South India Steel Rolling Mills, Madras

Vs

Commissioner of Income Tax, Madras

Civil Appeals Nos. 5332 to 5335 (NT) of 1983

(G. B. Pattanaik, S. C. Agarwal JJ)

25.02.1997

JUDGMENT

1. These appeals, by certificate granted under Section 261 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), have been filed by the assessee against the judgment of the Madras High Court dated 2-11-1981. By the said judgment the High Court has answered the following question referred to it by the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal" against the assessee and in favour of the Revenue :

> "Whether on the facts and circumstances of the case the revision of assessment under Section 263 by the Commissioner for withdrawing the development rebate granted for Assessment Years 1962-63, 1963-64, 1967-68 and 1968-69 is proper and justified."

2. The assessee was a partnership firm having been constituted on 1-9-1960. It was running a steel rolling mill. Initially, there were four partners, namely, M/s. S. L. Nahata, M. S. Bedi, Biharilal and M. K. Raheja, in the assessee firm. Two of the partners, Biharilal and M. K. Raheja, subsequently retired from the partnership and the partnership was reconstituted with the remaining two partners continuing the same business. On 3-3-1968, Shri M. S. Bedi, one of the two partners died. Since only one surviving partner was left the partnership stood dissolved. On 4-3-1968 a new partnership was constituted comprising Shri S. L. Nahata and the legal heirs of Shri M. S. Bedi to carry on the business undertaking previously carried on by the partnership firm of which Shri M. S. Bedi was a partner.

3. In these appeals we are concerned with the partnership firm as it existed prior to its dissolution on 3-3-1968. The assessee firm had obtained the benefit of development rebate under Section 33(1)(a) of the Act during the assessment years in question. Since the partnership stood dissolved on 3-3-1968, before the expiry of the period of 8 years, the Commissioner of Income Tax, in exercise of the powers conferred on him under Section 263 of the Act withdrew the development rebate that had been granted to the assessee for the said assessment years. Feeling aggrieved by the said order of the Commissioner, the assessee filed an appeal before the Tribunal which was decided against the assessee. At the instance of the assessee the Tribunal referred the question abovementioned for the opinion of the High Court.

4. The question raised involves interpretation of the provisions of Sections 33(1)(a) and 34(3) which at the relevant time read as under :

> "33. Development rebate. - (1)(a) In respect of a new ship or new machinery or plant,

(other than office appliances or road transport vehicles) 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 and of Section 34, be allowed a deduction, in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, a sum by way of development rebate as specified in clause (b).

34. Conditions for depreciation allowance and development rebate. - (3)(a) The deduction referred to in Section 33 shall not be allowed unless an amount equal to seventy-five per cent of the development rebate to be actually allowed is debited to the profit and loss account of any previous year and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business undertaking, other than -

(i) for distribution by way of dividends or profits; or

(ii) for remittance outside India as profits for the creation of any asset outside India :

Provided that this clause shall not apply where the assessee is a company, being a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948), or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958 :

Provided further that where a ship has been acquired after the 28th day of February, 1966 this clause shall have effect in respect of such ship as if for the words 'seventy-five', the word 'fifty' had been substituted.

Explanation. - For the removal of doubts, it is hereby declared that the deduction referred to in Section 33 shall not be denied by reason only that the amount debited to the profit and loss account of the relevant previous year and credited to the reserve account aforesaid exceeds the amount of the profit of such previous year (as arrived at without making the debit aforesaid) in accordance with the profit and loss account.

(b) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed, any allowance made under Section 33 or under the corresponding provisions of the Indian Income Tax Act, 1922 (11 of 1922), in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5) of Section 155 shall apply accordingly :

Provided that this clause shall not apply -

(i) where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958; or

(ii) where the ship, machinery or plant is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956); or

> (iii) where the sale or transfer of the ship, machinery or plant is made in connection with the amalgamation or succession, referred to in sub-section (3) or sub-section (4) of Section 33."

5. These provisions indicate that under Section 33(1)(a) the benefit of development rebate was available in respect of a new ship or new machinery or plant which was (i) owned by the assessee and (ii) was wholly used for the purposes of the business carried on by him. The availability of the said benefit of development rebate under Section 33(1)(a) was, however, subject to the provisions of Section 34. Under clause (a) of sub-section (3) of Section 34 deduction under Section 33 was permissible only if an amount equal to 75% of the amount of development rebate that was actually allowed was credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking. In clause (b) it was prescribed that in the event of the ship, machinery or plant in relation to which development rebate has been allowed being sold or otherwise transferred by the assessee before the expiry of the period of eight years from the end of the previous year in which it was acquired or installed, the allowance made in respect of it shall be deemed to have been wrongly made and the Assessing Officer may recompute the total income of the assessee for the relevant previous year and make the necessary amendment under Section 155(5) of the Act. This is, however, subject to the exceptions contained in the proviso to clause (b).

6. The High Court has held :

> "As part of the fundamental requirement for the grant of development rebate, the creation of a development rebate is a necessary first step. But that alone is not enough. The reserve account has got to be utilised by the assessee for the purposes the business of the undertaking for a period of eight years running immediately following the installation of the machinery. The implication of these conditions are that where the assessee does not utilise the reserve account for the purposes of his business during a period of 8 years, then the very condition on which the rebate is granted would remain unfulfilled. Hence the original grant of development rebate itself must perforce be regarded as having been made without the necessary condition being fulfilled therefor."

7. The High Court has observed that in the present care the assessee firm became extinct before the expiry of the eight-year period and what came afterwards was a different entity even if it comprised only the surviving partner and the deceased partner's legal representatives. According to the High Court there was a basic failure of the fact situation in the assessee's case to fit in with the terms of the statutory grant of development rebate implicit in the statutory provisions.

8. Ms Janki Ramachandran, the learned counsel appearing for the assessee, has submitted that development rebate is granted in respect of a business and that under Section 33(1)(a) and Section 34(3)(a) what is required is that the business must be continued for the prescribed period of eight years and that in the present case after the dissolution of the old partnership, the new partnership carried on the same business and, therefore, the benefit of development rebate could not be withdrawn. The learned counsel has placed reliance on the decisions of this Court in Mulahar Fisheries Co. v. CIT ((1979) 4 SCC 766 : 1980 SCC (Tax) 49 : (1979) 120 ITR 49) and CIT v. J. H. Gotla ((1985) 4 SCC 343 : 1985 SCC (Tax) 670 : (1985) 156 ITR 323). The learned counsel has also invited our attention to the Statement of Objects and Reasons appended to the Finance Bill, 1958 whereby the provisions relating to grant of development rebate as contained in Section 10 of

the Income Tax Act, 1922 were amended.

9. Dr. Gauri Shankar, the learned Senior Counsel appearing for the Revenue, has, on the other hand, submitted that the High Court has rightly construed the provisions contained in Sections 33(1)(a) and 34(3)(a) of the Act and the said view taken by the High Court is in consonance with the object sought to be achieved by the said provisions. He has, in this context, invited our attention to the report of the Taxation Enquiry Commission (1953-54) which was the basis for introducing the provisions relating to development rebate in the Income Tax Act, 1922. It has been pointed that the said report shows that the object underlying the grant of development rebate is that it would afford a direct stimulus to expansion and quicker replacement and aid the efficiency and competitive power of the industries. The submission is that having regard to the object underlying the said provision the development rebate can be available only to a particular assessee in respect of his business. Dr. Gauri Shankar has also pointed out that wherever the legislature intended to extend a particular tax benefit in circumstances where the partnership stood dissolved, an express provision has been made in that regard and he has invited our attention to sub-section (5-A) of Section 32-AB wherein express provision has been made for withdrawal of the amount standing to the credit of the assessee in the Investment Deposit Account before the expiry of the period of five years from the date of deposit in the event of dissolution of a firm. The learned counsel has urged that since the provisions contained in Sections 33(1)(a) and 34(3) (a) do not make any provision regarding dissolution of a partnership firm and speak of the assessee only, it must be held that the expression "assessee" in these provisions means the partnership firm as it stood before dissolution and would not cover a newly-constituted firm after the dissolution of the old firm.

10. Having regard to the words "which is owned by the assessee and is wholly used for the purposes of the business carried on by him", in Section 33(1)(a), it must be held that the benefit of development rebate is available only to the assessee which is owning the machinery or plant and is using it wholly for the purpose of the business carried on by him. Similarly in Section 34(3)(a) the words used are "to be utilised by the assessee during a period of eight years next following for the purpose of the business of the undertaking". The grant of development rebate under Section 33(1)(a) is subject to the conditions laid down in Section 34(3)(a) which means that the assessee who has obtained the development rebate under Section 33(1)(a) must also be the assessee who should utilise the amount credited to the reserve account during the period of eight years next following for the purpose of the business of the undertaking for which the development rebate was given. In other words, the expression "by the assessee" in these provisions refer to the same assessee. The condition for grant of rebate under Section 33 read with Section 34(3)(a) would not be satisfied if the assessee who has availed of the rebate ceases to exist before the expiry of the period of eight years.

11. The decisions on which reliance has been placed by Ms. Ramachandran have no direct bearing on the point in issue. In Malabar Fisheries Co. ((1979) 4 SCC 766 : 1980 SCC (Tax) 49 : (1979) 120 ITR 49) this Court has construed the expression "transfer" in the context of Section 34(3)(b) of the Act. In the instant case, we are not concerned with transfer of machinery or plant by the appellant-assessee. Here the assessee firm had ceased to exist as a result of dissolution before the expiry of the period of eight years. In CIT v. J. H. Gotla ((1985) 4 SCC 343 : 1985 SCC (Tax) 670 : (1985) 156 ITR 323) this Court, while considering the provisions of Section 16(1)(c) of the Income Tax Act, 1922, has observed that where the plain literary interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language so as to achieve that intention of the legislature and produce a rational construction. We are unable to hold that the said principle requires to be invoked while construing Sections 33(1)(a) and 34(3)(a) in the present case. The High Court, in our opinion, has rightly held

that in view of Section 34(3)(a) the appellant-assessee could not avail of the benefit of development rebate.

12. The other contention of Ms Ramachandran was that the Commissioner could not invoke his jurisdiction under Section 263 of the Act and that the matter could be dealt with only by the Income Tax Officer in exercise of his power of rectification under Section 155 of the Act. The submission is that since Section 155 is a special provision dealing with the a partnership firms, the general provision contained in Section 263 could not be invoked. It was also contended that the power under Section 263 can only be invoked on the basis of the record as it stood when the order was passed by the Income Tax Officer and that it was not open to the Commissioner to rake into account the dissolution of the assessee firm, which took place after; the passing of the order, because that circumstance is not disclosed in the record before the Income Tax Officer. As pointed out by the High Court, no question as to the competence of the Commissioner to exercise his powers of decision was raised by the assessee either before the Commissioner before the Tribunal. Even otherwise there is no merit in this contention. Merely because the Income Tax Officer could have rectified the order, the Commissioner could not be precluded from exercising the power conferred on him under Section 263. The power of rectification conferred on the Income Tax Officer under Section 155 and the power of revision conferred on the Commissioner under Section 263 are distinct powers. The principle that one is a special provision and the other is a general provision has no application. The revisional power conferred on the Commissioner under Section 263 is of wide amplitude. It enables the Commissioner to revise an order passed by the Assessing Officer if he considers it to be erroneous and prejudicial to the interests of the Revenue. We find no reason to limit this power by reference to Section 155.

13. As regards his taking into consideration an event which had occurred subsequent to the passing of the order by the Income Tax Officer, it may be stated that in Explanation (b) in Section 263 there is an express provision wherein it is prescribed that "record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner". The death of one of the two partners resulting in the dissolution of the assessee firm on account of such death took place prior to the passing of the order by the Commissioner and it could, therefore, be taken into consideration by him for the purpose of exercising his powers under Section 263 of the Act.

14. For the reasons aforementioned, we do not find any merit in the appeals and the same are accordingly dismissed. But in the circumstances there will be no order as to costs.