

Commissioner of Income Tax, Patiala v. M/s. Ludhiana Steel Rolling Mills, Ludhiana (S. S. Sodhi, J.)

year 1969-70, relevant to the assessment year 1970-71. The assessee failed upto this Court. It was observed as follows :

“that the assessee occupied the property after the execution of the agreement of sale dated March 17, 1964, in his favour and after the completion of the building he was in a position to earn income from the property sold to him. Further, the entire consideration was paid to the vendor earlier at the time of the execution of the agreement to sell dated March 17, 1964, and no payment was made at the time of the execution of the registered sale deed dated April 11, 1969. Therefore, the Tribunal was right in holding that the income from the self-occupied property was includible in the assessee’s income for the assessment years 1968-69 and 1969-70.”

(5) There, the department wanted to tax the income received by a person who was in occupation of the property but did not possess title and here the department wants to tax a person who has given up possession on the basis of agreement after squaring up the debt payable against the value of the building. This cannot be permitted.

(6) Following the aforesaid decision, we hold that for all intents and purposes the directors were owners of the building and thus the rental income received by the directors could not be included in the income of the company. Accordingly, we answer the question in the affirmative, in favour of the assessee with no order as to costs.

R.N.R.

Before : G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, PATIALA,—*Applicant.*

versus

M/S. LUDHIANA STEEL ROLLING MILLS, LUDHIANA,
—*Respondent.*

Income Tax Reference No. 200 of 1980

April 26, 1989.

*Income Tax Act (XLIII of 1961)—S. 33(1)(B)(i) (b), Schedule V
Item (1)—Development rebate—Articles manufactured from iron*

and steel—On manufacture of mild steel rounds and square bars assessee entitled to higher development rebate of 25 per cent—Assessee, however, not entitled to such rebate on sale and manufacture of lathes, blowers, surface grinders and drills—Interpretation of Item (i), Schedule V—Test of common parlance applied.

Held, that assessee is entitled to higher development rebate of 25 per cent with regard to manufacture of mild steel rounds and square bars. It is, however, clarified that this higher development rebate cannot be claimed in respect of the sale and manufacture of machinery like lathes, blowers, surface grinders and drills. With this qualification the reference is answered in affirmative in favour of the assessee and against the Revenue.

(Para 6)

Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, to the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the Tribunal's order 2st January, 1980 in R.A. No. 63/Chandi/80 in ITA No. 562/ASR/78-'9, Assessment year 1974-75:—

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee is entitled to development rebate at the rate of 25 per cent within the meaning of section 33(1)(B)(b) of the Income Tax Act, 1961?”

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the applicant.

Hemant Kumar, Advocate, for the respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The controversy here is with regard to the rate at which the assessee M/s Ludhiana Steel Rolling Mills, is entitled to development rebate under section 33(1) (B) (i) (b) of the Income-Tax Act, 1961 (hereinafter referred to as the Act), namely, whether it should be 15 or 25 per cent ?

(2) The business of the assessee firm consists of re-rolling of iron scrap, manufacture of mild steel rounds, square bars and also the manufacture and sale of machinery like lathes blowers, surface grinders and drills etc. The assessee is undoubtedly entitled to

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development rebate at the rate of 15 per cent but if it is held that what it manufactures falls within the ambit of item (1) of Schedule V of the Act, the development rebate that the assessee would be entitled to, would be not 15 per cent but 25 per cent.

(3) The Income-tax Officer rejected the assessee's claim for development rebate at the rate of 25 per cent of the cost of the new plant and machinery under section 33(1) (A) (i) (b) of the Act, holding that the articles it manufactured were not covered by item (1) of the fifth Schedule of the Act. This order was later upheld in appeal by the Appellate Assistant Commissioner. The Tribunal, however, took a contrary view and held that the assessee was engaged in the manufacture of iron and steel within the meaning of item (1) of the list in the fifth Schedule of the Act and was thus entitled to development rebate at the rate of 25 per cent. This is what has now led to the following question being referred for the opinion of this Court :—

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee is entitled to development rebate @ 25 per cent within the meaning of section 33 (1) (B) (i) (b) of the Income Tax Act, 1961 ?”

Item (1) of the fifth Schedule of the Act reads as under :—

“Iron and Steel (metal), ferro-alloys and special steels”.

The stand of the Revenue with regard to the question posed rests upon the judgment of the High Court of Calcutta in *Indian Steel and Wire Products Ltd. v. Commissioner of Income-tax, West Bengal* (1), where the question arose whether wire rods come within the expression “iron and steel (metal)” as per item (1) of the fifth Schedule of the Act. The Court held that upto certain stage iron and steel can be treated as raw material which can take many shapes and forms like billets, slabs, ingots etc. but there comes a stage when by further processing or manufacture it ceases to be a raw material and enters into the category of finished products and it cannot then, come within this item. Wire rods were thus held to be beyond the scope of item (1) of the fifth Schedule of the Act.

(4) A Full Bench of the High Court of Kerala in *Commissioner of Income-Tax Kerala II v. West India Steel Co. Ltd.* (2), however

(1) (1977) 108 I.T.R. 802.

(2) (1977) 108 I.T.R. 601.

taken a somewhat different view. The case there concerned an assessee engaged in the business of converting mild steel billets and mild steel ingots into mild steel rods and steel sections. To decide whether the articles produced were "iron and steel (metal)" as per item (1) of the fifth Schedule, the test laid down was :—

"If iron and steel bars or other raw material has been used for making an article which is known and accepted in common parlance or in the commercial world as a specific article different from iron and steel and that article can no more be treated or understood basically as iron and steel, that article cannot be termed "iron and steel (metal)". To illustrate, if iron is used for manufacture of shovels, or pickaxes no one would understand, treat or name the shovels or pickaxes as iron and steel. So the question is whether the finished article can be said to be something basically different from iron and steel."

Applying this test, it was held that articles manufactured by the assessee entitled it to the higher development rebate under section 33 (1) of the Act. A similar view taken by the High Court of Kerala earlier in *Commissioner of Income-Tax, Kerala v. Mittal Steel Re-Rolling and Allied Industries (P) Ltd.* (3), was approved.

(5) Next to note is *Commissioner of Income-Tax Karnataka-Bangalore v. Fitwell Caps Private Limited* (4), where the judgment of the Full Bench in *West India Steel Co. Ltd.'s case* (supra) was followed and applying the test laid down therein, it was held that aluminium caps manufactured from aluminium metal did not come within item (1) of the fifth Schedule of the Act.

(6) With respect, the view in *West India Steel Co.'s case* (supra) is indeed to be preferred and applying it to the facts here, it must be held that the assessee is entitled to the higher development rebate of 25 per cent with regard to manufacture of mild steel rounds and square bars. It is, however, clarified that this higher development rebate can not be claimed in respect of the sale and manufacture of machinery like lathes, blowers, surface grinders and drills. With this qualification the reference is answered in the affirmative in favour of the assessee and against the Revenue.

(7) This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

(3) (1977) 108 I.T.R. 207.

(4) (1986) 159 I.T.R. 454.