

Commissioner Of Income-Tax, Bangalore vs Venkateswara Hatcheries (P) Ltd on 24 March, 1999

Equivalent citations: AIR 1999 SUPREME COURT 1225, 1999 (3) SCC 632, 1999 AIR SCW 900, 1999 TAX. L. R. 407, (1999) 2 JT 338 (SC), 1999 (2) SCALE 257, 1999 (3) ADSC 255, 1999 (4) SRJ 348, (1999) 103 TAXMAN 503, 1999 (2) LRI 390, 1999 (2) JT 338, (1999) 2 KER LT 80, 1999 ADSC 3 255, (1999) 2 SCALE 257, (1999) 237 ITR 174, (1999) 149 TAXATION 657, (1999) 4 ANDHLD 30, (1999) 153 CURTAXREP 105, (1999) 3 SUPREME 202

Author: V.N. Khare

Bench: S.P.Bharucha, V.N.Khare, A.P.Misra

PETITIONER:
COMMISSIONER OF INCOME-TAX, BANGALORE

Vs.

RESPONDENT:
VENKATESWARA HATCHERIES (P) LTD.

DATE OF JUDGMENT: 24/03/1999

BENCH:
S.P.Bharucha, V.N.Khare, A.P.Misra

JUDGMENT:

V.N. KHARE,J.

Leave granted in the special leave petitions.

In this group of civil appeals and special leave petitions the main question that arises for consideration is whether the business of hatchery run by the assessee comes within the meaning of the expression manufacture or produce articles or things occurring in Section 32A(2) and Section 88J of the Income Tax Act (hereinafter referred to as the Act). The further question to be decided is whether the assessee is an industrial undertaking. The appeals excepting Civil Appeal No.2596 of 1997 are directed against the judgments of Andhra Pradesh and Karnataka High Courts whereby the two High Courts following the decision in the case of Commissioner of Income-tax vs. Sri Venkateswara Hatcheries (P) Ltd. (174 I.T.R. 231) rejected the applications of the Revenue filed under Section 256(2) Act holding that the business of hatchery comes within the meaning of the

expression an industrial undertaking producing articles or things and in one case answered the questions in favour of assessee. Whereas in Civil Appeal No.2596/97, the Bombay High Court has rejected the application of the assessee under Section 256(2) of the Act following the decision in the case of Commissioner of Income-Tax vs. Deejay Hatcheries (211 I.T.R. 652) wherein it was held that the business of hatchery cannot be termed as an industrial undertaking producing articles or things. That is how both sets of appeals are before us.

Respondents in these civil appeals and the appellant in civil appeal No.2596/97 (hereinafter referred to as the assessee) have poultry farms and they run hatcheries where eggs are hatched on large scale by adopting latest scientific and technological methods. The aforesaid questions arose when the assessee in connection with their income tax assessments for the relevant years claimed that since they are industrial undertakings engaged in the business of producing articles or things, they are entitled to development allowance under Section 43A and deductions under Sections 80HH, 80HHA, 80I and 80J of the Act.

The first contention on behalf of the Revenue is that chicks, being animate creatures, cannot be termed as articles or things within the meaning of Section 32A, (2)(iii) or Section 80J(4)(iii) of the Act. The second contention is that even if a chick could be construed as an article or thing it cannot be said that the assessee is producing chicks, that being a natural process of the development of the eggs. The third contention is that if the dictionary meaning of the word articles or things conveys different meanings, in that event the said words have to be interpreted in the context of the provisions of the Act, and regard must also be had to the legislative history of the provisions of the Act and the scheme of the Act and the fourth submission is that the assessee is not an industrial undertaking.

Since the arguments raised by the learned counsel for the Revenue are overlapping we, therefore, propose to deal them together.

The learned counsel appearing for the assessee on the other hand maintained that hatching of eggs comes within the meaning of the expression production of an article or thing. He contended that the word produce is of wider import and for that purpose he referred to various dictionary meanings of the word produce. In Websters New International Dictionary the word produce means something that is brought forth either naturally or as a result of effort and work; a result produced.

In Blacks Law Dictionary the meaning of the word produce is to bring forward; to show or exhibit; to bring into view or notice; to bring to surface.

A reading of aforesaid dictionary meanings of the word produce does indicate that if a living creature is brought forth it can be said that it is produced. However, dictionary gives more than one meaning of the word produce. Neither the word produce nor the word article has been defined in the Act. When the word is not so defined in the Act it may be permissible to refer to dictionary to find out the meaning of that word as it is understood in the common parlance. But where the dictionary gives divergent or more than one meaning of a word, in that case it is not safe to construe the said word according to the suggested dictionary meaning of that word. In such a situation the word has

to be construed in the context of the provisions of the Act and regard must also be had to the legislative history of the provisions of the Act and the scheme of the Act. It is settled principle of interpretation that the meaning of the words, occurring in the provisions of the Act must take their colour from the context in which they are so used. In other words, for arriving at the true meaning of a word, the said word should not be detached from the context. Thus, when the word read in the context conveys a meaning, that meaning would be the appropriate meaning of that word and in that case we need not rely upon the dictionary meaning of that word.

Viewed in this light what we find is that Section 10(27) of the Act was inserted in the Act through the Finance Act, 1964. The purpose of enacting Section 10(27) was to provide incentive to poultry farming, which includes the business of hatchery, by way of giving exemption from income tax on income from such business. Initially, the said exemption was given for the years 1965, 1966 and 1967 and was in the following terms:

any income derived from a business of livestock breeding or poultry or dairy farming which is assessable for the assessment years commencing on the 1st day of April 1965, 1966 and 1967.

In the year 1967, through the Finance Act No.2, the words beginning from word which to 1967 were omitted. Thus exemption from income-tax was allowed beyond the year 1967. In the year 1975, it was felt that the exemption from income-tax on income from poultry business is capable of being abused by unscrupulous people by showing income which would otherwise be chargeable to tax, as exempt income. It was in this background that the mischief was sought to be remedied by omitting Section 10(27) of the Act and re-enacting Section 80JJ providing restricted exemption to thirty three and one third percent of gross total income from livestock breeding, poultry and dairy farming. This is also evident from the Budget Speech of the then Finance Minister in the Parliament which runs as under:

At present income from livestock breeding and poultry and dairy farming is exempt from Income tax. This exemption is prone to abuse by showing income which would otherwise be chargeable to tax as exempt income. I accordingly propose to restrict the exemption to Rs.10,000/- in a year.

Consequently, Section 10(27) of the Act was omitted by the Finance Act 1975 with effect from 1st April, 1976 and Section 88JJ was brought into the Act with effect from the date of omission of Section 10(27) of the Act. Section 80JJ as re-enacted read as thus :

80JJ. Where the gross total income of an assessee includes any profits and gains derived from a business of livestock breeding, or poultry or dairy farming, there shall be allowed, in computing the total income of the assessee, a deduction as specified hereunder, namely:-

(a) in a case where the amount of such profits and gains does not exceed, in the aggregate, ten thousand rupees, the whole of such amount; and

(b) in any other case, one-third of the aggregate amount of such profits and gains or ten thousand rupees, whichever is higher.

The Finance Act 1976 inserted Section 32A with effect from 1st April, 1976 in replacement of development rebate. Section 32A provided development allowance where an industrial undertaking has installed new machinery or plant after March 31, 1976 for the purpose of business of manufacture or production of any article or thing. Relevant portion of Section 32A runs thus :

32A.(1) In respect of a ship or an aircraft or machinery or plant specified in sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be allowed a deduction, in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee.

(iii) in a small-scale industrial undertaking for the purposes of business of manufacture or production of any other articles or things.

Relevant portion of Section 80J runs as under: (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains (reduced by the deduction, if any, admissible to the assessee under section 80HH of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent. per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, computed in the prescribed manner in respect of the previous year relevant to the assessment year (the amount calculated as aforesaid being hereafter, in this section, referred to as the relevant amount of capital employed during the previous year).

4(iii) it manufactures or produces articles, or operates one or more cold storage plant or plants, in any part of India, and has begun or begins to manufacture or produce articles or to operate such plant or plants, at any time within the period of thirty-three years next following 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.

As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80JJ was done simultaneously. It is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which

substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision. Viewed in this background, the effect of re-enacted provision of Section 80JJ was that profit from the business of livestock and poultry which enjoyed total exemption under section 10(27) of the Act from assessment years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfillment of certain conditions.

This matter may be examined from another angle. As noticed earlier, Section 10(27) specifically excluded poultry income from being included in total income. The meaning of total income in Section 2(45) of the Income Tax Act is as follows:

total income means the total amount of income referred to in section 5, computed in the manner laid down in this Act.

Section 14(D) of the Income Tax Act deals with one part of the total income, namely, profit and gains of business. Section 29 of the Income Tax deals with deductions from the profit and gains. Section 32A is one of the sections dealing with such deductions. Therefore, the income from poultry being outside the scope of total income by virtue of omitted Section 10(27) of the Act, there was no question for application of Sections 32A and 80J to them at least when we find that Section 80JJ was consciously simultaneously re-enacted on the omission of Section 10(27) of the Act specially for those who were engaged in the business of poultry. If omitted Section 10(27) and Sections 32A, 80J and 80JJ are read together along with the legislative history it is evident that the provision giving benefit to those who were engaged in running poultry farming was separate and distinct from the provisions which provided incentive to industrial undertakings engaged in the business of manufacturing or producing articles. Thus, if the expression industrial undertaking for purpose of business of manufacture or production of an article or thing is read in the context of the provisions of the Act and with regard to legislative history of the provisions of the Act, it is abundantly clear that those who are engaged in the business of hatcheries are neither industrial undertakings nor engaged in the business of producing articles or things.

It was then urged that the assessee has been running a business where eggs are hatched on large scale by adopting the latest scientific technological methods. Learned counsel for the assessee referred to the various steps taken by the assessee in producing chicks, as noticed in the judgment of the Tribunal on the basis of written note submitted by the assessee, which runs as under:-

- (1) The farm and hatchery are kept strictly under quarantine.
- (2) The eggs are collected from the breeding farm frequently and hygienically. Then they are transported to the hatchery. Before admitting the eggs into the hatchery they

pass through the fumigation chamber. Once the eggs are fumigated they become free from most of the micro organisms which are pathogenic and present on the surface of the egg shell.

(3) Storage of eggs is a must because we cannot incubate and get a hatch every day due to economical reasons. The technique of storing eggs without affecting the hatchability has been evolved after many experiments. A cold room having 60-65 degrees fahrenheit temperature and 75 per cent humidity is considered ideal for optimum results, if your storage does not exceed a couple of weeks. Once we store the eggs in the above temperature, 60-65 degree fahrenheit, we just cannot take out and load them in the incubation immediately. We take out the eggs 12 to 18 hours before the loading time.

(4) The incubation period of the eggs is 21 days.

Even by the natural process it takes the same time, but there are certain research works which show that the incubation period of broilers, particularly, can be reduced to 18 days. Not only in India, but even in other parts of the world, the complicated technology for reducing the incubation period is not economical and viable. Hence, we follow the same 21 days incubation period. The incubation period can be divided into two stages : (a) First 18 days, and (b) last 3 days.

For the first 18 days, the eggs are incubated in a large scale in automatic machines where the temperature, humidity and changing of position of the egg every hour is done automatically. After completion of 18 days the same eggs are transferred to another machine in which, except turning, the rest are the same like the above machine. On completion of 21 days, the chicks will be out from the eggs.

(5) Once the chicks are out the male and female are separated. This process is called sexing. Two methods are in existence. One is the Japanese event method and the second is by a machine. In both the methods accuracy remains almost the same. In case of machine sexing, the chick mortality will be about 2 per cent whereas in the Japanese method this mortality does not occur. Once the sexed females(in case of layers) have been vaccinated against various diseases they are sent to the farmers.

(6) It is also stated that in modern hatchery operations there is a pooling of the following factors :

(1) Capital, (2) Labour, (3) Power, (4) Plant and machinery, (5) Artificial hatching, (6) Research, (7) Technology, (8) Large-scale production, (9) Prevention of diseases, (10) Quality of chicks : (a) Protection against diseases - less mortality, (b) Chicks - better yield, larger number of eggs, size of eggs, (c) Less feed consumption.

Learned counsel for the assessee also referred to various passages from several books, i.e., The Incubation Book by Dr. A.F. Anderson Brown, Poultry Hatcheries business by Dr. A.L. Bhagwat, Poultry Science and Production by Robert E. Moreng and Poultry Keeping in India by P.M.N. Naidu and on the strength of those passages it was emphasized that chickens are produced by mechanical

process and, therefore, the assessee is producing articles or things. It was also urged that better and larger number of eggs and chickens are not possible by conventional method, namely, through broody hens. It was stated that under natural conditions the broody hen produces about 6 to 8 eggs, then stops laying, sits on the eggs, incubates them for 3 weeks and hatches the chicks by natural methods. She then takes care of the young chicks for 2 to 3 weeks, till they are able to pick up independently. This conventional method produces only 68 to 80 eggs in a year, whereas by employing modern scientific methods assessee produces about 280 eggs in a year and is capable of producing 220 to 230 chicks in a year through artificial incubation. For the larger growth of eggs and chicks, it is necessary that incubation has to be mechanical as the broody hens are now virtually unobtainable from the commercial world.

From a perusal of the self-stated steps taken by the assessee for the alleged production of chicks it is clear that the assessee does not contribute to the formation of chicks. The formation of chicks is a natural and biological process over which the assessee has no hand or control. In fact, what the assessee is doing is to help the natural or biological process of giving birth to chicks. The chicks otherwise can also be produced by conventional or natural method and in that process also, same time is taken when the chicks come out from the eggs. What the assessee by application of mechanical process does in the hatchery is to preserve and protect the eggs at a particular temperature. But the coming out of chicks from the eggs is an event of nature. The only difference seems to be that, by application of mechanical methods, the mortality rate of chicks is less and the assessee may get chicks more in number. This, however, would not mean that the assessee produces chicks and that chicks are articles or things. We are, therefore, of the opinion that the assessee is neither an industrial undertaking nor does the business of hatchery carried out by the assessee fall within the meaning of Section 32A and Section 88J of the Act.

It was then urged by the learned counsel for the assessee that the Act uses the words articles or things at several places and the meaning assigned to them in other places of the Act should also be assigned under Section 32A and Section 88J of the Act. Fifth Schedule of the Act sets out a list of items which are treated as articles or things manufactured or produced for the purpose of Section 33(1)(b) of the Act. In this Schedule we find that processed seeds which are products of plants have been shown as articles or things. Similarly, item No.(30) of the said Schedule is fish, which is an animate object, it has been shown under heading articles or things. On the strength of the meaning assigned to articles and things in the Fifth Schedule of the Act, it was urged that hatching of chicks is also production of articles or things. It is, no doubt, true that processed seeds and fish have been described under the heading articles or things in the Fifth Schedule. Generally, the same words in a statute have the same meaning whenever used in that statute, but they may also have a different meaning in different provisions of the same statute. In *Shamrao Vishnu Parulekar and another vs. The District Magistrate, Thana and others*, (1956 SCR 644, it was held, thus:-

But it is contended by Mr. Chatterjee that the expression grounds on which the order has been made occurring in S.3(3) is, word for word, the same as in S.7, that the same expression occurring in the same statute must receive the same construction, that what S.3 requires is that on the making of an order for detention, the authority is to formulate the grounds for that order, and send the same to the State Government

under S.3(3) and to the detenu under S.7, and that therefore it was not sufficient merely to send to the State Government a report of the materials on which the order was made. Reliance was placed on the following passage in Maxwells Interpretation of Statutes:

It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act.

The rule of construction contended for by the petitioners is well-settled, but that is only one element in deciding what the true import of the enactment is, to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute. The presumption, says Craies, that the same words are used in the same meaning is however very slight, and it is proper if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act. And Maxwell, on whose statement of the law the petitioners rely observes further on:

But the presumption is not of much weight. The same word may be used in different senses in the same statute, and even in the same section.

The same word, if read in the context of one provision of the Act, may mean or convey one meaning and another in a different context. The Legislature in its wisdom had chosen to place processed seeds and fish under the heading articles or things in the Fifth Schedule as Legislature is competent to give artificial meaning to any word. We are, therefore, of the opinion that the meaning assigned to words articles or things in the Fifth Schedule cannot be assigned to the words articles or things used in Sections 32A and 80J of the Act.

Learned counsel for the assessee relied upon several decisions under the Sales Tax Acts, Central Excise Act and the provisions of other statutes for the contention that article includes goods and goods could be an animate object and, viewed in this light, the hatching of eggs would come within the meaning of the word produce which is of wider import than the word manufacture. No doubt, several Sales Tax Acts have included animate things for the purpose of levying tax on sales. But the meaning assigned to a particular word in a particular statute cannot be imported to a word used in a different statute.

We, therefore, reject the submissions of the learned counsel for the assessee. For the aforesaid reasons, we hold that the decision by the Andhra Pradesh High Court in the case of Commissioner of Income Tax vs. Sri Venkateswara Hatcheries (P) Ltd.(supra) does not lay down the correct view of law, whereas we approve the decision of the Bombay High Court in the case of Commissioner of Income Tax vs. Deejay Hatcheries (supra).

The result of the aforesaid discussion is that the assessee is neither an industrial undertaking nor is it engaged in the business of producing articles or things. Consequently, the assessee is not entitled to developmental allowance under Section 32A of the Act and deductions under Sections 80HH, 80HHA, 80I and 80J of the Act.

For the reasons stated above the judgments under appeal, except Appeal No. 2596 of 1997, are set aside. All the civil appeals, except Civil Appeal No. 2596 of 1997 are allowed. Appeal No. 2596 of 1997, are allowed. Appeal No. 2596 of 1997 is dismissed. There shall, however, be no order as to costs.