A M/S. SARASWATI INDUSTRIAL SYNDICATE LTD.

v.

THE COMMISSIONER OF INCOME TAX, HARYANA, ROHTAK

MARCH 10, 1999

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[S.P. BHARUCHA, S.S. MOHAMMED QUADRI AND R.C. LAHOTI, JJ.]

Income Tax Rules, 1962 :

C

Appendix-I, Part I, Para III Item 3(ii) B(7)—Machinery and plant used in manufacture of sugar—Claim for special rate of depreciation as corrosive chemicals were being used in the process—Expert opinion filed in support—Income Tax officer declining to consider expert opinion on ground that expert was not produced—Claim rejected—Held, neither the Income Tax Officer nor D *the High Court entitled to make statement on technical matters for which no basis had been laid on record—High Court should have asked the Tribunal to take further evidence and draw up a supplemental statement of case—Under the relevant entry it is not intended that machinery must come into contact with a pure corrosive chemical—It is enough that what passes* E *through the machinery contains chemicals which are corrosive—Tribunal shall take further evidence and prepare a supplemental statement of case on the basis whereof matter shall be re-heard by High Court.*

Practice and Procedure—Intervention application—Held, only purpose of granting the application is to entitle intervenor to address arguments in F *support of one or the other side.*

The assessee, a manufacturer of sugar, claimed before the Income Tax Officer depreciation of higher rate of 15% on machinery it used in the manufacture of sugar, contending that the machinery was covered under G **Item 3(ii) B(7) of Para III of Part I of Appendix I to the Income Tax Rules, 1962; and in support of his claim, filed the opinion of an expert. The Income Tax Officer declined to consider the expert opinion on the ground that the expert was not produced for cross-examination. He rejected the assessee's claim holding that the corrosive chemicals were used in insignificant quantity to treat the cane juice and it was not those acids, but the** H **cane juice which was the main substance that came into contact with the**

machinery. The appeal filed by the assessee was dismissed by the Appellate Assistant Commissioner holding that depreciation was allowable at the higher rate on such plant and machinery in which chemicals with high corrosive potential were used for manufacturing purpose and manufacture of sugar did not fall in such category. The Income Tax Appellate Tribunal disagreed with the view taken by the authorities below and held that the corrosive chemicals contemplated in the relevant entry were not only free chemicals but also non-free chemicals provided they were corrosive in effect so far as metals were concerned. The reference made to the High Court was answered against the assessee. Aggrieved, the assessee filed the present appeals.

Allowing the appeals and remitting the matter to the Tribunal, this Court

HELD : 1.1. Neither the Income Tax Officer nor the High Court was entitled to make statement on technical matters for which no basis had been laid on the record by either the Revenue or the assessee. It can be understood that the authorities declined to rely upon the expert's opinion because he was not produced for cross-examination. But in case the High Court was of the view that further material was required, the appropriate course was to require the Tribunal to take further evidence and draw up a Supplemental Statement of case. [978-E]

1.2. This apart, there appears to be some misunderstanding of what entry at Item 3(ii) B (7) of Para III of Part I of Appendix I to Income Tax Rules, 1962 is intended to convey. Depreciation at a higher rate is allowed to machinery that comes into contact with corrosive chemicals. Corrosive chemicals corrode the machinery. They erode and, by reason of such erosion, the life of the machinery is truncated. To compensate, depreciation is allowed at a higher rate. It is not intended that the machinery must come into contact with a pure corrosive chemical. It is enough that what passes through the machinery contains chemicals which are corrosive and which, therefore, have the effect of wearing it down. Keeping this in mind the Tribunal shall give both the assessee and the Revenue the opportunity of producing further evidence, and, based thereon, shall decide whether the machinery for which the assessee claims depreciation at the higher rate is entitled to it. It shall then draw up a Supplemental Statement of Case and the matter shall be re-heard by the High Court, having regard to what

is found by the Tribunal and to this judgment. [978-F-H]

3. As regards the intervention application, the same order cannot be passed on it. The only purpose of granting an intervention application is to entitle the intervenor to address argument in support of the one of the the other side. The intervenors may take advantage of the order passed in the appeals. [979-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1804-06 of 1981.

From the Judgment and Order dated 21.4. 81 of the Punjab & Haryana High Court in I.T.R. Nos. 130, 98 and 100 of 1976.

With

Civil Appeal Nos. 4975-78/93 and 5671 of 1985.

From the Judgment and Order dated 17.11.88, 19.9.89 and 4.3.85 of the Punjab & Haryana High Court in I.T.R. Nos. 157, 114/79, 23- 24/84 and 96 of 1984.

G.C. Sharma, R.K. Ragavan, S. Chaudhary, B.V. Desai and S.K. Agarwal for the Appellant.

Ranbir Chandra, Rajiv Nanda, C.V.S. Rao, B.K. Prasad and (S.K. Gambhir) (NP) for the Respondent.

The Judgment of the Court was delivered by

BHARUCHA, J. Under appeal are the judgments and orders of Division Benches of the Punjab and Haryana High Court. The assessment years involved are Assessment Years 1970-71 to 1977- 78. The High Court answered in the negative and in favour of the Revenue the following question :

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the words 'corrosive chemicals' employed in entry (ii)B(7) of Para III of Part I of Appendix I to the Income-tax Rules, 1962, contemplates not only free chemicals but also non-free chemicals of corrosive effect."

The assessee is in appeal. A

The assessee manufacturers, among other things, sugar. It claimed depreciation at the higher rate of 15% on machinery it used in the manufacture of sugar, which was detailed in a statement placed before the Income tax Officer. It did so having regard to Item 3(ii)B(7) of Para III of Part I of Appendix I to the Income Tax Rules, 1962, which reads thus : B

> "Machinery and plant coming into contact with corrosive chemicals." rate of depreciation 15%

C

The assessee filed in support of its case the opinion of an expert. The Income Tax Officer rejected the assessee's claim of higher depreciation at the rate of 15% on such machinery. He declined to consider the expert opinion on the ground that the assessee was unable to produce the expert for cross-examination. He referred to the meaning of the word "chemical" and concluded that cane juice was not something which was obtained D through a chemical process nor was it used for chemical effect. The contention of the assessee that, during the manufacture of sugar, the juice was treated with corrosive chemicals like sulphuric and phosphoric acid, which had corrosive effect on the sugar machinery, could not be given any importance as the quantity used was quite small and it was not those acids which came into contact with the machinery. They formed a very small part E and their use was confined to a particular stage. It was the cane juice which was the main substance that came into contact with the machinery. The Appellate Assistant Commissioner dismissed the assessee's appeal. His view was that depreciation was allowable at the higher rate on such plant and machinery in which chemicals with high corrosive potentials were used F for manufacturing purposes and the manufacture of sugar did not fall in such category.

The Income Tax Appellate Tribunal disagreed. It noted that the only criticism directed against the statement which had been tendered by the G assessee before the Income Tax Officer was that it included machinery that came in contact, not with corrosive chemicals, but with cane juice and molasses, which were not corrosive chemicals but, at best, corrosive materials. The Tribunal found no force in this criticism for the reason that the corrosive chemicals contemplated in the said entry were not only free chemicals but also non-free chemicals provided they were corrosive in H

effect so far as metals are concerned.

Out of the order of the Tribunal the question, quoted above, was referred to the High Court. The High Court disagreed with the Tribunal for the reason that, according to it, lime and sulphuric acid were mixed with the sugarcane juice to filter and purify the juice but, by their mixture, the juice itself was not converted into a chemical. Reference was made to the dictionary meaning of the word "chemical" and it was said that it was obvious therefrom that sugarcane juice could not be covered by the term simply because some acid has been mixed with it for its filtration. The acid and the lime were mixed in the sugarcane juice for the purpose of its filtration and once the chemical reaction had been caused, most of its effect was lost. Whatever remained settled down along with the sediments at the bottom. Thereafter, the filtered sugarcane juice which came into contact with the machinery before it was converted into crystallised sugar could not be said to be a corrosive chemical.

We can understand that the authorities declined to rely upon the experts' opinion because he was not produced for cross-examination. But neither the Income Tax Officer nor, indeed, the High Court were entitled to make statements on technical matters for which no basis had been laid on the record by either the Revenue or the assessee. If the High Court was of the view that further material was required, the appropriate course was to require the Tribunal to take further evidence and draw up a Supplemental Statement of Case.

This apart, there appears to be some misunderstanding of what the said entry is intended to convey. Depreciation at a higher rate is allowed to machinery that comes into contact with corrosive chemicals. Corrosive chemicals corrode the machinery. They erode and, by reason of such erosion, the life of the machinery is truncated. To compensate, depreciation is allowed at a higher rate. It is not intended that the machinery must come into contact with a pure corrosive chemical. It is enough that what passes through the machinery contains chemicals which are corrosive and which, therefore, have the effect of wearing it down.

In the instant case, with this understanding of the said entry in mind, the Tribunal shall take further evidence, giving both the assessee and the Revenue the opportunity of producing it, and, based thereon, shall decide whether the machinery for which the assessee claims depreciation at the

higher rate is entitled to it. It shall then draw up a Supplemental Statement of Case and the matter shall be re-heard by the High Court, having regard to what is found by the Tribunal and to this judgment. A

The appeals are allowed. The judgments and orders under appeal are set aside. The matters are remanded to the Tribunal to be proceeded with as set out hereinabove. B

This order shall also govern Appeal No.5671/85 where reference of the question of law aforementioned was declined. Even in this matter the Tribunal shall conduct a further enquiry as indicated above and draw up a Supplemental Statement of Case and it shall then refer the question aforementioned to the High Court. C

No order as to costs.

Learned counsel for the intervenors submits that he is entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. The only purpose of granting an intervention application is to entitle the intervenor to address arguments in support of one or the other side. Having heard the arguments, we have decided in the assessee's favour. The intervenors may take advantage of that order. D

Order on the intervention application accordingly. E

R.P. Appeals allowed.