

Commissioner Of Income-Tax, Delhi And ... vs Webbing And Belting Factory Ltd. on 28 March, 1967

Equivalent citations: [1968]68ITR186(SC), AIRONLINE 1967 SC 67

Bench: J.C. Shah, S.M. Sikri

JUDGMENT

Sikri J.

1. This appeal by certificate granted by the High Court of Punjab is directed against its judgment in Income-tax Reference No. 18 of 1958, made by the Income-tax Appellate Tribunal on November 11, 1957.

2. The Tribunal had referred the following question to the High Court :

"Whether, on the facts and in the circumstances of this case, the concession contained in section 15C of the Indian Income-tax Act in respect of the industrial undertaking of the manufacture of handloom fabrics at Ghaziabad is available to the assessee ?"

3. The High Court answered the question in the affirmative. The Commissioner of Income-tax having obtained certificate from the High Court under section 66A (2) of the Indian Income-tax Act, 1922, the appeal is now before us.

4. The learned counsel for the revenue contends that the High Court has disregarded the findings of fact made by the Appellate Tribunal and itself arrived at certain findings of fact and on the basis of those findings has answered the question. It is common ground that the High Court has no jurisdiction to do so.

5. Let us then consider whether the High Court has in fact disregarded any of the findings of the Appellate Tribunal. The difficulty has mainly arisen because the Appellate Tribunal wrote a very cryptic order. The order reads thus :

"The facts have been correctly found by the Appellate Assistant Commissioner, and on those facts it is quite clear that the assessee's undertaking does not fall within items (i) and (ii) of sub-section (2) of section 15C inasmuch as the undertaking was partly formed by transfer to it of machinery and plant that had been used in business carried on before 1st April, 1948, and had begun to manufacture of produce articles before that date. We would accordingly hold that this industrial undertaking is not one to which that section applies. That being so, the exemption there provided is not available to the assessee."

6. The relevant portion of section 15C reads as follows :

"15C. Exemption from tax of newly established industrial undertakings. -

(1) Save as otherwise hereinafter provided, the tax shall be not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent. per annum on the capital employed in the undertaking, computed in accordance with such rules as may be made in this behalf by the Central Board of Revenue.

(2) This section applies to any industrial undertaking which -

(i) is not formed by the splitting up, or the reconstruction of, business already in existence or by the transfer to a new business building, machinery or plant used in a business which was being carried on before the 1st day of April, 1948;

(ii) has begun or begins to manufacture or produce articles in any part of the taxable territories at any time within a period of thirteen years from the 1st day of April, 1948, or such further period as the Central Government may by notification in the official gazette specify with reference to any particular industrial undertaking;....."

7. From the order of the Appellate Tribunal it would appear as if the Appellate Assistant Commissioner had given some categorical findings, but when we go through the order of the Appellate Assistant Commissioner it appear that it is not so. What happened was that the Income-tax Officer in his original order rejected the claim of the assessee under section 15C on the following grounds :

"The assessee is a private limited company incorporated on 22nd January, 1947. It took over the running business of the firm of the same name on 1st February, 1947. It ran two factories, one at Nicholson Road and the other at Bela Road. Somewhere in December, 1947, Bela Road factory stopped functioning. The factory premises were sold off while the machinery was shifted to Ghaziabad. Shifting expenses have been debited in the books for the year ending 31st March, 1948. Machinery installed in Bela Road Factory has been shown in the depreciation statement of the assessee for the year ending 31st March, 1948. ... The above fact clearly shows that the assessee's claim under section 15C is untenable as it does not satisfy the condition laid down in section 15C (2) (i). Ghaziabad factory was started by the transfer to this place of machinery and plant which was used in business carried on before the 1st day of April, 1948. This being quite clear, it is needless to dilate on the further requirements of this section.

8. The assessee appealed to the Appellate Assistant Commissioner urging that the assessee was entitled to relief under section 15C in regard to the Ghaziabad factory. It was urged before the Appellate Assistant Commissioner that it was not a case of reorganisation but starting of a new kind

of work at Ghaziabad. But the Appellate Assistant Commissioner remanded the case with direction that the Income-tax Officer should consider all the points raised by the counsel before him and before the Appellate Assistant Commissioner, and he should visit the Ghaziabad factory to properly appreciate the position.

9. The Income-tax Officer reported his findings. He found that the powerlooms which were acquired by the Ghaziabad factory had never worked at Ghaziabad and some of them were found lying in the form of junk in a remote corner of the factory premises. As far as the cloth looms are concerned, he reported :

"It has been contended that these were being used before 31st March, 1948, on experimental basis of see whether the scheme conceived by Mr. Kaul could be successfully executed in this part of the country. Huge correspondence which Mr. Kaul had been carrying on with the Common- wealth Trust Ltd., Calicut, shows that the entire work was done under instructions from the Trust including the construction of looms. On visit I noticed that the size of these looms was much smaller than the size of looms not being worked at Ghaziabad factory. I am told that the looms used on experimental measure were 36" only whereas the looms presently installed vary from 8" to 90". I also found that the looms now being worked are of Jacquard type."

He further found the fact that "experiments were being made before 1st April, 1948, and that the pilot plant consisting of the cloth handlooms became the starting point of this enterprise militates against the assessee's claim for exemption. This gives support to the conclusion of my predecessor that the new enterprise had its beginning before 31st March, 1948."

10. It would be noticed that the Income-tax Officer did not dispute the contention of the assessee that the Bela Road factory was only a pilot project which was operating before March 31, 1948.

11. The Appellate Assistant Commissioner went through the remand report and the register and the correspondence entered into by the assessee with the technical officers Commonwealth Trust Limited, Calicut. He traced the history of the formation of the company. Then he dealt with the case of the assessee for exemption as follows :

"The assessee's case for exemption under section 15C rests on the point that the production of goods at Bela Road factory was only on experimental basis and was not in the course of regular business of the assessee which was proposed to be carried on. It is claimed that the limited company was incorporated to manufacture handlooms furnishing on the model of those manufactured by its South India counter-part and goods as the company had not at its disposal a regular bleaching plant or dyeing plant. Therefore the Commonwealth Trust Ltd. refused to sell these unstandard goods. The assessee wants to press that since the goods produced by it were not up to the mark, it should be held that they had not started producing any goods as contemplated under section 15C. Further it is contended that as the regular

production of Ghaziabad factory started production only after March, 1948, they were entitled to exemption under section 15C.

12. On going through the correspondence, I find that the goods produced by the Bela Road factory were completed except to the extent that they were not bleached by the regular bleaching plant but by local dhobis etc., and as the local dhobis were not able to do expert work, the assessee chose to sell all the manufactured cloth through the canvassing agents of the Commonwealth Trust Limited, but without the labels of the said Trusts. This is apparent from a letter produced before me in which the Commonwealth Trust Limited agree to sell the goods through its canvassers. I also find that the production of handloom cloth during the various months was as under :

Rs February 1947 14,348 March do. 30,254 April do. 11,692 May do. 3,000 June do. 2,743 July do. 9,897 August do. 5,934

13. A total production of Rs. 67,085 cannot be described as pure experimental production and it is not merely the production of samples of launching the bigger production scheme of the assessee. It is true that the assessee was not able to manufacture all the contemplated varieties, yet they had commenced producing goods on the handlooms installed by them in the Bela Road factory prior to 31st March, 1948.

14. The contention of the assessee that during these months they had to consume the quote of yarn allotted them monthly has not much force as the fact remains that the manufacture was carried on. The factory had begun to manufacture articles before 1st April, 1948, and, therefore, is not entitled to the exemption laid down under section 15C."

15. It would be noticed from the order of the Appellate Assistant Commissioner that he did not reject the contention of the assessee, which the Income-tax Officer had apparently accepted, i.e., that a pilot project had been set up by the assessee. He further found that because the total production amounted to Rs. 67,085, it could not be described as "pure experimental production. " It is difficult to understand the exact import of the words "pure experimental production", in the context.

16. The High Court first set out some undisputed facts some of which it took from the order of the Income-tax Officer and some from the order of the Appellate Assistant Commissioner. Regarding the purely experimental nature of production, the High Court felt that the question in issue was :

"Whether the transfer of any machinery of plant to a new business, however small a portion the plant or machinery so transferred forms of the plant or machinery of the new business, automatically has the effect of denying the new business the concession under section 15C. With this is involved the question whether the manufacture of cloth at the Bela Road factory was undertaken merely by way of an experiment and as training for the start of what might be called the new business of the manufacture of handloom furnishing fabrics. " The High Court observed :

"On this point the learned counsel for the Commissioner has argued that we cannot question the finding of fact of the Appellate Assistant Commissioner that the sale of cloth worth Rs. 67,000 in 1947, could not be described as purely experimental production. I find, however, that the Income-tax Officer accepted the fact that the production before the 1st the April, 1948, was experimental, and that the pilot plant consisting of the handlooms became the starting point of the enterprise. Moreover, what we are to consider is a question of law arising out of the final order of the Appellate Tribunal which has not expressed any opinion either as to whether the manufacture in 1947, was by way of experiment and training, but has based its decision entirely on the facts that some looms were transferred to the new factory. I therefore do not consider that I am precluded from expressing the opinion that the fact that sales amounted to Rs. 67,000 in 1947, in no way rebutted the contention of the assessee that the product

17. The High Court then concluded :

"In my opinion a provision of this kind which is intended to encourage the setting up of new industrial enterprises must be construed liberally and on this view of the matter I consider that the opening of the factory at Ghaziabad was a new enterprise encouraged by the successful experiment, and that the fact that what apparently amounts to about 35% of the machinery or plant used in the factory had been used before the 1st of April, 1948, does not preclude the factory at Ghaziabad from enjoying the concession granted under section 15C."

18. It seems to us that the High Court has exceeded its jurisdiction under section 66 of the Indian Income-tax Act. It is true that the Income- tax Officer had apparently accepted the fact that the production before April 1, 1948, was experimental, but the Appellate Assistant Commissioner had merely stated that a total production of Rs. 67,085 could not be described as "pure experimental production". In other words, the Appellate Assistant Commissioner did not give a clear finding whether the assessee had put up a pilot plant or not. In view of these circumstances, the High Court should have called for a supplementary statement under section 66(4) of the Indian Income-tax Act and not gone into the facts itself and come to the conclusion that the Income-tax Officer was right in holding that a pilot plant had been set up by the assessee, which became the starting point of the enterprise.

19. Accordingly we set aside the judgment of the High Court and remand the case to it with the direction that it should call for a supplementary statement from the Appellate Tribunal and then deal with the reference according to law. As the point on which we are allowing the appeal was not taken in the statement of the case, the learned counsel for the assessee contends that the assessee should not be burdened with costs. In view of the circumstances of the case, we order that there will be no order as to costs in this appeal.

20. Appeal allowed. Case remanded.