

M/S. PRAKASH TRADING CO.
v.
COMMISSIONER OF INCOME TAX, GUJARAT

FEBRUARY 20, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Income tax Act, 1961 :

Finance Act, 1966 : s.2(5)(a)(ii) and (iii); 2(5)(c) :

Finance Act, 1967 : ss.2(4)(a)(ii) and (iii); 2(4)(c) :

Industries (Development and Regulation) Act, 1951; Schedule I : Income Tax—Export/sale to exporter, of de-oiled cakes—Additional deduction—Held, not admissible on articles enumerated in clause(c) of s.2(5) of 1966 Act, and cl.(c) of s.2(4) of 1967 Act—Sub-clauses (ii) and (iii) of clause (a) and clause (c) as also 1st Schedule to I.D.R. Act, refer to articles only.

In order to encourage export of industrial goods, the Finance Acts of 1966 and 1967 provided that a person engaged in manufacturing of any articles in an industry enumerated in the First Schedule to the Industries (Development and Regulation) Act, 1951 and exporting such articles or selling them to an exporter was entitled to an additional deduction as specified in Sub clauses (ii) and (iii) of clause (a) of s.2(5) of 1966 Act and s.2(4) of 1967 Act. However, the articles mentioned in clause (c) of ss.2(5) and 2(4) of the two Acts respectively were excluded from the incentive.

The appellant-assessee, a manufacturer of groundnut oil, claimed additional deduction on the amount received on export/sale to exporter of deoiled cakes under the provisions of ss.2(5)(a)(ii) and (iii) 1966 Act and s.2(4)(a)(ii) and (iii) of 1967 Act. The Income Tax Officer rejected the claim relying upon clause (c) of s.2(5) of 1966 Act and s.2(4) of 1967 Act. On appeal, the Appellate Assistant Commissioner accepted assessee's case that the above mentioned clause (c) referred to articles as such and not to industries and since deoiled cake was not mentioned in clause (c), the assessee was entitled to additional deduction. This view was affirmed by the Income Tax Appellate Tribunal. But on reference, the High Court decided the matter against the assessee. Aggrieved, the assessee filed the

A present appeals.

On the question : Whether clause (c) of ss.2(5) and 2(4) of 1966 Act and 1967 Act respectively referred to articles mentioned therein or whether it referred to industries engaged in the manufacture of those articles :

B Dismissing the appeals, this Court

C HELD : Sub-clauses (ii) and (iii) of clause (a) as also clause (c) of ss.2(5) and 2(4) of Finance Act, 1966 and Finance Act, 1967, respectively, refer to articles only, as does the First Schedule to the Industries (Development and Regulation) Act, 1951 and, therefore, all of them must carry the same meaning and purport. Moreover, *clause (c) being an exception to sub-clauses (ii) and (iii) must follow the same pattern as in the said sub-clauses.* Just as the First Schedule to the I.D.R. Act mentions several articles under various heads, so does clause (c) of Section 2(5) of the 1966 Act and Section 2(4) of the 1967 Act. The description is identical in both the First Schedule and clause (c). [855-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 452 and 453 of 1978.

E From the judgment and Order dated 31.8.77 of the Gujarat High Court in I.T.R. No. 70 of 1975.

Sameer Parekh for P.H. Parekh for the Appellants.

F Dr. V. Gaurishankar, Anil Srivastava and S.N. Terdol for the Respondents.

The Judgment of the Court was delivered by

G B.P. JEEVAN REDDY, J. : These appeals preferred by the assessee against the judgment of the Gujarat High Court answering the two questions referred to it, at the instance of the Revenue, in favour of the Revenue and against the assessee. The two question stated for the opinion of the High Court under Section 256(1) are :

H "(1) Whether on the facts and in the circumstances of the case, the assessee was entitled to claim deduction from tax in respect of decoiled cakes exported or sold to exporters by it under section

2(5)(a)(ii) and (iii) and Section 2(5)(c) of the Finance Act, 1966 read with item No. 28 of the First Schedule to the Industries (Development and Regulation) Act, 1951 for the assessment year 1966-67 ? A

(2) Whether on the facts and in the circumstances of the case the assessee was entitled to claim deduction from income-tax in respect of deoiled cakes exported or sold to exporters by it under section 2(4)(ii) and (iii) and section 2(4)(c) of the Finance Act, 1967 read with Item No. 28 of the First Schedule to the Industries (Development and Regulation) Act, 1951 for the assessment year 1967-68 ?" B C

With a view to encourage export of industrial goods, the Finance Acts of 1966 and 1967 provided an additional incentive. A person engaged in the manufacture of any articles in an industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (I.D.R. Act) and who has exported such articles out of India or has sold the said articles to an exporter was entitled, to an additional deduction specified in sub-clauses (ii) and (iii) of clause (a) of Section 2(5) of the Finance Act, 1966 and Section 2(4) of the Finance Act, 1967. The relevant provisions in both the Finance Acts are identical. It would suffice if we refer to the provisions in the Finance Act, 1966. Insofar as relevant, the provisions in Section 2(5) read as follows : D E

"2(5)(a) In respect of any assessment for the assessment year commencing on the 1st day of April 1966, in the case of an assessee being a domestic company or an assessee other than a company,- F

(i) where his total income includes any profits and gains derived from the export of any goods or merchandise out of India, he shall be entitled to a deduction, from the amount of income-tax with which he is chargeable, of an amount equal to the income-tax calculated at one-tenth of the average rate of income-tax on the amount of such profits and gains included in his total income. G

(ii) where he is engaged in the manufacture of any articles in an industry specified in the first Schedule to the industries (Development and Regulation) Act, 1951 (LXV of 1951), and has, during the previous year, exported such articles out of india, he shall be H

- A entitled, in addition to the deduction of income-tax referred to in sub-clause (i), to a further deduction, from the amount of income-tax with which he is chargeable for the assessment year, of an amount equal to the income-tax calculated at the average rate of income-tax on an amount equal to two per cent, of the sale proceeds receivable by him in respect of such export;
- B

Explanation-- xxxxxx

- C (iii) where he is engaged in the manufacture of any articles in an industry specified in the said First Schedule and has, during the previous year, sold sole such articles to any other person in India who himself has exported them out of India, and evidence is produced before the Income-tax Officer of such articles having been so exported, the assessee shall be entitled to a deduction, from the amount of income-tax with he is chargeable for the assessment year of an amount equal to the income-tax calculated at average rate of income-tax on a sum equal to two percent of the sale proceeds receivable by him in respect of such articles from the exporter.
- D

(b) xxxxxxxx

- E (c) *Nothing contained in sub-clause (ii) or sub-clause (iii) of clause (a) shall apply in relation to --*

- (1) fuels,
 (2) fertilisers,
 (3) Photographic raw film and paper;
 F (4) textiles (including those dyed, printed or otherwise processed made wholly or in part of jute, including jute twine and rope,
 (5) newsprint,
 (6) pulp-wood pulp, mechanical, chemical including dissolving pulp.
 G (7) sugar,
 (8) vegetable oils and vanaspati,
 (9) cement and gypsum products,
 (10) arms and ammunition, and
 (11) cigarettes

- H respectively, specified in items 2, 18, 20 23(2), 24(2), 24(5), 25, 28,

35, 37 and 38 of the First Schedule to the industries (Development and Regulation) Act, 1951 (LXV of 1951)."

The appellant-assessee is a registered partnership firm engaged in the manufacture of groundnut oil at Veraval. It has a solvent extraction plant at Veraval. It exported, or sold to exporters, de-oiled cakes of the value of Rs. 48, 92, 902 and Rs. 24, 13, 040 respectively during the accounting years relevant to the Assessment Years 1966-67 and 1967-68 and claimed the additional deduction in respect of the said amounts under the provisions of Section 2 (5)(a)(ii) and (iii) of the Finance Act, 1966 and under Section 2(4)(a)(ii) and (iii) of the Finance Act, 1967. The Income Tax Officer rejected the claim with reference to and relying upon clause (c) of Section 2(5) of the Finance Act, 1966 and clause (c) of Section 2(4) of the Finance Act, 1967. On appeal, the Appellate Assistant Commissioner agreed with the assessee's contention that clause (c) aforesaid refers to articles as such and not to industries and since de-oiled cake is not mentioned in clause (c), the assessee is entitled to additional deduction. The Tribunal affirmed the said view in appeal. At the instance of the Revenue, the Tribunal referred the aforesaid two questions under Section 256(1).

The only question that arises in these appeals is whether clause (c) refers to articles mentioned therein or whether it refers to industries engaged in the manufacture of those articles. For answering this question, we have to turn to the scheme underlying the provisions aforementioned. Sub-clauses (ii) and (iii), which provide the additional deduction, speak of the *articles* manufactured in "an industry specified in the First Schedule to the I.D.R. Act", which have been exported out of India by the manufacturer during the relevant accounting year or which have been sold to an exporter who has actually exported them out of India. Clause (c) of Section 2(5) of the 1966 Act for (or Section 2(4) of the 1967 Act) is in the nature of an exception to sub-clauses (ii) and (iii) of clause (a). It follows, as it must, the same pattern. Clause (c) opens with the words "(N)othing contained in sub-clause (ii) or sub-clause (iii) of clause (a) shall apply in relation to----". Then it proceeds to mention several articles, at same time specifying the item numbers in the First Schedule to the I.D.R. Act under which the said articles fall. Just as the First Schedule (to the I.D.R. Act) mentions several articles under various heads, so does clause (c) of Section 2(5) of the Finance Act, 1966 and Section 2(4) of the Finance Act, 1967. The descrip-

A tion is identical in both the First schedule and clause (c). We may illustrate what we say. The pattern in the First Schedule is to mention an article under a heading (item) and then mention several categories thereof under the sub-headings (sub-items). For example, Item (2) in the First Schedule reads : "2. FUELS :

- B (1) Coal, lignite, coke and their derivatives.
- (2) mineral oil (crude oil) motor and aviation spirit, diesel oil, kerosene oil, fuel on diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like.
- C (3) Fuel gases -- (coal gas, natural gas and the like)."

Now, clause (c) adheres to the said pattern. Where it seeks to refer to the entire item in the First Schedule, it does so and where it seeks to refer only to a particular sub-item of an item in the First Schedule, it says so - and the description is identical. To wit, Item (1) in clause (c) is "Fuels", the same as the heading of Item (2) of the First Schedule. Item (2) in clause (c) is "Fertilizers, the same as in Item (18) of the First Schedule. Similarly, Item (3) in clause (c) is "photographic raw film and paper", the same as Item (20) in the First Schedule. However, when it comes to Item (4) in clause (c), it covers only a sub-item of Item (23) in the First Schedule. Item (23) of the First Schedule "Textiles (including those dyed, printed or otherwise processed)" has five sub-items. It reads :

"23. TEXTILES (INCLUDING THOSE DYED, PRINTED OR OTHERWISE PROCESSED) :

- F (1) Made wholly or in part of cotton, including cotton yarn, hosiery and rope.
- (2) Made wholly or in part of jute, including jute twine and rope.
- G (3) Made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets.
- (4) Made wholly or in part of silk, including silk yarn and hosiery.
- H (5) Made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres."

Item (4) in clause (c), however, refers only to sub-item (2) of Item (23) in the First Schedule but not to other sub-items. Item (4) in clause (c) reads : "Textiles (including those dyed, printed or otherwise processed made wholly or in part of jute including jute twine and rope." Similarly, Item (5) in clause (c) refers to sub-item (2) of Item (24) of the First Schedule and Item (6) in clause (c) refers to sub-item (5) of Item (24). In all cases, however, the description of articles is identical. To report, both clauses (ii) and (iii) of clause (a) *and* clause (c) refer to articles only, as does the First Schedule to the I.D.R. Act. If so, all of them must carry the same meaning and purport. Moreover, *clause (c) being an exception to sub-clauses (ii) and (iii) must follow the same pattern as in the said sub-clauses. It is reasonable to presume so.*

For the above reasons, we agree with the High Court and dismiss the appeals. No costs.

R.P.

Appeals dismissed.