

Bombay High Court

Commissioner Of Income-Tax vs Jayanand Khira And Company (P.) ... on 15 April, 1987

Equivalent citations: 1988 170 ITR 31 Bom

Author: Sugla

Bench: Bharucha, T Sugla

JUDGMENT Sugla, J.

1. The assessee is a company. Its main business is that of bus-body building over chassis supplied by owners. The assessee's claim that its business was that of manufacture, construction or production of motor buses and it was, therefore, entitled to higher development rebate for the assessment years 1967-68, 1968-69 and 1969-70 and to deduction under section 80E/80-I for the assessment years 1967-68 and 1968-69 was rejected both by the Income-tax Officer and the Appellate Assistant Commissioner. However, the Income-tax Appellate Tribunal accepted the claim.

2. At the instance of the Revenue, the Tribunal has referred to this court the following questions of law :

3. Assessment years 1967-68 and 1968-69 :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee carried on the business of manufacture or production of 'motor trucks and buses' as specified in the list in the Fifth Schedule to the Income-tax Act, 1961, and should be considered as a 'priority industry' ?

(2) Whether, on the facts and in the circumstances of the case, the assessee is entitled to relief under sections 80E/80-I of the Income-tax Act, 1961, at 8% of the profits and gains from such business of manufacture of trucks ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to development rebate at 35% instead of 20% allowed by the Income-tax Officer ?"

4. Assessment year 1969-70 :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee carried on the business of manufacture or production of 'motor trucks and buses' as specified in the list in the Fifth Schedule to the Income-tax Act, 1961, and it should be considered as a 'priority industry' ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to development rebate at 35% instead of 20% allowed by the Income-tax Officer ?"

5. For the purpose of considering whether the assessee is or is not entitled to higher development rebate and deduction under section 80E/80-I for various years, it is desirable to refer to the relevant provisions :

"33. (1)(b)(B) in the case of machinery or plant, -

(i) where the machinery or plant is installed for the purposes of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule, -."

"80E. (relevant for the assessment year 1967-68 only) : Deduction in respect of profits and gains from specified industries in the case of certain companies. -(1) In the case of a company to which this section applies, where the total income (as computed in accordance with the other provisions of this Act) includes any profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule, there shall be allowed a deduction from such profits and gains of an amount equal to eight per cent. thereof, in computing the total income of the company....."

"80-I. (relevant for the assessment year 1968-69 only) : Deduction in respect of profits and gains from priority industries in the case of certain companies. -(1) In the case of a company to which this section applies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent. thereof, in computing the total income of the company....."

6. Section 80I uses the expression "priority industry" which is defined in section 80B(7) as under :

"80B. (7) 'priority industry' means the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Sixth Schedule or the business of any hotel where such business is carried on by an Indian company and the hotel is for the time being approved in this behalf by the Central Government."

7. Items Nos. 10 and 20 in the list of articles or things in the Fifth and Sixth Schedules are identical, i.e., motor trucks and buses and automobile ancillaries.

8. Shri Dhanuka, learned counsel for the Revenue, contended that the assessee was only a body builder over the chassis supplied by the owners. The assessee did not manufacture, construct or produce motor buses nor automobile ancillaries. He laid great emphasis on the words "articles or things" used in sections 80E, 80B(7) and 33(1)(b)(B) of the Act. Body-building over the chassis, according to him, was certainly not an article or a thing which could be sold. For this purpose, he tried to derive support from the Supreme Court decisions in *State of Gujarat v. Variety Body Builders* [1976] 38 STC 176; *Ram Singh and Sons Engineering Works v. Commissioner of Sales Tax*

[1979] 43 STC 195; and the Punjab and Haryana High Court decision in *Ambala Coach Builders v. State of Haryana* [1977] 39 STC 44.

9. The crucial expression calling for interpretation in this reference is "the business of construction, manufacture or production of any one or more of the articles or things specified in the Fifth/Sixth Schedule". This is exactly the expression used in section 33(1)(b)(B) and section 80E as also in section 80B(7) except with the difference that this clause refers to the Sixth Schedule in place of the Fifth Schedule. For the present, we are confining ourselves to item No. 10 only in the list of articles or things in the Fifth/Sixth Schedule, which is "motor trucks and buses". In the instant case, what is relevant is only motor buses, as the assessee is building bodies for buses only. It is pertinent to mention that all the three provisions hereinabove are the provisions granting relief to assesseees with a view to give incentive to certain types of industries. The Legislature has in its wisdom used the expression "for the purpose of business of construction, manufacture or production of" (motor buses in this case) which is of wider connotation than the expression "for constructing, manufacturing or producing" motor buses. Moreover, we have to take judicial notice of the fact that no manufacturer in India manufactures motor trucks and/or motor buses as such. While some manufacturers manufacture only chassis, others build bodies over them for trucks or buses and these two major activities taken together make a complete motor truck or bus. The fact that the interpretation suggested by Shri Dhanuka, for the Revenue, will virtually make item No. 10 in the list of articles or things in the Fifth/Sixth Schedule of no consequence, as in that case, that neither the manufacturer of chassis nor the manufacturer of bus/truck bodies would be manufacturing motor trucks and/or buses as such and, therefore, would not be entitled to these benefits, cannot be lost sight of. Needless to mention, such a construction requires to be avoided. Having regard to all those aspects, we agree with the Tribunal that bus body builders are as much carrying on the business of manufacturing motor buses as chassis manufacturers are and that the assessee was, therefore, rightly held to be entitled to higher development rebate under section 33(1)(b)(B) and deduction under sections 80-E and 80I read with section 80B. In this view, we are fortified by the Madras High Court's decision in *CIT v. Simpson and Co. Ltd.* [1983] 141 ITR 35 (Mad), where the assessee in identical circumstances was held entitled to higher development rebate falling both under item No. 10 and item No. 20 in the list of articles or things in the Fifth Schedule.

10. Shri Dastur had also contended that it was open to him to argue that if his clients' case was not to fall under item No. 10 in the list of articles or things in the Fifth/Sixth Schedule, it would fall under item No. 20. In view of the fact that we have taken the view that this case falls under item No. 10, it is not necessary to deal with his submissions regarding item No. 20, though we hold that in view of this court's decisions in *Ismailia Grain Merchants Association Ltd. v. CIT* [1957] 31 ITR 433 (Bom) and *CIT v. New Digvijaysinhji Tin Factory* [1959] 36 ITR 72 (Bom), it would have been open to him to so urge.

11. No doubt, the Punjab and Haryana High Court in *Ambala Coach Builders' case* [1977] 39 STC 44 had held that bus bodies mounted upon motor chassis could not be regarded as accessories or spare parts and that they were to be regarded as component parts of a motor vehicle. It might be that in that view of the matter, the expression "motor vehicles" would not include its component parts such as bus bodies. The question in this case, however, is a little different. It is whether the assessee who

carries on business of bus-body building over the chassis supplied by the owner is, or can be said to be, engaged in the business of construction, manufacture or production of motor buses. For reasons given in the earlier paragraph, we have already held that the assessee is as much engaged in the manufacture of motor buses as manufacturers of chassis.

12. The facts in the above two Supreme Court decisions relied upon were different. In Variety Body Builders' case, the assessee was constructing/manufacturing railway coaches for the Railways. The question involved was whether the assessee in that case was transferring railway coaches as chattel. On the facts of that case, the court held that it was not so. More or less similar facts obtained in Ram Singh & Sons Engineering Works' case. It is, however, of particular significance that in State of Gujarat v. Variety Body Builders, the Supreme Court referred to its earlier decision in the case of McKenzies Limited v. State of Maharashtra [1965] 16 STC 518 (SC) (sic) with approval. The assessee in McKenzies Ltd. v. State of Maharashtra [1965] 16 STC 518 (SC) was a body builder over chassis as in the case before us. The question involved was whether was a dealer for sales tax purposes. The answer depended upon whether a body builder transferred the property in the body after it was built over the chassis. It was held that it was so. Thus, we do not find anything in the above two Supreme Court decisions relied upon by Shri Dhanuka supporting the case of the Revenue.

13. Having regard to the above discussion, we answer all the five questions of law referred to us in the affirmative and in favour of the assessee. No order as to costs.