India Leather Corporation (P) Ltd., Madras

Vs

Commissioner of Income Tax, Madras

Civil Appeal No. 292 of 1982 with SLPs (C) Nos. 8179 of 1980 and 4141 of 1981

(S. C. Agarwal JJ)

30.04.1997

ORDER

1. This appeal by the assessee is directed against the judgment of the Madras High Court dated 14-11-1978 in Tax Case No. 33 of 1975 relating to the Assessment Year 1966-67.

2. The assessee is a private limited company carrying on the business of tanning hides and skins by chemical process and selling the resultant leather as well as purchase and sale of leather on commission basis. It owns a tannery known as Southern India Tanneries where the tanning of hides and skins by chemical process is done. During the Assessment Year 1966-67 the total profit of the assessee was Rs. 5,05,045 which included Rs. 3,73,870 earned by sale of chemicals imported on the strength of licences granted on the basis of export of leather, hides and skins in earlier years. The distributable income of the assessee for the Assessment Year in question was Rs. 2,59,289 but it had distributed only Rs. 1,00,000 as dividend. The assessee claimed that it was a company whose main business was manufacture of leather, processing of hides and skins with chemical process and the provisions of Section 104 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") do not apply in view of sub-section (4) of Section 104. The Income Tax Officer held that profit of Rs. 3,73,870 earned by the assessee by sale of imported chemicals could not be said to be attributable to its activity of manufacture or processing of goods and consequently the assessee could not be considered as a company falling within the purview of Section 104(4) since the income attributable to such activity was less than 51% of its total income. He, therefore, levied additional tax of Rs. 58,937 under Section 104. The said order of the Income Tax Officer was affirmed in appeal by the Appellate Assistant Commissioner and by the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") on further appeal. The Tribunal, in its order, has taken note of the fact that during the previous year ending 31-12-1965 the total export sales of the assessee were Rs. 3,99,13,372 out of which export sales of hides and skins manufactured by it were to the extent of Rs. 32,49,000 only. The Tribunal has observed that the sale of goods manufactured by the assessee was less than 10% of the total export and that the rest were all goods of third parties, purchased and exported by it on commission basis. On these facts the Tribunal held that it could not be said that the profit derived by the appellant by sale of imported chemicals had direct relationship or connection with its manufacturing activity. At the instance of the assessee the Tribunal referred the following question for the opinion of the High Court :

> "Whether the profit of Rs. 3,73,870 obtained by the assessee during the relevant previous year by the sale of chemicals imported by it on the strength of licences issued to it based on its export performance of leather both manufactured and purchased by it was rightly held as not attributable to the manufacturing activity carried on by it."

3. By the impugned judgment the High Court has answered the said question in the affirmative, i.e., against the assessee and in favour of the Revenue. The High Court has held that though the export business of leather manufactured or purchased by the assessee was the remote cause for import entitlement which in turn had given rise to the earning of income from sales of imported goods and could in one sense be said to be connected with manufacturing, such connection was not sufficiently proximate to enable the Court to say that the income was attributable to the manufacturing process of leather.

4. The High Court granted certificate of fitness for appeal to this Court a under Section 261 of the Act in view of the decision of this Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT ((1978) 2 SCC 644 : 1978 SCC (Tax) 119 : (1978) 113 ITR 84). Hence this appeal.

5. Mrs. Janaki Ramachandran, the learned counsel for the assessee, has invited our attention to the provisions contained in the Explanation in sub-section (4) of Section 104 of the Act which reads as under :

> "For the purposes of clause (a) of this sub-section, the business of a company shall be deemed to consist mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power if the income attributable to any of the aforesaid activities included in its gross total income for the relevant previous year is not less than fifty-one per cent of such total income."

6. The submission is that the expression "income attributable to any of the aforesaid activities" in the Explanation are words of wide amplitude and that income earned by the assessee on the sale of chemicals imported under import licences obtained by the assessee on the basis of the export of leather; hides and skins should be treated as income attributable to the business of manufacture of such goods by the assessee. In support of the said submission, the learned counsel has placed reliance on the decisions of this Court in Cambay Electric Supply Industrial Co. Ltd. ((1978) 2 SCC 644 : 1978 SCC (Tax) 119 : (1978) 113 ITR 84) and Ashok Leyland Ltd. v. CIT ((1997) 1 SCC 729 : (1997) 224 ITR 122).

7. We have perused the said judgments of this Court. It is no doubt true that the words "attributable to" have a wider meaning than the words "derived from". But at the same time it cannot be ignored that normally the word "attributable" implies that "for a result to be attributable to anything it must be wholly, or in material part, caused by that thing". [See Stroud's Judicial Dictionary, 5th Bdn., Vol. I, p. 223.] A causal connection is necessary. In order that income can be said to be attributable to manufacture or processing of goods for the purpose of Explanation to Section 104(4) of the Act the earning of the income must be directly connected with manufacture or processing of goods. It is also necessary that material part of the said income should have been earned by that activity. In the present case the profit of Rs. 3,73,870 was earned by the assessee by the sale of chemicals imported by it. The import licences for such imports were obtained by the assessee on the basis of its export performance in respect of goods in which the goods manufactured or processed by the assessee was less than 10%. Keeping in view these facts the High Court as well as the Tribunal have rightly taken the view that there was no direct or sufficiently proximate connection with the activity of manufacturing and the income derived from the sales of chemicals imported by the assessee under the import licences obtained on such export performance could not be held to be income attributable to the business of manufacture or processing carried on by the a assessee for the purpose of Section 104(4) of the Act. In these circumstances, we do not find any merit in the appeal and the same is

accordingly dismissed. No order as to costs.

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8. These special leave petitions relating to the Assessment Year 1967-68 raise the same question as is involved in CA No. 292 of 1982 and are, therefore, dismissed.