

BOMBAY HIGH COURT

Hindustan Chemical Works Limited

Vs

Commissioner of Income Tax

(Chandurkar, J.)

09.02.1979

JUDGEMENT

Chandurkar, J.

(1.) THE assessment years in respect of which this reference has been made are 1959 -60, 1960 -61, 1961 -62 and 1962 -63. The assessee -company was originally carrying on business in the manufacture of certain chemicals, particularly dichromate and its by -products. The business of the company had commenced from October 14, 1946, but the company stopped manufacturing chemicals in the year 1955 due to acute financial stringency. The assets of the company were mortgaged to the Industrial Finance Corporation of India (hereinafter referred to as the 'finance corporation'). But the finance corporation refused to provide any further funds to the assessee from the middle of 1955. With the consent of the finance corporation, the premises of the company were leased to Colgate Palmolive (India) Ltd. in 1956 and 1958, though the assessee retained a portion of the premises for its own use and it kept its plant and machinery after it was dismantled from the premises which were let out to Colgate Palmolive (India) Ltd. and Indo - Chem Pvt. Ltd. The assessee got a loan from Bombay Hospital Trust on mortgage of land and buildings and the liabilities of the Finance Corporation were discharged and the assessee took possession of its assets There were some negotiations between foreign companies and the assessee, but it was not till August 31, 1967, that the assessee was able to establish a plant in Bhilai in Madhya Pradesh where a part of the machinery was shifted. The then prevalent state of affairs, particularly the financial position of the company, are reflected in the directors' reports made from time to time, the directors' reports from 1953 -54 to 1966 -67 are annexed to the statement of the case as annex. 'A'. The company had run into loss year after year and in the directors' report date May 11, 1955, the loss shown was Rs. 1,54,486 -14 -6, the main reason for the loss being given as depression in the dichromate industry and keen competition as a result of overproduction of dichromate in the country. The figure of loss increased of Rs. 2,34,382 in the year ending August 31, 1955, the main reason for the loss given being that, during the year, the company had to close down the factory in December, 1954, on account of financial difficulties. It was stated in the reports that the company tried its level best to secure further loans from the Finance Corporation as well as from private parties but could not succeed and hence could not restart production. It was also stated that efforts were being made to lease out or sell off the entire land and buildings, though the company had not so far been successful and was still negotiating

with prominent firms for the purpose. The statement of accounts for the year ending August 31, 1955, showed a loss of Rs. 49,516 and it was stated that the company had succeeded in leasing out buildings at an annual rental of Rs. 1,50,000 partly to M/s. Colgate Palmolive (India) Pvt. Ltd. and partly to Indo -Chem Pvt. Ltd. in December, 1957. The report also states that the rents were being recovered by the Finance Corporation and the company proposed to restart the business very soon on securing a site in Greater Bombay. For the year ending August 31, 1957, the directors' report stated that the factory premises were leased out after carrying out the necessary repairs and modifications to the buildings. It was also stated : 'The plants and machinery have been dismantled and the company intends to restart production elsewhere after securing the site and making the necessary financial arrangements.'

(2.) THE directors' report for the ending August 31, 1958, refers to additions and alterations and repairs to buildings not being completed and its inability, therefore, to give possession of all buildings to the lessees except for the main building. There is no reference in this report to any decision of the directors to restart the business. The report for the year ending August 31, 1959, states that the depreciation on fixed assets of the company was not charged to the profit and loss account as the factory was closed and the fixed assets were not used. The report for the year ending August 31, 1960, states : 'As the company's manufacturing activities were closed since 1955, the plants and machinery were dismantled to enable the company to lease out the buildings.....' A hope was held out in this report that the company would be able to restart the industry as negotiations were being held with foreign firms for collaboration. The report for the year ending August 31, 1962, which is the relevant report for the purposes of the last assessment year in this reference, stated that the Bombay Hospital Trust had paid Rs. 5 lakhs to pay off the debts of the Finance Corporation and would further pay Rs. 2,50,000 towards development of the Mahim property. It further stated : 'The company has now decided to go ahead with the expansion of the Mahim property to enhance the rental income of the property,' The company had also applied for the necessary licence for expansion of its capacity and the directors were negotiating for a suitable site.

(3.) IN the assessment years 1958 -60 to 1962 -63, the ITO disallowed the claim of the assessee for certain expenditure and depreciation and for allowance of unabsorbed depreciation for the earlier years on the ground that the assessee did not carry on any business in the years of account.

;