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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-27-1993

Reported in : (1994)49ITD560(Mum.)

Judge : T Natarajachandran, M Chaturvedi

Appellant : international Data Management

Respondent : inspecting Assistant

Judgement :

1. This appeal by the assessee is directed against the order of the CIT, Bombay City-VI, Bombay, passed under Section 263 of the Income-tax Act, 1961 and pertains to the assessment year 1984-85.

2. In the opinion of the CIT, following three errors did exist in the assessment: (i) Extra shift allowance of Rs. 5,53,123 on data processing machine was wrongly allowed.

(ii) Investment allowance of Rs. 6,90,898 on the computers or data processing machine was wrongly allowed as the same fell under item No. 22 of the Eleventh Schedule.

(iii) Deduction under Section 80-1 amounting to Rs. 59,083 was wrongly allowed as the assessee was involved in the manufacture of an article listed in the Eleventh Schedule viz., data processing machines and computers. In view of the above, jurisdiction under Section 263 was assumed and directions were rendered to the Assessing Officer to modify the assessment pro tanto.

3. Shri F.V. Irani, learned counsel for the assessee, appeared before us. In regard to extra shift allowance, it was contended that the matter stands covered by the decision of the Tribunal in favour of the assessee in assessee's own case for the assessment years 1982-83 and 1983-84 in ITA Nos. 3470/Bom./85 and 882/Bom./85. Ld. Departmental Representative supported the order of the CIT. It was contended that the order of the Tribunal, so far as the allowability of extra shift allowance is concerned has not become final. He relied on some precedents to support that extra shift allowance is not allowable to the assessee. Facts being identical, we follow the precedent and decide accordingly.

4. Coming now to the allowability of investment, allowance and deduction Under Section. 80-1, we find that the CIT held that these deductions are not admissible to the assessee as because the words 'office machines and apparatus' as used in item 22 of the Eleventh Schedule includes within its ambit, both data processing machines as well as computers. The issue as posed before us is - "Whether the assessee was manufacturing anything which is specified in the Eleventh Schedule?" The provision of Sections 32A(2)(b)(iii) and 80-1(3) contemplates that deduction as listed in the section shall not be available to the assessee if the assessee is engaged in manufacturing or producing of any article or thing, being any article or thing specified in the Eleventh Schedule. It would be proper here to reproduce item No. 22 of the Eleventh Schedule: 22. Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters.

Explanation: The expression 'office machines and apparatus' includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work [and for data processing (not being computers within the meaning of Section 32AB)].

5. Shri Irani, Id. counsel for the assessee, contended that the Explanation cannot go beyond the main provision. It is not a substantive provision in any sense of the term. For this preposition, he relied on the ruling of the apex court, Lald down in the case of S.Sundaram PilLal v. V. R. Pattabiraman AIR 1985 SC 582. He further

relied on the decision in the case of CGTv. N.S. Getti Chettiar [1974] 95 ITR 476 (Bom.) and CGTv. Dr. R.B. Kamdin [1974] 95 ITR 476 (Bom.).

Our attention was also invited to the decision of the Bombay High Court in the case of C/Tv. IBMWorld Trade Corpn. [1981] 130 ITR 739' wherein it was held that data processing machines are substitutes for human labour and perform intellectual functions and they cannot be equated with office appliances. Reliance was also placed on the decision of the Tribunal in the case of Dr. Beck & Co. India Ld. v. ITO [1984] 10 ITD 145 (Bom.). In this case, the Tribunal followed the dictum 'noscitur a sociis'.

6. Shri R.N. Bhadgaonkar, ld. Departmental Representative, contended that computers are clearly listed within the scope of entry 22 of the Eleventh Schedule. Therefore, the assessee cannot get the benefit of investment allowance and 80-1 deduction. It was stated that in the Explanation, the scope of the section is clearly elaborated. The item manufactured by the assessee finds place within the meaning of entry 22 of Eleventh Schedule read with the Explanation. It was submitted that conditions precedent for invoking jurisdiction Under Section 263 did exist on the facts and circumstances of the present case.

7. We have heard the rival submissions in the light of material placed before us and precedents relied upon. The Eleventh Schedule was introduced in the Act with effect from 1 -4-1978. It listed out certain articles or things which were luxury items. The Parliament in their wisdom thought that investment allowance and deduction Under Section.

80-1 should not be granted for the manufacture of these items. All the items in the Eleventh Schedule are primarily concerned with not essential needs but maintenance of higher standards of life. It was argued that the Computer, in the present day context, is considered as a panacea for the economic up liftmen of the nation and speedy progress in all the realms of life. It is endowed with intellect and it works with promptitude. The Bombay High Court has held that it is not an office appliance. This cannot be considered as a luxury item.

Explanation cannot go beyond the main provision.

It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the pLaln meaning of the word itself shows, it is merely meant to explain or clarify certain ambiguities which may have crept, in the statutory provision, (para 45) (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve, (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful, (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Exp lanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming a hindrance in the interpretation of the same.

9. We now propose to read the main provision in the light of the dictum: Noscitur a sociis. The literal meaning of the dictum is 'it is known from its associates'. When two or moe words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. A man may be known by the company he keeps and a word may be interpreted with reference to the accompanying words.

It is one of the rules of interpretation of statutes and documents that where thewords that are otherwise general, follow an enumeration of persons or things referable to anything particular and specific, the general words are to be construed as referring to the same general kind and class as those specifically mentioned.

Entry 22 of the Eleventh Schedule makes a mention of office machines and apparatus, such as, typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters. The word "such as" in the Chamber's Twentieth Century Dictionary is defined to mean "for example". In the Concise Oxford Dictionary, the meaning of the words "such as" is given 'of a kind that, like, for example'. The items referred to after the word "such as" are only illustrations of the things which could be construed as office machines and apparatus. The Bombay High Court has Lald down that a data processing machine is not coming within the ambit and purview of office machines and apparatus.

In view of the nature of data processing machine and the functions which it performs in our opinion, it is difficult to put it within the genus of things exemplified in entry 22 of the Eleventh Schedule such as typewriters, calculating machines etc. The apex court has Lald down that the Explanation cannot go beyond the main provision. The words 'office machines and apparatus' as used in the statute are associated 'noscitur a sociis' with the words, typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters. Data processing machine bears a different colour and cannot be associated with these machines. It is, therefore, not an office appliance hence does not find place within the Eleventh Schedule, entry 22. As such, assessee is entitled to get benefit of investment allowance and also deduction under Section 80-1. In view of this, there was no error in the order of the A.O. The conditions precedent for invoking the jurisdiction under Section 263 did not exist in the facts and circumstances of the present case.