

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Kopran Chemical Co. Ltd

(R Kantawala, C.J. V Tulzapurkar, J.)

06.07.1977

JUDGMENT

R. Kantawala, C.J.

1. This reference can be disposed of by a very short order as the question for determination is not capable of being answered in any other manner except in favour of the assessee in view of the findings of fact given by the Tribunal.

2. Kopran Chemical Co. Ltd., the assessee, was incorporated on April 26, 1958. The assessee-company was incorporated with the following objects :

"To acquire, purchase and carry on the business of Kopran Chemical company now carried on by Ramanlal v. Shah at 18, 3rd Pasta Lane, Colaba, Bombay-5, and accordingly to enter into and carry into effect with or without modification an agreement with the said Ramanlal Vadilal Shah in the terms of the draft which has for the purpose of identification been initialled by the subscribers to the memorandum and articles of association."

By an agreement dated December 18, 1958, the assessee purchased stock-in-trade and raw materials of Kopran Chemical Co. from its proprietor, Ramanlal Vadilal Shah. Kopran Chemical Company was manufacturing tooth-paste only. The assessee-company sold away stock of tooth-paste taken over by it. the assessee did not manufacture tooth-paste but started the business of manufacturing pharmaceutical goods.

3. In the accounting year ending March 31, 1959, the assessee-company purchased machinery of the value of Rs. 58,003 out of which the value of the new machinery was Rs. 28,455 and the old machinery, Rs. 29,588. The old machinery was acquired by the assessee-company by purchase from the following three parties :

1. Of the value of Rs. 7,000 from R. V. Shah Kopran Chemical Company.

2. Re-conditioned tablet making machine of the value of Rs. 2,987 from M/s. Kilburn & Co. Pvt. Ltd.

3. Rotary table machine of the value of the Rs. 19,601 from M/s. Lovely Products.

We are concerned in the present case with the accounting year ending March 31, 1960, relevant to the assessment year 1960-61. In this year the assessee-company purchased entirely new machinery of the value of Rs. 53,944.

4. From Kopran Chemical Company the assessee-company purchased machinery of the value of Rs. 7,000, raw materials for the manufacture of tooth-paste of the value of Rs. 15,000 and furniture and fixtures of the value of Rs. 5,000. The machinery, etc., were purchased by the assessee-company pursuant to the agreement dated December 18, 1958, and the purchase was made with effect from April 29, 1958. Out of the machinery of the value of Rs. 7,000, the assessee-company sold away mixing machine and electric motor of the value of Rs. 2,500 and the remaining machinery of the value of Rs. 4,500 remained idle and was not used by the assessee-company in its business of manufacture of pharmaceutical goods. Production of pharmaceutical goods was started by the assessee-company on August 27, 1958, while the rotary tablet machine of the value of Rs. 19,601 was purchased by the assessee-company from Lovely Products on November 18, 1958, i.e., nearly three months after the commencement of the production. It was the case of the assessee-company that the reconditioned tablet making machine of the value of Rs. 2,987 purchased from Kilburn & Co. Pvt. Ltd., even though it was old, was not used in any business. On these facts having regard to the provisions of section 15C of the Indian Income-tax Act, 1922, the assessee-company claimed that its profits to the extent of 6 per cent. of the capital employed in the business was exempt from payment of tax. The Income-tax Officer rejected the claim of the assessee-company holding that the assessee's business was set up by purchase of second-hand machinery amounting to Rs. 29,588 which had been used previously in some other business. The Appellate Assistant Commissioner upheld the order of the Officer, but it is common ground before us that certain facts found by him were entirely wrong. When the matter came up before the Tribunal in second appeal at the instance of the assessee the Tribunal in order to ascertain the correct fact called for a remand report from the Appellate Assistant Commissioner. Such remand report was furnished by the Appellate Assistant Commissioner after making an enquiry. After receipt of the remand report the Tribunal by its order dated July 21, 1964, came to the conclusion that the assessee-company was entitled to the relief claimed under section 15C of the Act. There were two applications for rectification and upon consideration of the rectified facts the Tribunal was of the opinion that the assessee was entitled to the said benefit. At the instance of the revenue, from this order of the Tribunal the following question has been referred to us for our determination :

"Whether, on the facts and in the circumstances of the case, was the assessee-company entitled to relief under section 15C of the Indian Income-tax Act, 1922, in respect of its industrial undertaking ?"

5. Mr. Joshi on behalf of the revenue submitted that the Tribunal was in error in coming to the conclusion that the assessee was entitled to the benefit of the provision of section 15C of the Act. His submission is that the industrial undertaking started by the assessee-company was formed by transfer to a new business of part of machinery or plant which was used in a business which was being carried on before April 1, 1948, and he, therefor, submitted that in such a case, clause (i) of sub-section (2) of section 15C has no application and the assessee-company is not entitled to the benefit of the said section.

6. Section 15C provides for exemption from tax of newly established industrial undertaking. The material part of the said section for our present purpose is as under :

"15C. (1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent. per annum on the capital employed in the undertaking, computed in accordance with such rules as may be made in this behalf by the Central Board of revenue.

(2) 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 a business which was being carried on before the 1st day of April, 1948;....."

The case of Mr. Joshi is that as the new business has been started by the assessee as a result of transfer of part of machinery or plant used in an earlier business as indicated in clause (i), the assessee-company is not entitled to the benefit of section 15C. It is not disputed that in the accounting year ending March 31, 1959, the assessee-company purchased machinery on the value of Rs. 59,003 out of which the value of new machinery was Rs. 28,455 and the old machinery Rs. 29,588. The old machinery was acquired by the assessee-company by purchase from the following three parties :

1. Of the value of Rs. 7,000 from R. V. Shah of Koprán Chemical Co. 2. Recondition tablet making machine of the value of Rs. 2,987 from M/s. Kilburn & Co. Pvt. Ltd. 3. Rotary tablet machine of the value of Rs. 19,601 from M/s. Lovely products.

7. Out of the machinery of the value of Rs. 7,000 purchased R. V. Shah of Koprán Chemical

Company, the assessee-company sold away mixing machine and the electric motor of the value of Rs. 2,500 in the preceding accounting year ending March 31, 1959. According to the assessee the remaining machinery of the value of Rs. 4,500 remained idle and was not used by it for its business purposes. The case of the assessee that the remaining machinery of the value of Rs. 4,500 was not used for the purposes of business has been accepted by the Appellate Assistant Commissioner as well as by the Tribunal. So far as the third item, namely, the rotary tablet machine of the value of Rs. 19,601 is concerned, it was purchased on November 18, 1958, i.e., nearly three months after the production of pharmaceutical goods was commenced. Thus, the industrial undertaking cannot be regarded as having been formed by the one of that machine. Actually, when the production started the machine itself was not purchased. So far as the reconditioned tablet making machine worth Rs. 2,987 is concerned, the case of the assessee is that the said machine could not be said to have been used previously in any business. In fact, notwithstanding such a contention, no evidence is brought on record with a view to show that Kilburn Co. Private Ltd. from whom this machine was purchased had never used it earlier. Even apart from that, assuming for the sake of argument that this machine of the value of Rs. 2,987 was used by Kilburn & Co. Pvt. Ltd. still it is not possible to take the view that the new industrial undertaking was formed by transfer of machinery used in any other business. Out of the machinery of the value of Rs. 58,003, this machine is of insignificant value and even if such user is assumed it will not affect the claim for exemption. If any authority is required for this proposition it is to be found in the case of *Commissioner of Income-tax v. Asbestos, Magnesia & Friction Materials Ltd*¹. In that case the Division Bench of this court has taken the view that the assessee was entitled to the exemption under section 15C(1) for the relevant assessment years in respect of the textile department unit since the value of the machinery transferred from the old factory at Sewri formed but a small fraction of the assets employed in the new textile department at Ghatkopar. Thus, looked at from any point of view, the contention of the revenue that the benefit of section 15C(2) is not available to the assessee cannot be accepted. Actually the Tribunal in its order dated January 17, 1966, has given clear findings on questions of fact and if those findings of fact are accepted, there is no scope for arguing that the exemption available under section 15C cannot be availed of by the assessee-company.

8. In the result, our answer to the question referred is in the affirmative and in favour of the assessee. The revenue shall pay the costs of the assessee.

Cases Referred.

¹[1977] 106 ITR 286 (Bom)