee is engaged in any processing activity, we should not be guided by the aforesaid decision of the Hon'ble Supreme Court in the case of Chowgule & Co.

Ltd. (supra) as well as the decisions of the Hon'ble Calcutta and Bombay High Courts in G.A. Renderian's case (supra) and Shree Mulchand Co. Ltd.'s case (supra) respectively. He, therefore, strongly urged that we should uphold the action of the IT authorities.

8. We have carefully considered the rival submissions of the parties and the material to which our attention was drawn and we find considerable force in the stand taken on behalf of the assessee. It is no doubt true that in the case of Chowgule & Co. Ltd. (supra) the Hon'ble Supreme Court was considering the provision of the Central Sales-tax Act. However, it is pertinent to note that in the said case, the Hon'ble Supreme Court was interpreting the word "processing" without any particular context in which it occurred in the statute.

Even assuming for the sake of argument that we should not be guided by a meaning given to the definition/expression in one statute in interpreting similar expression in the other statute, it is pertinent to note that the language contained in Section 8(3)(b) of the Central Sales-tax Act is almost akin to the language used in the Explanation to Sub-section (4) of Section 104 of the Act. Therefore, the decision rendered by the Hon'ble Supreme Court in that case is directly applicable in the instant case also. The activities carried on by the assessee have been reproduced above which clearly show that the assessee is mixing different dye powders to get a different dye as per the requirements of its customers. In doing so, the assessee is using special salt or soda in order to get different shades. In this view of the matter, we have no hesitation in accepting the stand taken on behalf of the assessee that it is engaged in "processing" activity, if not, "manufacturing" activity. We have carefully gone through the letter of the Dyestuff Manufacturers Association of India addressed to the Collector of Central Excise and are of the view that the said Association has taken a stand that it was not engaged in a manufacturing activity in an altogether different context. Therefore, according to us, no adverse inference should be drawn against the assessee in this regard. As per the workings given at pages 1 and 2 of the paper-book, the profits attributable to the manufacturing activity are 79.62%, In fills view of the matter, the provisions of Section 104 of the Act would not be applicable In the instant case in view of the Explanation to Sub-section (4) of the said section.

9. Even assuming for the sake of argument that Sub-section (4) of Section 104 is not applicable in the instant case, the profit of the assessee has to be bifurcated between the manufacturing and trading activity. In view of the aforesaid decision of the Hon'ble Bombay High Court in the case of Hoechst Dyes & Chemicals Ltd.

(supra) the provisions of Section 104 could be, applied only in the case of the profits attributable to the trading activity. Under Section 109(3) of the Act, the assessee is required to distribute 60 per cent of the profits attributable to the trading activity which works out to Rs. 2,53,130. Since, in the instant case, the assessee has distributed dividend of Rs. 6 lakhs, there is no question of applying the provisions of Section 104 of the Act.

10. In view of the aforesaid discussion, we have no hesitation in setting aside- the orders passed by the IT authorities in the present proceedings.

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