

A COMMISSIONER OF INCOME TAX, GUJARAT

v.

CELLULOSE PRODUCTS OF INDIA LTD.

SEPTEMBER 4, 1991

B [S. RANGANATHAN, V. RAMASWAMI AND N.D. OJHA, JJ.]

*Income Tax Act 1961: Sections 84 and 261—New Industrial Undertaking—Exemption—Commencement of period—When arises.*

C The respondent is a Public Limited Company incorporated on April 14, 1989 for carrying on business of manufacturing chemical products particularly of Carboxy Methyl Cellulose (CMC) and Cellulose Pulps. The respondent was also granted an industrial licence by the Central Government for the manufacture of Carboxy Methyl Cellulose. The respondent had installed a cellulose plant in which cellulose pulp, the raw material for Carboxy Methyl Cellulose was manufactured. The plant had begun production from March 1961 while the production of Carboxy Methyl Cellulose was started from June 15, 1961.

E The respondent claimed relief under section 84 of Income Tax Act as it stood prior to its being deleted with effect from April 1, 1968 by Finance Act (2) 1967, for the assessment year 1966-67, the previous year of accounting being the financial year 1965-66.

F The Income Tax Officer took the view that since the respondent had started production of cellulose pulp from March, 18 1961, it had begun to manufacture or produce finished articles or goods in the year ending March 31, 1961 and consequently the assessment year 1961-62 was the first year in which the assessee was entitled to relief under section 84 Sub-section (7) of the Income Tax Act under which the relief contemplated was to be available only for five assessment years. So the respondent was not entitled to relief in the assessment year 1966-67 which fell beyond the aforesaid period.

G The above view the Income Tax Officer was affirmed in appeal by the Appellate Assistant Commissioner. Even the Income Tax Appellate Tribunal held that the respondent having begun production or manufacture of finished product which was capable of being sold in the market in the year of accounting relevant to the assessment year 1961-62 the last year in which the respondent was entitled to get relief under section 84 of the Act was the assessment year 1965-66 and the claim for

the relief in the assessment year 1966-67 was not maintainable. The High Court on reference, held that the mere fact that the respondent started production of Cellulose Pulp which was an intermediate product on March 18, 1961 did not mean that the company had begun to produce or manufacture "articles" in the assessment year 1961-62 because the word "articles" used in Sub-section (7) of section 84 in the context, could be only the end product of the industrial undertaking as a whole where there was no phased programme of installation and construction.

Allowing the appeal of the Revenue with costs, the Court,

**HELD:** The High Court on the facts and circumstances of the instant case committed an error in interfering with the conclusion of the Tribunal. It is settled law that a High Court while hearing a reference under the Act does not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal and it acts purely in an advisory capacity. Further in the instant case the finding of the Tribunal did not suffer from any infirmities such as not being supported by any evidence or being perverse or patently unreasonable. The production of Cellulose Pulp during the month of March, 1961 was a finished product which was a marketable commodity. It is true that Cellulose Pulp also constitutes raw material for manufacture of Carboxy Methyl Cellulose and the circumstances that the industrial licence granted to the respondent was for the manufacture of Carboxy Methyl Cellulose which also included the manufacture of Cellulose Pulp which was intermediate product to be used in its turn as a raw material for the manufacture of Carboxy Methyl Cellulose. The relevant clause of the Memorandum of Association of the respondent company is obviously wide in its amplitude and as such contemplates "manufacture of chemical products of any nature and kind whatsoever and particularly of Carboxy Methyl Cellulose, Cellulose Pulp and other chemical products." So the High Court obviously committed an error in holding that the manufacture of Cellulose Pulp during March 1961 was of no consequence and that the first year of production would be the assessment year 1962-63 when Carboxy Methyl Cellulose was actually manufactured. The provisions of section 84 of the Act could be construed liberally only, when there is any genuine doubt about the interpretation. [892H-893G, 894B]

In the instant case, a plain reading of Sub-section (7) of the section 84 of the Act makes it clear without any doubt that the period of assessment year relevant to the previous year in which the undertaking began to manufacture or produce "articles" was 1961-62. The question as to the assessment year in which the undertaking begins to manufacture or

- A produce articles is essentially a question to be decided on the facts of each case and on the basis of evidence placed on record. [894C-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1314 (NT) of 1976.

- B From the Judgment and Order dated 15.11.1975 of the Gujarat High Court in Income Tax Reference No. 160 of 1974.

Dr. V. Gauri Shankar, Manoj Arora and Ms. A. Subhashini for the Appellant.

- C J. Vellapaly, Ms. A.K. Verma and J.B. Dadachanji for the Respondent.

The Judgment of the Court was delivered by

- D **OJHA, J.** This appeal has been preferred on the basis of a certificate granted by the High Court of Gujarat under Section 261 of the Income Tax Act, 1961 (hereinafter referred to as the Act). The judgment appealed against is reported in *Cellulose Products of India Ltd. v. Commissioner of Income Tax, Gujarat*, [1977] 110, I.T.R. page 151. The respondent is a public limited company incorporated on April 14, 1989 mainly for the purpose of carrying on business of manufacturing chemical products. The Memorandum of Association of the respondent company, as is apparent from the order of the Appellate Assistant Commissioner of Income Tax, *inter alia* contains the following clause:

- F “to carry on the business of manufacture of and dealer and importers and exporters in chemical products of any nature and kind whatsoever and particularly of Carboxy Methyl Cellulose (CMC), Cellulose Pulps and other chemical products.”

- G The respondent was granted an industrial licence by the Central Government for the manufacture of Sodium Carboxy Methyl Cellulose (for short CMC). In pursuance of the said licence the respondent installed a Cellulose plant, in which was manufactured Cellulose pulp which in its turn was meant to be used as a raw material for manufacture of CMC. This fact does not appear to have been in dispute that the respondent began production of Cellulose pulp from
- H March 18, 1961 in the said plant while the production of CMC was started from June 15, 1961.

In the assessment year in question namely 1966-67, the previous year of account being the financial year 1965-66 ending on March 31, 1966, the respondent claimed relief contemplated by Section 84 of the Act (as it stood prior to its being deleted with effect from April 1, 1968 by Finance (No. 2) Act, 1967). The Income Tax Officer took the view that since the respondent had started production of Cellulose pulp from March 18, 1961 it had begun to manufacture or produce finished articles or goods in the year ending on March 31, 1961 and consequently the assessment year 1961-62 was the first year in which the assessee was entitled to relief under Section 84. According to him, the relief contemplated by Section 84 being available only for five years namely the assessment year 1961-62 and the four assessment years immediately succeeding as contemplated by Sub-section (7) of Section 84 of the Act, the respondent was not entitled to the relief claimed in the assessment year 1966-67 which fell beyond the aforesaid period. This finding of the Income Tax Officer was affirmed in appeal by the Appellate Assistant Commissioner. The matter was taken by the respondent in further appeal before the Income Tax Appellate Tribunal. The respondent's contention that the production of Cellulose pulp during the month of March 1961 was a trial production was repelled by the Tribunal and a categorical finding was recorded by it that Cellulose pulp manufactured by the respondent during the month of March 1961 was a finished product which was a marketable commodity. On this view the Tribunal held that the respondent having begun production or manufacture of finished product which was capable of being sold in the market in the year of account relevant to the assessment year 1961-62, the last year in which the respondent was entitled to get relief under section 84 of the Act was the assessment year 1965-66 and the claim made by it for the said relief in the assessment year in question namely 1966-67 was not maintainable. The Tribunal, however, on an application made in this behalf by the respondent referred the following question to the High Court of Gujarat for its opinion:-

“Whether on the facts and in the circumstances of the case, the Tribunal was right in rejecting the assessee's claim for relief under section 84 of the Act for the assessment year 1966-67?”

The High Court by the judgment under appeal answered the question aforesaid in the negative, that is, in favour of the assessee and against the revenue. It held that even though the word “article” used in Sub-section (7) of section 84 of the Act was undoubtedly an ordinary word employed by the legislature but in the context in which it was used and

A looking to the object with which it was enacted it was obvious that it could only refer to the end product of the industrial undertaking as a whole where there was no phased programme of installation and construction. On this view the High Court found that the mere fact that the respondent started the production of Cellulose pulp which was an intermediate product on March 18, 1961 did not mean that the company had begun to produce or manufacture "articles" in the assessment year 1961-62.

C It has been urged by learned counsel for the appellant that the finding recorded by the Tribunal referred to above was essentially a finding of fact based on appraisal of evidence and it was not open to the High Court in its advisory jurisdiction to take a contrary view. For the respondent, on the other hand, in support of the judgment appealed against, it was urged by its learned counsel that inasmuch as section 84 of the Act contemplated grant of relief to a new undertaking, it should be construed liberally so as to effectuate the object thereof. He maintained that since the undertaking established by the respondent was to manufacture CMC and the industrial licence had also been granted to it for the said purpose, exemption under section 84 of the Act could be claimed by it only in the year during which CMC was actually manufactured and since it was so done during the assessment year 1962-63 exemption could not be claimed in the assessment year 1961-62, notwithstanding the fact that Cellulose pulp for captive consumption was manufactured in that year. According to him, therefore, the period of five years contemplated by sub-section (7) of section 84 of the Act would represent the assessment year 1962-63 and the four assessment years immediately succeeding and in this view of the matter the High Court was right in allowing the relief claimed by the respondent during the assessment year in question, namely 1966-67. In the alternative, he submitted that if ultimately the view of the Tribunal prevailed that the production had started in the assessment year 1961-62 then the disallowance of the relief in the 5th year namely in the assessment year in question should be restricted to the investment of the pulp factory and the respondent should not be denied the relief in respect of the investment exclusively related to the CMC plant.

H Having given our anxious consideration to the respective submissions made by the learned counsel for the parties, we are inclined to agree with the contention of the learned counsel for the appellant that the High Court on the facts and in the circumstances of the instant case committed an error in interfering with the conclusion of the tribunal. It

is settled law that a High Court hearing a reference under the Act does not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal and that it acts purely in an advisory capacity. If the Tribunal after considering the evidence produced before it on a question of fact records its finding it cannot be interfered with in a reference by the High Court unless of course such finding was not supported by any evidence, was perverse or patently unreasonable. In our opinion, the finding of the Tribunal in the instant case did not suffer from any of these infirmities. The finding that the production of Cellulose pulp during the month of March 1961 was not a trial production and that Cellulose pulp as manufactured by the respondent was a finished product which was a marketable commodity was essentially a finding of fact based on appraisal of evidence. It is true that Cellulose pulp constitutes raw material for manufacture of CMC but it has not been disputed before us by the learned counsel for the respondent that it was even by itself a finished marketable commodity. The circumstance that the industrial licence granted to the respondent was for the manufacture of CMC and not of Cellulose pulp is, in our opinion, keeping in view the nature of the two articles, not of much significance. In the same manner as a licence, for instance, for the manufacture of cloth includes the manufacture of cotton yarn, an intermediate product necessary for manufacturing cloth, the licence granted to the respondent for the manufacture of CMC included the manufacture of Cellulose pulp which was an intermediate product to be used in its turn as a raw material for the manufacture of CMC. The relevant clause of the Memorandum of Association of the respondent-company, already quoted above, is obviously wide in its amplitude. It contemplates manufacture of "chemical products of any nature and kind whatsoever and particularly of CMC, Cellulose pulp and other chemical products". Manufacture of Cellulose pulp was thus indeed one of the objects of the company. The question involved had to be considered in this background and the Tribunal having done so and recorded the finding of fact referred to above the High Court obviously committed an error in holding that manufacture of Cellulose pulps during March 1961 was of no consequence and that the first year of production would be the assessment year 1962-63 when CMC was actually manufactured. The decision of the Madras High Court relied on by the learned counsel for the respondent reported in *Madras Machine Tools Manufacturers Ltd. v. Commissioner of Income-Tax, Madras*, [1975] 98 ITR 119, in view of what has been observed above on the facts of the instant case does not advance the case of the respondent any further than the reasons recorded in the judgment under appeal.

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A As regards the alternative submission made by the learned  
counsel for the respondent suffice it to say that the case on the basis of  
which this alternative submission is sought to be made was not set up  
before the Tribunal nor any such question was sought to be referred on  
the basis of which this alternative submission could be made. It cannot,  
B as such, be permitted to be made in the present appeal. The submission  
that the provisions of section 84 of the Act should be construed  
liberally so as to effectuate the object thereof need detain us for long.  
It is only when there is any genuine doubt about the interpretation of a  
fiscal statute or where two opinions are capable of being formed that  
the rule of interpretation canvassed by learned counsel for the respon-  
dent may be taken to. In the instant case a plain reading of sub-section  
C (7) of section 84 of the Act makes it clear without any doubt that the  
period of five years was to start from the assessment year relevant to  
the previous year in which the undertaking began to manufacture or  
produce "articles". Since the language of the sub-section is plain and  
admits of no ambiguity there is no scope of applying the aforesaid rule  
of interpretation. The question as to in which assessment year "the  
D undertaking begins to manufacture or produce articles" is essentially a  
question to be decided on the facts of each case and on the basis of the  
evidence placed on record.

E In view of the foregoing discussion, this appeal succeeds and is  
allowed with costs and the judgment of the High Court under appeal is  
set aside.

S.B.

Appeal allowed.