

Supreme Court of India

Minocha Bros. Pvt. Ltd. vs Commissioner Of Income Tax on 8 September, 1993

Equivalent citations: 1993 204 ITR 628 SC, 1994 Supp (2) SCC 694

Bench: B J Reddy, S Bharucha

ORDER

1. The only question in this appeal preferred by the assessee against the judgment of the Delhi High Court (see [1986] 160 ITR 134) is whether the appellant is an "industrial company" within the meaning of the said expression as defined in the Finance Acts of 1971 and 1972. The definition reads as follows :

Industrial company' means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

Explanation.-For the purposes of this clause, a company shall be deemed to be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, if the income attributable to any one or more of the aforesaid activities included in its total income of the previous year (as computed before making any deduction under Chapter VI-A of the Income-tax Act) is not less than fifty-one per cent of such total income.

2. The assessee is engaged in the construction of buildings. For that purpose, it manufactures windows, doors, shutters and other goods. The goods so manufactured by it are used in the constructions made by it. The assessee claimed that, being an industrial company within the meaning of the said Finance Acts, it is entitled to the lower rate of tax. The Income-tax Officer and the Appellate Assistant Commissioner rejected the claim but the Tribunal agreed with the appellant. On reference, at the instance of the Revenue, the High Court has held that the assessee is not an "industrial company.

3. A reading of the definition aforesaid shows that, for being characterised as an "industrial company", the company must be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. The Explanation says that a company shall be deemed to be mainly engaged in any of the specified activities, only if the income attributable to any one or more of the specified activities is not less than 51 per cent. of the total income, i.e., total income for the relevant previous year, as computed before making any deduction under Chapter VI-A of the Income-tax Act. The appellant upon whom lay the burden of establishing the requirements of the said definition has failed to adduce any material to establish that the income attributable to the manufacturing activity undertaken by him represents not less than 51 per cent. of its total income. We repeatedly asked learned counsel for the appellant as to whether the appellant has adduced any material in this case to establish the said circumstance. He could not point to any such material-except stating that the Tribunal and the High Court have not recorded any finding that the said requirement is not satisfied. The question is not so much as to whether the authorities under

the Act or the High Court have or have not recorded such finding. The question is whether the appellant has adduced any material to establish the basis upon which he claimed the said benefit.

4. Learned counsel for the appellant relied upon a circular of the Central Board of Revenue dated February 17, 1993. Paragraph 2 of the Circular reads as follows :

The question as to the exact meaning of the Explanation to Sub-section 7(d) of Section 2 of the Finance Act, 1966, came up for consideration and the Board are advised that an 'Industrial company' would mean-

(i) A company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, even if its income from such activities is less than 51 per cent. of its total income ; and

(ii) a company which, even though not mainly so engaged, derives in any year 51 per cent. or more of its total income from such activities.

5. It may, however, be noted that construction of buildings is not one of the activities mentioned in Clause (i). Clause (ii) does not help the appellant. If so, it is unnecessary to express any opinion whether the said circular runs contrary to the Explanation to the definition of "industrial company" in the Finance Acts and, if so, whether it can be acted upon.

6. The appeals are, accordingly, dismissed. No costs.