Prakash Trading Co.

Vs

Commissioner of Income Tax.

Civil Appeal Nos. 452 & 453 of 1978

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

20.02.1996

JUDGMENT

B. P. JEEVAN REDDY J.

These appeals are preferred by the assessee against the judgment of the Gujarat High Court answering the two questions referred to it, at the instance of the Revenue, in favour of the Revenue and against the assessee. The two questions stated for the opinion of the High Court under s. 256(1) are :

> "(1) Whether, on the facts and in the circumstances of the case, the assessee was entitled to claim deduction from tax in respect of deoiled cakes exported or sold to exporters by it under s. 2(5)(a)(ii) and (iii) and s. 2(5)(c) of the Finance Act, 1966 r/w item No. 28 of the First Schedule to the Industries (Development & Regulation) Act, 1951 for the asst. yr. 1966-67 ?
>
> (2) Whether, on the facts and in the circumstances of the case the assessee was entitled to claim deduction from income-tax in respect of de-oiled cakes exported or sold to exporters by it under s. 2(4)(a)(ii) and (iii) and s. 2(4)(c) of the Finance Act, 1967 r/w Item No. 28 of the First Schedule to the Industries (Development & Regulation) Act, 1951 for the asst. yr. 1967-68 ?"

2. With a view to encourage export of industrial goods, the Finance Acts of 1966 and 1967 provided an additional incentive. A person engaged in the manufacture of any articles in an industry specified in the First Schedule to the Industries (Development & Regulation) Act, 1951 (IDR Act) and who has exported such articles out of India or has sold the said articles to an exporter was entitled, to an additional deduction specified in sub-cls. (ii) and (iii) of cl. (a) of s. 2(5) of the Finance Act, 1966 and s. 2(4) of the Finance Act, 1967. The relevant provisions in both the Finance Acts are identical. It would suffice if we refer to the provisions in the Finance Act, 1966. Insofar as relevant, the provisions in s. 2(5) read as follows :

> "2(5)(a). In respect of any assessment year commencing on the 1st day of April 1966, in the case of an assessee being a domestic company or an assessee other than a company, -
>
> (i) where his total income includes any profits and gains derived from the export of any goods or merchandise out of India, he shall be entitled to a deduction, from the amount of income-tax with which he is chargeable, of an amount equal to the

income-tax calculated at one- tenth of the average rate of income-tax on the amount of such profits and gains included in his total income.

(ii) where he is engaged in the manufacture of any articles in an industry specified in the First Schedule to the Industries (Development & Regulation) Act, 1951 (LXV of 1951), and has, during the previous year, exported such articles out of India, he shall be entitled, in addition to the deduction of income-tax referred to in sub-cl. (i), to a further deduction, from the amount of income-tax with which he is chargeable for the assessment year, of an amount equal to the income-tax calculated at the average rate of income-tax on an amount equal to two per cent, of the sale proceeds receivable by him in respect of such export;

Explanation. - .....

(iii) where he is engaged in the manufacture of any articles in an industry specified in the said First Schedule and has, during the previous year, sold such articles to any other person in India who himself has exported them out of India, and evidence is produced before the ITO of such articles having been so exported, the assessee shall be entitled to a deduction, from the amount of income-tax with which he is chargeable for the assessment year of an amount equal to the income-tax calculated at the average rate of income-tax on a sum equal to two per cent of the sale proceeds receivable by him in respect of such articles from the exporter.

(b).....

(c) Nothing contained in sub-cl. (ii) or sub-cl. (iii) of cl.

(a) shall apply in relation to -

(1) fuels,

(2) fertilisers,

(3) photographic raw film and paper;

(4) textiles (including those dyed, printed or otherwise processed) made wholly or in part of jute, including jute twine and rope,

(5) newsprint,

(6) pulp-wood pulp, mechanical, chemical including dissolving pulp.

(7) sugar,

(8) vegetable oils and vanaspati,

(9) cement and gypsum products,

(10) arms and ammunition, and

(11) cigarettes

respectively, specified in items 2, 18, 20, 23(2), 24(2), 24(5), 25, 28, 35, 37 and 38 of the First Schedule to the Industries (Development & Regulation) Act, 1951 (LXV of 1951)."

3. The appellant-assessee is a registered partnership firm engaged in the manufacture of groundnut oil at Veraval. It has a solvent extraction plant at Veraval. It exported, or sold to exporters, de- oiled rakes of the value of Rs. 48,92,902 and Rs. 24,13,040 respectively during the accounting years relevant to the asst. yrs. 1966-67 and 1967-68 and claimed the additional deduction in respect of the said amounts under the provisions of s. 2(5)(a)(ii) and (iii) of the Finance Act, 1966 and under s. 2(4)(a)(ii) and (iii) of the Finance Act, 1967. The ITO rejected the claim with reference to and relying upon cl. (c) of s. 2(5) of the Finance Act, 1966 and cl. (c) of s. 2(4) of the Finance Act, 1967. On appeal, the AAC agreed with the assessee's contention that cl. (c) aforesaid refers to articles as such and not to industries and since de-oiled cake is not mentioned in cl. (c), the assessee is entitled to additional deduction. The Tribunal affirmed the said view in appeal. At the instance of the Revenue, the Tribunal referred the aforesaid two questions under s. 256(1).

4. The only question that arises in these appeals is whether cl. (c) refers to articles mentioned therein or whether it refers to industries engaged in the manufacture of those articles. For answering this question, we have to turn to the scheme underlying the provisions aforementioned. Sub-cls. (ii) and (iii), which provide the additional deduction, speak of the articles manufactured in "an industry specified in the First Schedule to the IDR Act", which have been exported out of India by the manufacturer during the relevant accounting year or which have been sold to an exporter who has actually exported them out of India. Clause (c) of s. 2(5) of the 1966 Act [or s. 2(4) of the 1967 Act] is in the nature of an exception to sub-cls. (ii) and (iii) of cl. (a). It follows, as it must, the same pattern. Clause (c) opens with the words "Nothing contained in sub-cl. (ii) or sub-cl. (iii) of cl. (a) shall apply in relation to -". then it proceeds to mention several articles, at the same time specifying the item numbers in the First Schedule to the IDR Act under which the said articles fall. Just as the First Schedule [to the IDR Act] mentions several articles under various heads, so does cl. (c) of s. 2(5) of the Finance Act, 1966 and s. 2(4) of the Finance Act, 1967. The description is identical in both the First Schedule and cl. (c). We may illustrate what we say. The pattern in the First Schedule is to mention an article under a heading [item] and then mention several categories thereof under the sub-headings [sub-items]. For example, Item (2) in the First Schedule reads :

"2. Fuels :

(1) Coal, lignite, coke and their derivatives.

(2) mineral oil (crude oil) motor and aviation spirit, diesel oil, kerosene oil, fuel on diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like.

(3) Fuel gases - (coal gas, natural gas and the like)."

Now, cl. (c) adheres to the said pattern. Where it seeks to refer to the entire item in the First Schedule, it does so and where it seeks to refer only to a particular sub-item of an item in the First Schedule, it says so - and the description is identical. To wit, Item (i) in cl. (c) is "Fuels", the same as the heading of Item (2) of the First Schedule. Item (2) in cl. (c) is "Fertilizers", the same as in Item (18) of the First Schedule. Similarly, Item (3) in cl. (c) is "photographic raw film and paper", the same as Item (20) in the First Schedule. However, when it comes to Item (4) in clause (c), it covers only a sub-item of Item (23) in the First Schedule. Item (23) of the First Schedule "Textiles

(including those dyed, printed or otherwise processed)" has five sub-items. It reads :

> "23. Textiles (including those dyed, printed or otherwise processed) :
>
> (1) Made wholly or in part of cotton, including cotton yarn, hosiery and rope.
>
> (2) Made wholly or in part of jute, including jute twine and rope.
>
> (3) Made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets.
>
> (4) Made wholly or in part of silk, including silk yarn and hosiery.
>
> (5) Made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres."

Item (4) in cl. (c), however, refers only to sub-item (2) of Item (23) in the First Schedule but not to other sub-items. Item (4) in cl. (c) reads : "Textiles (including those dyed, printed or otherwise processed) made wholly or in part of jute including jute twine and rope." Similarly, Item (5) in cl. (c) refers to sub-item (2) of Item (24) of the First Schedule and Item (6) in cl. (c) refers to sub-item (5) of Item (24). In all cases, however, the description of articles is identical. To repeat, both sub-cls. (ii) and (iii) of cl. (a) and cl. (c) refer to articles only, as does the First Schedule to the IDR Act. If so, all of them must carry the same meaning and purport. Moreover, cl. (c) being an exception to sub-cls. (ii) and (iii) must follow the same pattern as in the said sub-clauses, it is reasonable to presume so .

5. For the above reasons, we agree with the High Court and dismiss the appeals. No costs.