

Income Tax Appellate Tribunal - Ahmedabad

Assistant Commissioner Of Wealth ... vs Prasad Productions (P) Ltd. on 14 March, 1996

ORDER G. Chowdhury, J. M.

1. These appeals have been filed by the Revenue for the asst. yrs. 1988-89 and 1989-90. The main business of the assessee-company is production of films. In the process of development of printing of films chemicals are used, out of which flakes and dust are accumulated, which contain silver. After processing and cleaning the flakes and dust pure silver is accumulated by the company which has been sold in the market. The value of the silver sold in the market has been shown by the assessee as income from business in its income-tax assessments. While computing the wealth-tax assessments the Assessing Officer (AO) included the value of the silver in the net wealth of the assessee for the two assessment years. The assessee appealed to the CWT(A) against the said order passed by the AO. According to the assessee, the silver collected from the dust and flakes is not asset within the meaning of s. 40 of the Finance Act, 1983, so that it can be included in the net wealth of the assessee. The CWT(A) by the impugned order held that the silver is a by-product in the process of development and printing of films. Therefore, it is a manufactured item by the assessee-company, which cannot be treated as an asset within the meaning of s. 40(3) of the Finance Act, 1983. Against the said order the Revenue is in appeal before us.

2. On behalf of the Revenue, it was contended that although silver is a by-product in the business of the assessee-company, it is an asset for the purpose of inclusion in the net wealth of the assessee-company. It was further submitted that the silver cannot be treated to be a raw material in the line of business of the assessee-company for the purpose of excluding the same from the net wealth under the WT Act. Our attention was drawn by the Revenue to sub-s. (3) of s. 40 of the Finance Act, 1983, according to which gold, silver, platinum or any other precious metal is to be included within the net wealth of the assessee. On the other hand, the learned counsel for the assessee submitted that the business of the assessee is processing of films and during the process flakes and dust are accumulated, which contain some quantity of silver. The assessee-company by way of further process and cleaning segregates pure silver from the dust and ultimately that is sold in the market. The sale proceed has been shown as business income by the assessee, which has been accepted by the Department in the income-tax proceedings. It was further submitted that accordingly the silver should be considered as stock-in-trade, which has been sold by the assessee in the market and s. 40 of the Finance Act, 1983, specifically excluded the stock-in-trade from the purview of the net wealth by inserting the proviso. It was further contended that silver being a production cannot be treated to be an asset within the meaning of s. 40(3) of the Finance Act, 1983. On behalf of the assessee, reliance was placed on the decision of the Tribunal (Madras Bench 'D') in the case of Fagun Co. (P) Ltd. vs. Dy. CIT (1993) 45 ITD 117 (Mad).

3. We have heard both the sides. The facts of the case are not in dispute. In the course of processing, developing and printing of films, chemicals are being used by the assessee-company. In the said process dust and flakes are accumulated, which contain some amount of silver. Thereafter by further processing, the assessee-company separates pure silver from the dust and flakes and ultimately the silver is sold in market. The return from the said sale of silver was shown by the assessee as business income, which is being accepted by the Department for income-tax purposes. Therefore, although

the main activity of the assessee is processing and production of films, during the two assessment years, the AO found that the amount for which the silver was sold by the assessee was Rs. 36,00,000 and Rs. 75,52,090, which should have been included in the net wealth of the assessee for the purpose of wealth-tax assessments applying the provisions of s. 3(1) of the Finance Act, 1983. The CWT(A) held that since silver was a product of the assessee-company, it cannot be termed as an asset for the purpose of s. 40(3) of the Finance Act, 1983. Therefore, from the facts of this case, we find that the assessee-company accumulated pure silver out of dust and flakes by further processing and in turn the silver is being sold out in the market.

4. The provision of s. 40(3)(i) is as under :

"40(3). The assets referred to in sub-s. (2) shall be the following, namely :

(i) gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals (not being any such precious metal or alloy held for use as raw material in industrial production)."

The last portion of the said sub-section, i.e., 'not being any such precious metal or alloy held for use as raw material in industrial production' has been included in the said section w.e.f. 1st April, 1989. Further from 1st April, 1989, a proviso was introduced to the said section, which reads as follows :

"Provided that this section shall not apply to any asset referred to in cls. (i), (ii), (iii), (iv), (v) or (vi), which is held by the assessee as stock-in-trade in a business carried on by it or, in the case of motor cars referred to in cl. (vii), they are held as stock-in-trade in such business or registered as taxis and used as such in a business of running motor-cars on hire carried on by the assessee."

According to the said proviso, it is clear that the assets referred to in cl. (i) of s. 40(3) will not be included in the net wealth of the assessee-company if it is held as stock-in-trade in the business carried on by it.

5. By s. 3(1) of the Finance Act, 1983, the assets referred to as gold, silver, etc., are subject to the provision that those are not being used as raw material in the industrial production, which is not the case here. Here the assessee gets some silver out of the dust and flakes, which may be called as by-product, but the assessee-company is not stocking the said silver as an asset. On the other hand, the assessee sells the silver in open market by which it gets income and offers it for taxation. The word 'stock-in-trade' has not been defined either in the WT Act or in the IT Act. In Chambers 20th Century Dictionary the meaning of 'stock-in-trade' is that all the goods a shopkeeper has for sale. Therefore, the meaning of the word 'stock-in-trade' should be taken as in common parlance, according to which any good stocked by a person for sale can be termed as stock-in-trade. In the present case, the silver accumulated by the assessee out of processing is being sold in the market is not in dispute. Therefore, the silver is to be termed as 'stock-in-trade'.

6. We have already noticed that the provision of s. 40(3)(i) came into operation from 1st April, 1989. Therefore, since 1st April, 1989, if gold, silver, platinum or any other precious metal held by the

assessee-company as raw material in industrial production or as a stock-in-trade in its business, the same shall not be included in the net wealth of the assessee. Under the aforesaid situation so far as the asst. yr. 1989-90 is concerned that provision is clearly applicable in the case of the assessee. In relation to the asst. yr. 1988-89, following the decision of the Tribunal (Madras 'C' Bench) in the case of Varadaraja Theatres (P) Ltd. vs. WTO (1989) 33 TTJ (Mad) 146 : (1989) 29 ITD 29 (Mad), it can be held that the aforesaid provision is applicable for that year also. In the case of Varadaraja Theatres (P) Ltd. vs. WTO (supra), the Tribunal held that although the cinema house was included within the exempted assets under s. 40(3)(vi) of the Finance Act, 1983, w.e.f. 1st April, 1989, by the Finance Act, 1988, for the earlier assessment years also the exemption will be applicable if it is found that the theatre building was being used exclusively by the assessee for the purpose of business. In the present case also, we find that the assessee has utilised the silver as stock-in-trade for the earlier assessment year also. Hence, the assessee will be entitled to the benefit of this provision.

7. The decision reported in (1993) 45 ITD 117 (Mad) (supra), cited on behalf of the assessee, has no relevance for the purpose of the present case because in that case the issue was whether a building would be exempted as business asset when it was partly used for the company's own business and partly let out to others to carry on their business.

8. Under the aforesaid circumstances, we hold that the silver sold by the assessee as stock-in-trade cannot be included in the net wealth of the assessee. The appeals filed by the Revenue are dismissed.