

SUPREME COURT OF INDIA

A.M. Moosa

Vs.

Commissioner of Income Tax, Trivandrum

C.A.No.4144 OF 2007

(Dr. Arijit Pasayat and D.K. Jain JJ.)

10.09.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J:-

1. Leave granted.

2. Challenge in this appeal is to the legality of order passed by a Division Bench of Kerala High Court answering the reference made to it in favour of the department and against the assessee appellant.

3. Background facts in a nutshell are as follows.

For the assessment year 1992-93, the assessee appellant had claimed deduction under Section 80-HHC of the Income Tax Act, 1961, (in short, 'the Act'). The assessing officer disallowed the claim on the ground that the 'profits of the business' computed under Section 80-HHC indicated a negative figure. An appeal was preferred before Commissioner of Income-Tax (Appeals), Cochin Bench, hereinafter, referred to as 'the CIT(A)'. The said appellate authority also was of the same view and dismissed the appeal. The assessee appellant preferred an appeal before the Income Tax Appellate Tribunal, Cochin Bench, in short 'the ITAT'. By Order dated 14th September, 1995 in ITA No. 498 (Coch)/1995, the view of the assessing officer as well as of CIT(A) was affirmed. On being moved for reference, ITAT referred the following questions for adjudication by the High Court:

"(1) Whether, on the facts and circumstances of the case, the Tribunal was justified in entertaining the additional ground raised by the assessee on an issue which had not been disputed earlier before the assessing officer or the first appellate authority? (2) Whether, on the facts and circumstances of the case, the Tribunal is right in law in holding that the payment received from the export houses under the agreements could not partake the nature of receipt towards "charges" mentioned in clause (baa) of Explanation to Sec.80HHC? (3) Whether, on the facts and in the circumstances of the case, and on an interpretation of Sec. 80HHC(3) would the assessee be entitled to the deduction in an amount equal to 90&percent; of the sums referred to in clause (iiia) (not being profits on sale of a licence acquired from any other person) and clause (iiib) and clause (iiic) of section 28, the same proportion as the export turnover bears to the total turnover to the business carried on by the assessee? (4) Whether, on the facts and in the circumstances of the case, the Tribunal is right in its interpretation of the term 'profits of business'? (5) Whether, on the facts and in the circumstances of the case, the assessee is entitled to the benefits of sec. 80HHC of the Income Tax Act?"

4. By the impugned Judgment, the High Court held that the view taken by the assessing officer, CIT(A) and ITAT was in order.

Accordingly, as noted above, the reference was answered in favour of the department and against the assessee.

5. In support of the appeal, learned counsel for the appellant submitted that the view taken by the High Court is clearly untenable and does not reflect a true interpretation of the provision, that is, Section 80-HHC of the Act. Learned counsel for the Revenue on the other hand supported the orders stating that the view taken is unexceptional. At this juncture, it should be appropriate to take note of the relevant provision. Same reads as follows:

"80-HHC. Deduction in respect of profits retained for export business.- (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1-B) derived by the assessee from the export of such goods or merchandise:

Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an export house or a trading house, as the case may be,) issues a certificate referred to in clause (b) of sub-section (4-A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee in respect of such trading goods.

(1-A) Where the assessee, being a supporting manufacturer, has during the previous year, sold goods or merchandise to any export house or trading house in respect of which the export house or trading house has issued a certificate under the proviso to sub-section (1), there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1-B) derived by the assessee from the sale of goods or merchandise to the export house or trading house in respect of which the certificate has been issued by the export house or trading house.

(3) For the purposes of sub-section (1), - (a) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;

(c) where the export out of India is of goods or merchandise manufactured [or processed] by the assessee and of trading goods, the profits derived from such export shall, - (i) in respect of the goods or merchandise manufactured [or processed] by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of

such goods bears to the adjusted total turnover of the business carried on by the assessee; and (ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods :

Provided that the profits computed under clause (a) or clause (b) or clause (c) of this sub-section shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiia) (not being profits on sale of a licence acquired from any other person), and clauses (iiib) and (iiic), of section 28, the same proportion as the export turnover bears to the total turnover of business carried on by the assessee.

Explanation : For the purposes of this sub-section,- (a) "adjusted export turnover" means the export turnover as reduced by the export turnover in respect of trading goods;

(b) "adjusted profits of the business" means the profits of the business as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (b) of sub-section (3);

(c) "adjusted total turnover" means the total turnover of the business as reduced by the export turnover in respect of trading goods;

(d) "direct costs" means costs directly attributable to the trading goods exported out of India including the purchase price of such goods;

(e) "indirect costs" means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover;