

**SUPREME COURT OF INDIA**

Commissioner of Trade Tax, U.P.

Vs.

Bhushan Steel and Strips Ltd.

C.A.No.978of2014

(H.L.Dattu and S.A. Bobde,JJ.)

28.01.2014

**ORDER**

**H.L.Dattu,J.**

1. Leave granted.
2. This appeal, filed by the revenue is directed against the judgment and order of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Tax Revision No.20 of 1997, dated 29.10.2009, whereby and whereunder the High Court has allowed the revision petition filed by the respondent herein.
3. The facts of the case are: the respondent-assessee before us is a public limited company which had established a new unit for manufacturing and sale of C.R. Strips. The assessee had applied for grant of eligibility certificate under Section 4-A of the Uttar Pradesh Trade Tax Act, 1948 (for short "the Act"). The assessee was issued the said certificate on the original fixed capital investment of Rs.542.28/- lacs for a period of six years with effect from 07.03.1990. Later, the assessee had sought for exemption under diversification, modernization/expansion programme on total fixed capital investment including additional fixed capital investment to the extent of Rs.7378.68/- lac. The Divisional Level Committee allowed the investment of Rs.5511.98/- lac for the purposes of computing the benefit of exemption and disallowed exemption on certain items by order dated 23.12.1995.
4. Being aggrieved by the aforesaid, the assessee filed an appeal before the Uttar Pradesh Tribunal, Trade Tax, Lucknow (for short "the Tribunal"). The Tribunal had allowed the claim of the assessee as follows:

"(a) Only the Additional Fixed Capital Investment, which has been made by the appellant in expansion/modernization diversification of its Industrial Unit shall qualify for granting exemption from Trade Tax.

(b) The investment made on construction of Temple, Canteen, TimeOffice and Check Post, amounting to Rs.15,11,000/- has been wrongly disallowed by the Divisional Level Committee, Meerut and this amount should be included in the Fixed Capital Investment for the purpose of granting exemption from Trade Tax.

(c) The investment made on Transformer/ CVT, Exhaust Fan, and investment in obtaining study report etc., a total of Rs.60,92,252.17 should also be included in the Fixed Capital Investment.

(d) The preoperative expenses amounting to Rs.7,56,30,000/- should also be included in the Additional Fixed Capital Investment for granting benefit of exemption from Trade Tax, to the appellant."

5. Aggrieved by the aforesaid order of the Tribunal, the Revenue preferred a Trade Tax Revision before the High Court which was partly allowed. The High Court has concluded that while investment made pertaining to the temple and cost of Rs.25,000/- incurred on account of study report are not allowable for the purposes of calculation of additional fixed capital income; the expenditure incurred by the assessee for installation of transformer/CVT is allowable for the purposes of Section 4-A of the Act and constitutes part of additional fixed capital income and the amount of Rs.7,56,30,000/- which is payment made to financial institution as interest on loan taken by the assessee for construction of the unit would form an essential part of additional fixed capital income and hence is allowable.

6. Aggrieved by the aforesaid judgment and order of the High Court, the Revenue is before us in this appeal.

7. Heard the learned counsel for the parties to the lis. We have also perused the judgment(s) and order(s) passed by the Courts below.

8. The following two questions of law would arise for our consideration and decision in this appeal:

“i) Whether preoperative expenses in the form of payment of interest towards the advance loan taken from the financial institution would form part of additional fixed capital investment (FCI)?

ii) Whether the transformer/C.V.T. installed for regulating voltage for running of the machinery in the factory premises would fall within the meaning of the expression "fixed capital investment"?

9. Shri Pawan Shree Agarwal, learned counsel appearing for the appellant would submit that the first question of law raised by the Revenue for consideration and decision by this Court is no more *res integra* for the reason that the aforesaid issue had come up before this Court in the case of Commissioner of Trade Tax, U.P. & Anr. vs. M/s. Kajaria Ceramics Limited, (2005) 11 SCC 149. Therefore, he submits that the first question requires to be answered in favour of the Revenue and against the assessee.

10. Insofar as the second question is concerned, the learned counsel would submit that the respondent has purchased the transformer/C.V.T for running of the factory and thus, would not fall within the meaning of the expression "fixed capital investment" as provided under Section 4-A of the Act and therefore, the High Court has erred in passing the impugned judgment and order to that effect.

11. Per contra, Shri Dhruv Agrawal, learned senior counsel, appearing for the respondent-assessee would submit that this Court, while rendering the judgment in Kajaria Ceramics Ltd. (*supra*), had not noticed the proviso appended to Section 4-A of the Act and therefore, the said decision requires re-consideration by a larger Bench. Insofar as the second question of law is concerned, the learned senior counsel would bring to our notice clause (b) of the explanation to explanation (4) of Section 4-A of the Act and submit that the machinery purchased for establishment or running of the factory would certainly fall within the meaning of the expression "fixed capital investment" and therefore, the High Court has not erred in granting relief to the assessee insofar as the purchase of the transformers for running of the factory are concerned.

12. In the case of Kajaria Ceramics Ltd. (*supra*), this Court specifically dealt with the issue whether preoperative expenses in the form of payment of interest to the financial institution would form preoperative expenses as part of the "fixed capital investment". The Court, after noticing the meaning of the expression "fixed capital investment", has come to the conclusion that the legislature has consciously used the expression "means" immediately after the expression "fixed capital investment" to imply and ensure that the definition is exhaustive. Further, the Court has observed that the language employed by the legislature while defining the meaning of the expression "fixed capital investment" is unambiguous and therefore, no inclusion can be made in the definition by means of interpretation. In the words of the Court:

"61. The respondent had claimed preoperative expenses as part of the fixed capital investment which included interest to financial institutions, rights shares issue expenses, foreign technician expenses and foreign travel expenses. The Tribunal allowed the claim relying on *Challapalli Sugars Ltd. vs. CIT* (1975) 98 ITR

167, Commissioner of Income Tax vs- Motor Industries Co. Ltd., (1988) 17 ITR 374 and CIT v. Polychem Ltd. : 1975 98 ITR 574 on the ground that he expenses were necessary to undertake the expansion scheme. The view was affirmed by the High Court, in our opinion, wrongly.”

13. We have already noted in connection with Issue I that Explanation 4 to section 4A has defined fixed capital investment saying that it "means "investment in land and building and such plant, machinery, equipment apparatus, components, moulds, dyes, jigs and fixtures as have not been used or acquired for use in any other factory or workshop in India".

14. The language of the definition of the phrase in Explanation (4) to Section 4A is sufficiently clear and unambiguous. This coupled with the use of the word "means" in the Explanation shows that the definition is exhaustive. As has been observed in Feroze N. Dotiwala v. P. M. Wadhvani (2003) 1 SCC 433, 442 (SCC paras 13-14:

"Generally, when the definition of a word begins with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself. Therefore, unless there is any vagueness of ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition."

15. According to the Constitution Bench in PLD Corporation Ltd., v. Presiding Officer, Labour Court [1990] 3 SCR 111,(SCR at p. 150) when the statute says that a word or phrase shall mean certain things it is a "...hard and fast definition, and no other meaning can be assigned to the expression than is put down.... A definition is an explicit statement of the full connotation of a term". (SCC p.717, para 72)

16. Therefore apart from the actual investment in or cost of the specific items of land, building, plant, machinery, equipment apparatus, components moulds dyes, jigs and fixtures, no other item of expense is includible under the head of fixed capital investment for the purposes of section 4A of the Act.

17. After carefully considering the submissions made by both the learned counsel, we are of the considered view that insofar as the first legal issue raised and canvassed before us by the Revenue is squarely covered by the observations made by this Court in Kajaria Ceramics Ltd.(supra) and therefore, the first question of law requires to be answered in favour of the revenue and against the assessee. Accordingly, that portion of the order wherein the High Court had granted relief to the assessee requires to be set aside.

18. Insofar as the second issue is concerned, we have to notice the proviso to explanation (4) of Section 4-A of the Act. Explanation (4) speaks of "fixed capital investment" to mean "investment in land and building and such plant, machinery, equipment apparatus, components, moulds, dyes, jigs and fixtures as have not been used or acquired for use in any other factory or workshop in India". The said proviso need not be noticed by us for the purpose of disposal of this appeal.

19. Sub-clause (b) of explanation (4) of Section 4-A, is as under:

"For the purposes of determining value of plants including captive Power plant, machinery, equipment, apparatus, components, moulds, dyes, jigs and fixtures only the following shall be taken into account: Investment, whether by means of purchase, hire or lease in such plant, equipment, apparatus, components and machinery as is necessary for the establishment or running of the factory or workshop;" (emphasis supplied)

20. In the present case, it is the stand of the assessee that in order to control the fluctuation of the electrical energy for running the factory the assessee has purchased the transformer and therefore, the transformer would certainly fall within the meaning of the expression "plant and equipment" essential for effective functioning of the factory.

21. It is not in dispute that the appellant has purchased the aforesaid machinery. The said machinery is used by the respondent for the purpose of controlling the fluctuation in the supply of electrical energy to the machinery/equipment installed in the factory premises. Sub-clause (i) of explanation 4(b) of Section 4-A speaks of investment made on machinery/apparatus, components etc. for establishment or running of the factory would fall within the meaning of the expression "fixed capital investment". If that is so, the investment that is made by the assessee would certainly fall within sub-clause(i) of explanation (4)(b) of Section 4-A of the Act. In that view of the matter, we cannot take exception to the judgment and order passed by the High Court where the High Court has appropriately considered the issue and granted relief to the assessee/respondent.

22. In view of the above, we allow this appeal in part and set aside the judgment and order passed by the High Court insofar as the relief that is granted to the respondent in payment of interest. We confirm the judgment and order passed by the High Court insofar as the purchase of the transformer for erection in the business premises for running of the machinery.

23. With these observations, the appeal is disposed of. No order as to costs.



