

SUPREME COURT OF INDIA

Commissioner of Income-Tax

Vs.

Gem India Manufacturing Co.

(S.P. Bharucha, N. S. Hegde and Y.K. Sabharwal JJ.)

05.12.2000

ORDER

1. We are concerned with the assessment years 1983-84 and 1984-85 in this appeal against the order of a Division Bench of the High Court of Bombay. By that order, the following question was answered in the affirmative and in favour of the assessee:

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right of confirming the order of the Commissioner of Income-tax (Appeals) holding that the assessee, engaged in cutting and polishing of diamonds, amounts to manufacturing or production of goods and is entitled to deduction under Section 80-1 of the Income-tax Act, 1961?"

2. The High Court gave this answer because counsel for the parties were agreed that the issue stood covered by the High Court's decision in CIT v. London Star Diamond Co. (I.) Ltd. [1995] 213 ITR 517.

3. Section 80-1 gives a deduction in respect of profits and gains from industrial undertakings which, among other conditions, manufacture or produce any article or thing. The question, therefore, is whether the assessee, in cutting and polishing diamonds manufactures or produces any article or thing.

4. The Tribunal took the view that it did because in "common parlance and commercial sense raw diamonds are not the same thing as polished and cut diamonds. The two are different entities in the commercial world. Though the chemical composition remains the same the physical characteristics of shape and class, etc., are substantially different". It would appear that no material had been placed on the record before the Tribunal upon which it could have reached the conclusions that, either in common or in commercial parlance, raw diamonds were not the same thing as polished and cut diamonds, and that they were different entities in the commercial world. An ipse dixit of the Tribunal is not the best foundation for a decision.

5. The High Court, as aforesaid, concluded that the case was covered by its decision in the case of CIT v. London Star Diamond Co. (I.) Ltd. [1995] 213 ITR 517. It was not pointed out to the High Court that the question in that case was whether the assessee was an industrial company within the meaning of Section 2(8) of the Finance Act, 1975, and that, in answering that question, the High Court had held that raw diamonds and cut and polished diamonds were different and distinct marketable commodities having different uses ; therefore, a company engaged in cutting and

polishing raw diamonds for the purpose of export was engaged in the "processing of goods" to convert them into marketable form. The question that the High Court and we are here concerned with is whether, in cutting and polishing diamonds, the assessee manufactures or produces articles or things.

6. There can be little difficulty in holding that the raw and uncut diamond is subjected to a process of cutting and polishing which yields the polished diamond, but that is not to say that the polished diamond is a new article or thing which is the result of manufacture or production. There is no material on the record upon which such a conclusion can be reached.

7. The appeal is, therefore, allowed. The order under challenge is set aside. The question quoted above is answered in the negative and in favour of the Revenue. The assessee shall pay to the Revenue the costs of the appeal.