Berger Paints India Ltd vs Commissioner Of Income Tax, Calcutta on 17 February, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1743, 2004 (12) SCC 42, 2004 AIR SCW 1302, 2004 TAX. L. R. 417, 2004 (2) SCALE 554, 2004 (2) SLT 235, (2004) 135 TAXMAN 586, (2004) 4 JT 252 (SC), (2004) 113 ECR 829, (2004) 266 ITR 99, (2004) 165 ELT 488, (2004) 2 SCALE 554, (2004) 187 CURTAXREP 193, (2004) 180 TAXATION 10, (2004) 3 SUPREME 588

Bench: K.G. Balakrishnan, B.N. Srikrishna

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           CASE NO.:
Appeal (civil)  1081-1083 of 2004

PETITIONER:
BERGER PAINTS INDIA LTD.

RESPONDENT:
COMMISSIONER OF INCOME TAX, CALCUTTA

DATE OF JUDGMENT: 17/02/2004

BENCH:
K.G. BALAKRISHNAN & B.N. SRIKRISHNA

JUDGMENT:
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JUDGMENT 2004 (2) SCR 502 The Judgment of the Court was delivered by SRIKRISHNA, J. Leave granted.

The assessee is a company engaged in the manufacture and sale of paints, varnishes and other allied products. During the previous year ending on 31st December 1983 pertaining to the assessment year 1984-85, the petitioner in its returns had disclosed a sum of Rs. 1,33,31,370 as income. During this period, the appellant-assessee had incurred expenditure on account of customs and excise duty aggregating to Rs.5,85,87,181 which was duly debited to the Profit and Loss Account of the petitioner for the relevant previous year and was also fully paid during the relevant previous year. In addition there to the petitioner had also credited to the Profit and Loss Account of the relevant previous year an amount of Rs. 98,25,833 relatable to the customs and excise duty on the closing stock of inventory by including the said sum in the valuation of such closing stock. During the assessment proceedings for the assessment year 1984-85, the appellant- assessee claimed that under Section 43B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') that it was entitled to deduction of the entire sum of Rs. 5,85,87,181/ being the duties actually paid during the relevant previous year.

On similar basis, the appellant-assessee had claimed a deduction of an amount of Rs. 1,22,54,261 being the actual customs and excise duty included in the value of the closing stock for the previous year pertaining to the assessment year 1986-87 and offered for tax a sum of Rs. 98,25,833 being customs and excise duty including in the value of the opening stock. Similarly, for the assessment year 1986-87, the petitioner claimed a deduction of Rs. 24,28,428 {Rs. 1,22,54,261 - Rs. 98,25,833}. The assessee claimed a deduction of Rs. 77,81,739 Rs. 2,00,36,000 - Rs. 1,22,54,261} on similar basis for the assessment year 1987-88. In the assessment proceedings of the assessment year 1984-85, the Inspecting Assistant Commissioner of Income Tax allowed the appellant-assessee's claim that it was entitled to deduct the entire sum of Rs. 5,85,87,181 being the duties actually paid during the relevant year previous to the assessment year 1984-85. The Commissioner of Income Tax initiated proceedings under Section 263 of the Act on the ground that the Assessing Officer had wrongly allowed the claim for deduction of an amount of Rs.98,25,833 towards customs and excise duty paid during the previous year but credited to the Profit and Loss Account in closing stock of goods under the provisions of Section 43B. The assessee relied upon the judgment of the Gujarat High Court in Lakhanpal National Ltd. v. ITO, [1986] 162 ITR 240 (Guj.) [hereinafter referred to as "Lakhanpal National Ltd. 's case"] in support of its claim. The Commissioner of Income Tax took the view that the Gujarat High Court's decision was distinguishable on facts and, therefore, made an order under Section 263 of the Act disallowing the claim of the assessee. On appeal to the Tribunal the Tribunal held that the Gujarat High Court's judgment in Lakhanpal National Ltd's case was distinguishable and confirmed the order of the Commissioner of Income Tax. On an application made under Section 256(1) of the Act at the instance of the appellant-assessee, the Tribunal inter alia referred the following question of law for the opinion of the High Court:-

> "Whether, on the facts and in circumstances of the case, the Tribunal was right in law in rejecting the assessee's claim for deduction of the excise and customs duties of Rs. 98,25,833 paid in the year of account and debited in the Profit & Loss Account, on the ground the crediting of the Profit & Loss Account by the value of the closing stock, which included the aforesaid duties, did not have the effect of wiping out the debit to the Profit & Loss Account?
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> The High Court by its judgment dated 24th September, 2001 in ITR No. 213 of 1993 answered the question referred in favour of the Revenue and against the assessee.
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> For the assessment year 1986-87, the Tribunal upheld the claim of the assessee and allowed a deduction amounting to Rs. 77,81,948 claimed under Section 43B of the Act being Central Excise and Customs duty, which had been included in the value of the closing stock. At the instance of the Revenue, the following question of law was referred to the High Court for the assessment year 1986-87:-
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> "Whether, on the facts and in the circumstances of the case and under Explanation 2 to section 43B coming into force with effect from 1.4.84, the Tribunal was justified in directing to allow the amount of Rs. 77,81.948 u/s. 43B of the I.T. Act. being Central Excise and Customs duty which had been included in the value of closing stock.?"

For the assessment year 1987-88. the Tribunal allowed a similar claim and a reference came to be made to the High Court in the following terms:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in directing the I.TO. to allow the sum of Rs. 24,28,428 being Central Excise and Customs duty under Section 43B of the Act on the ground that the said amount has been included in the value of closing stock.?"

The High Court by its judgment dated 6th February, 2002 disposed off both the references. The questions referred in both the references were answered in favour of the Revenue and against the assessee. An application made for certificate to appeal to this court under Section 261 of the Act was rejected by the Calcutta High Court by observing "we are unable ourselves to burden an already over burdened Hon'ble Supreme Court". Being aggrieved, the assessee impugns both judgments of the Calcutta High Court pertaining to the three assessment years, by these appeals.

There is no doubt that the judgment of the Gujarat High Court in Lakhanpal National Ltd. 's case is completely in favour of the assessee as it accepts the contention of the assessee in toto. It is not in dispute that the decision in Lakhanpal National Ltd. 's case was not challenged by the department before this court and thus has been accepted by the department. The interpretation placed on Section 43B in Lakhanpal National Ltd. 's case was directly followed by the judgment of the Bombay High Court in CIT v. Bharat Petroleum Corporation Ltd., [2001] 252 ITR 43 (Bom.) and by the Madras High Court in Chemicals and Plastics India Ltd. \. CIT, [2003] 260 ITR 193 (Mad.). These two judgments also appear to have been accepted by the Revenue and have not been challenged before this court at all. This fact asserted before us by the petitioner-assessee had not been disputed in the counter affidavit of the Department.

In addition to these three High Court judgments, it appears that, noticing the conflicting views taken by the Tribunals, a Special Bench of the Income Tax Appellate Tribunal was constituted to resolve the issue. In Indian Communication Network Pvt. Ltd v. IAC, [1994] 206 ITR 96 (SB-AT), the Special Bench of the Tribunal considered all the conflicting judgments and judgment in Lakhanpal National Ltd 's case (supra) as also its own order in the case of the appellant-assessee reported in Berger Paints India Ltd. v. CIT, [1993] 44 ITD 573 (ITAT, Cal.). After noticing all the conflicting views, and the attempt made by the Tribunal in Hindustan Computers Ltd. v. ITO, [1987] 21 ITD 524 (ITAT, Del.), to distinguish the observations made in Lakhanpal National Ltd. 's case, the Special Bench of the Tribunal made the following observations at 206 ITR 96 at p. 114:-

> "We would like to make it absolutely clear that the removal of the amount in question from the figure of closing stock is not tantamount to a 'tinkering' of the closing stock but allowing to the assessee the effective deduction to which it is entitled under Section 43B. We would also like to emphasise that in the subsequent assessment year, the assessee's opening stock would stand reduced by a corresponding figure since it cannot avail of a "double deduction."

It was further observed by the Special Bench at p. 114 that:-

> "Before we part with this ground, we cannot help feeling that the litigation between the parties could have been avoided since it was quite immaterial, whether full deduction was allowed in one year or partly in one year and partly in the next, since the assessee is a company and rate of the tax is uniform. The gain to one and the loss to the other is illusory since what is deferred in one year, would have to be discharged in the next. In that sense, nobody has won and nobody has lost."

It is specially asserted in the written submissions of the appellant- assessee that this decision of the Special Bench of the Income Tax Appellate Tribunal in Indian Communication Network Pvt. Ltd's. case (supra) has also not been challenged. This fact is also not disputed by the Revenue.

In view of the judgments of this Court in Union of India v. Kammudini Narayan Dalai, 249 ITR 219 (SC); CIT v. Narendra Doshi, 254 ITR 606 (SC) and CIT v. Shivsagar Estate, 257 ITR 59 (SC), the principle established is that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause. The judgment of the Gujarat High Court in Lakhanpal National Ltd. 's case was relied upon and followed by the Bombay High Court in CIT v. Bharat Petroleum Corporation Ltd. (supra) as well as by the Madras High Court in Chemicals and Plastics India Ltd. v. CIT (supra). The Special Bench of the Tribunal also relied upon the judgment of the Gujarat High Court in Lakhanpal National Ltd. 's case The Revenue has attempted to distinguish the judgment of the Gujarat High Court on the facile ground that the judgment of the Gujarat High Court was one rendered in connection with a provisional assessment under Section 141A and not in a regular assessment. In our view, this distinction is hardly acceptable. in any event a reading of the Gujarat High Court's judgment shows that the judgment is not based merely on the adjustments permissible under Section 141 A. as is contended by the Revenue, but that the judgment proceeds on an analysis of Section 43B and makes a finding that the entire amount of excise duty/customs duty paid by the assessee in a particular accounting year was an allowable deduction in respect of that year irrespective of the amount of excise duty/customs duty which was included in the valuation of the assessee's closing stock at the end of the accounting year. After coming to this conclusion, the Gujarat High Court then proceeded to consider the impact of Section 141A and granted appropriate relief thereunder. It is not possible for us to accept the contention of the Revenue that the judgment of the Gujarat High Court in Lakhanpal National Ltd. 's case is distinguishable on the ground put forward.

The decision in Lakhanpal National Ltd. 's case which clearly laid down the interpretation of Section 43B was followed by the judgments of the Madras High Court and Bombay High Court and was again followed by the decision of Special Bench of the Income Tax Appellant Tribunal, none of which have been challenged. In these circumstances, the principle laid down in Union of India v. Kammudini Narayan Dalai, (supra), CIT v. Narendra Doshi (supra) and CIT v. Shivsagar Estate (supra) clearly applies. We see no 'just cause' as would justify departure from the principle. Hence in our view, the Revenue could not have been allowed to challenge the principle laid down in Lakhanpal National Ltd. 's case, which was followed by the Inspecting Assistant Commissioner in the case of the assessee in the three assessment years in question. We are. therefore, of the view that the Commissioner, the Income Tax Appellate Tribunal and the Calcutta High Court erred in

permitting the Revenue to raise a contention contrary to what was laid down by the Gujarat High Court in Lakhanpal National Ltd. 's case. This decision has been subsequently followed by the decisions of the Bombay High Court in CIT v. Bharat Petroleum Corporation Ltd. (supra) and the Madras High Court in Chemicals and Plastics India Ltd. v. CIT (supra) as well as the decision of the Special Bench in Indian Communication Network Pvt. Ltd. v. IAC (supra), which have all remained unchallenged.

Hence, the following Order:-Assessment Year 1984-85 We set aside the judgment of the Calcutta High Court in ITR No. 213 of 1993 and answer the question referred against the Revenue and in favour of the assessee.

Assessment Year 1986-87 We set aside the judgment of the Calcutta High Court in ITR No. 122 of 1995 and answer the question referred in favour of the assessee and against the Revenue.

Assessment Year 1987-88 We set aside the judgment of the Calcutta High Court in ITR No. 137 of 1995 and answer the question referred in favour of the assessee and against the Revenue.

In view of the fact that other High Courts had taken a particular view, if the Calcutta High Court desired to depart from the uniform view taken by them, in fairness to the assessee, a certificate to appeal under Section 261 of the Act ought to have been granted.

Appeal is accordingly allowed with no orders as to costs.