

CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Sainthia Rice and Oil Mills

(Sabyasachi Mukharji J.)

17.04.1969

JUDGMENT

Sabyasachi Mukharji J.

1. This reference arises out of the assessment for the assessment year 1960-61. The assessee is a registered firm owning rice and oil mills at Sainthia in the district of Birbhum of the State of West Bengal. The corresponding previous year relevant for the present assessment is 2015-16 Diwali Samvat. In the course of assessment proceeding for this year the assessee had claimed exemption from tax under section 15C of the Indian Income-tax Act, 1922, which is allowable to a newly established industrial undertaking. The same claim had also been made by the assessee in respect of the assessment of the immediately preceding year, 1959-60, and such claim had been refused originally by the Income-tax Officer on the ground that rice milling is not an industrial undertaking within the meaning of section 15C of the said assessment for 1959-60. The Appellate Assistant Commissioner had directed that the Income-tax Officer should allow the benefit under section 15C of the said Act. The assessee had preferred an appeal against the said order to the Appellate Assistant Commissioner in respect of the said order to the Appellate Assistant Commissioner in respect of the said assessment for 1959-60. The Appellate Assistant Commissioner had directed that the Income-tax Officer should allow the benefit under section 15C to the assessee provided the requisite conditions as laid down in that section were fulfilled. In the revised assessment as made under the directions of the Appellate Assistant Commissioners order passed under section 31 for the year 1959-60, the Income-tax Officer again disallowed the claim under section 15C of the said Act on the ground that some of the machinery utilised for the newly started mill were old and second-hand. The Income-tax Officer had observed :

"It appears from the above provisions of the section (meaning section 15C(2) (i) that this section will not apply to an industrial undertaking which is formed by the transfer to a new business of building, machinery or plant previously used in any other business. It

appears from the details of machinery account filed by the assessee for the accounting year 2013-4 S. corresponding to this assessment that one second-hand steam engine was purchased from Messrs. Ballav Karar & Sons, Howrah. So it is not evident that the second-hand steam engine was not previously used in any other business. Hence, it is held that the requisite condition under section 15C(2) (i) is not satisfied. Therefore, the benefit contemplated under section 15C is not allowable in this case. As such, the claim under section 15C is rejected."

For the assessment year 1960-61, the Income-tax officer apparently disallowed the claim of the assessee on the same grounds mentioned hereinbefore, although the assessment order itself does not mention either any claim under section 15C or the grounds of rejection of such claim. There was an appeal before the Appellate Assistant Commissioner who upheld the order of the Income-tax Officer. The assessee preferred an appeal before the Income-tax Appellate Tribunal. The Tribunal accepted the position that under section 15C(2) of the Income-tax Act of 1922, if an industrial undertaking had been formed by the transfer to the new business of such machinery or plant which had already been used in a business which was being carried on before the 1st April, 1948, the exemption would not be applicable, but at the same time the Tribunal interpreted the word "transfer" to be a transfer of a going concern by one to the other and not purchase in the open market. The Tribunal was, therefore, of the opinion that the assessee was entitled to the benefit under section 15C of the Income-tax Act, 1922. On an application being made, the Tribunal has referred to this court under section 66(1) of the Indian Income-tax Act, 1922, the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in interpreting the meaning of the word transfer as appearing in clause (i) of sub-section (2) of section 15C, to mean only transfer of used machinery in the assessee's own business to the new industrial undertaking and not to purchase of second-hand machinery in the open market and in directing the Income-tax Officer to grant relief to the assessee under section 15C of the Income-tax Act, 1922 ?"

Sub-section (2) of section 15C of the Indian Income-tax Act, 1922, without the proviso, is in the following terms :

"This section applies to any industrial undertaking which -

(i) is not formed by the splitting up, or the reconstruction of, business already in existence or by the transfer to a new business of building, machinery or plant previously used in any other business :

(ii) has begun or begins to manufacture or produce articles in any part of the taxable territories at any time within a period of eighteen years from the 1st day of April, 1948, or such further period as the Central Government may, by notification in the official gazette, specify with reference to any particular industrial undertaking;

(iii) employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power....." The only question that requires consideration is whether purchase of one second-hand steam engine by this industrial undertaking disentitle it to exemption under clause (i) of sub-section (2) of section 15C of the said Act. The scheme of this section is to encourage new industrial undertakings provided they fulfill the conditions mentioned in the various clauses of the sub-section. It is true that in order to be entitled to exemption an assessee must strictly come within the terms of the provision under which such exemption is being claimed, but in construing the provisions of this section one must construe the said section reasonably in the context of the purpose for which the section has been introduced. The expression "transfer" is used in varying senses in different statutes depending on the context. In a broad sense, it will certainly include an acquisition of an asset by one person from whatever source. But the scheme of the section indicates that what is being aimed at is to prevent exemption to those industrial undertakings which are formed by the splitting up or by reconstruction or by transfer to a new business, plant or machinery of the old business. The transfer, in our opinion, in this context, must mean a transfer of plant which is essential for the formation of new industrial undertaking and that must again mean a transfer to the new business of the transfer of any machinery used by the said transferee in his old business. Merely because some machinery in the new industrial undertaking has been purchased from the second-hand market cannot, in our opinion, disentitle the assessee to the relief or the exemption contemplated under section 15C of the Indian Income-tax Act, 1922. In the case of *Webbing and Belting Factory Private Ltd. v. Commissioner of Income-tax* the Punjab High Court held that, even though part of the machinery was used before 1st of April, 1948, for experimental and training purpose, that did not disentitle an assessee from enjoying the benefit of section 15C of the Indian Income-tax Act, 1922. The Punjab High Court, however, was considering sub-clause (i) of sub-section (2) of section 15C of the said Act. The said decision of the Punjab High Court went up in appeal to the Supreme Court. The Supreme Court judgment is *Commissioner of Income-tax v. Webbing and Belting Factory Ltd.* The Supreme Court felt that there was no clear evidence of the user of the machinery in the pilot project before 1st April, 1948, and as such the High Court had no jurisdiction to answer the question in the manner done, and as such the Supreme Court directed a supplementary statement of case to be called for. In view of the facts mentioned hereinbefore, we are of the opinion that an acquisition of a part of the machinery in second-hand from open market by an assessee would not disentitle it to exemption under clause (i) of sub-section (2) of section 15C. In that view of the matter the

answer to the question referred to this court will be in the affirmative and in favour of the assessee. The Commissioner of Income-tax will pay the costs of the reference.

DEB J. - I agree Question answered in the affirmative.

