

Dy. Cit Vs. Trab Enterprises

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Court : Mumbai

Decided On : Jul-08-2002

Reported in : (2004)90TTJ(Mumbai)1093

Appeal No. : ITA Nos. 4259 & 4260/Mum/I995 8 July 2002 A.Y. 1990-91 & 1991-92

Appellant : Dy. Cit

Respondent : Trab Enterprises

Advocate for Pet/Ap. : P. Peerya, *for the Assessee Sanjeev Shah, for the Revenue*

Judgement :

ORDER

V.D. Wakharkar, A.M.:

These two appeals by the revenue raise an identical ground. They are therefore, disposed of by a common order.

2. Both the appeals raise the following ground :

'On facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) has erred in holding that section 80HHC(3) is amply clear to state that the benefit ought to be calculated as per that section, i.e., same ratio

that the export turnover bears to the total turnover and the total turnover may include both export turnover as well as other trading activities not necessarily export. He further erred in his direction to assessing officer to calculate the benefit in the following manner:

Profit of the business

x

Export turnover

Total turnover

3. The assessee is a partnership firm. Upto the assessment year 1989-90, its business comprised only of transportation of goods and material. For and from the assessment year 1990-91, they started exporting oil-seeds and extractions. Thus, for both the years under appeal, the assessee had income from transportation business and from exports. The assessee claimed deduction under section 80HHC by treating the total receipts both from the exports and transportation service charges as total turnover and applied the proportion of export turnover/total turnover to the net profits. The assessing officer held that under sub-section (3) of section 80HHC as they applied to the relevant assessment years, the denominators in both the proportions, namely, (a) profits of business (b) total turnover of business, have to be restricted to profits and total turnover of the particular business to which the export activity related. On the other hand, the assessee took the entire business profits and the total turnover of all the businesses together to work out the proportion of export profit. The assessing officer, however, excluded from the total turnover, income received by the assessee from transportation by way of, service charges and commission. For the purpose of ascertaining total turnover, only the turnover of trading business was taken into account. On this basis, the assessing officer worked out deduction allowable to the assessee under section 80HHC for the assessment year 1990-91 at Rs. 1,68,519 as against the assessee's claim of Rs. 5,89,783. For the assessment year 1991-92, he found that if the profit and turnover of the

transportation business are excluded from the computation and if the expenses are allotted to the two activities on the proportionate basis, the assessee earned no profit from export and in fact incurred a loss of more than Rs. 25 lakhs. The assessee's claim to deduction under section 80HHC was totally rejected for the assessment year 1991-92.

4. In appeal, the learned Commissioner (Appeals) relied upon the CBDT's Circular No. 604, dated 5-7-1990, (1990) 184 ITR 137 and upheld the assessee's claim that the deduction has to be allowed with reference to the proportion of the profit worked out on the basis of export turnover over total turnover of the business. Being aggrieved, the revenue is in appeal before us.

5. Before us, the learned Departmental Representative relied upon a series of decisions of the Hon'ble jurisdictional High Court. Particular reliance was placed on the decision of the Hon'ble jurisdictional High Court in the case of CIT v. K.K. Doshi & Co. : [2000]245ITR849(Bom) Reliance was also placed on the decision of the jurisdictional High Court in the case of CIT v. S.G. Jhaveri Consultancy Ltd. : [2000]245ITR854(Bom) and the decision of the same High Court in the case of CIT v. Kantilal Chotelal : [2000]246ITR439(Bom) It was pointed out that in the case of CIT v. K.K. Doshi & Co. (supra) the Hon'ble Bombay High Court clearly held that business profits for the purposes of section 80HHC shall not include receipts by way of brokerage, commission, interest, rent charges or any other receipt of some nature, as they do not have any nexus with the sale profits of export activities. It was held that there has to be direct nexus between the profits on the one hand and export activity on the other. In the said case, the Hon'ble Bombay High Court dealt with a case of a dealer in diamonds who in addition to export sales had received service charges on job works. The Hon'ble High Court held that service charges could not be considered as business profits while working out deduction under section 80HHC. The learned departmental Representative argued that service charges received in the business of transportation could not be taken into account for the purposes of section 80HHC.

6. The learned authorised representative relied upon the circular of the CBDT referred to above, particularly para 4 of the said circular, which reads as under :

'4. Sub-s. (3) of section 80HHC statutorily fixes the quantum of deduction on the basis of a proportion of the profits of business under the head Profits and gains of business or profession' irrespective of what could strictly be described as profits derived from the export of goods or merchandise out of India'. The deduction is computed in the following manner

Profit of the business

x

Export turnover

Total turnover

7. It was argued that the CBDT's circular made it clear that export profit for the purpose of section 80HHC would not be profits and gains strictly derived from export of goods and merchandise and that the proportion of export profit has to be worked out on the basis of method laid down in para 4 of the said circular, which is in line with sub-section (3) of section 80HHC. Reliance was placed on a large number of decisions in support of the plea that when there is circular of the CBDT, it would override any propositions of law laid down by courts and the revenue must follow the CBDT's circular, if it is beneficial to the assessee even though there are judicial pronouncements to the contrary. Reliance was particularly placed on the decision of the Hon'ble Supreme Court in the case of Collector of Central Excise v. Dhiren Chemical Industries : [2002]254ITR554(SC) and the decisions reported. as Paper Products Ltd. v. Commr. of Central Excise : [2001]247ITR128(SC) and CIT v. Indra Industries (2001) 248 ITR 338. Reference was made particularly to the observation of the Apex Court on p. 557 to the effect that 'if there are circulars, which have been issued by the Central Board of Excise and Customs, which place different interpretation upon the said phrase, that interpretation will be binding upon the revenue.'

8. The learned authorised representative stated that the provisions of section 80HHC had a self-contained code for computation of eligible profits and the method laid down therein should not be tinkered with. It was argued that with

determination of profits derived from the export of goods and merchandise, one has to start with the quantum of profits, as computed under the head 'Profits and gains of business and profession', thereafter the export turnover and the total turnover have to be determined and the proportion of export turnover to total turnover has to be applied to the profits as determined under the head 'Profits and gains of business and profession' and not on the basis of the profits only of the trading activity of which the export activity is a part. He, therefore, pleaded that the order of the learned Commissioner (Appeals) contained no infirmity and ought to be confirmed. In the alternative, it was argued that profits earned on sale of gunny bags in the assessment year 1991-92 ought to be treated as a part of the export business and export profit.

9. We have considered the rival submissions. We are bound to follow the ratio laid down by the Hon'ble jurisdictional High Court in the case of CIT v. K.K. Doshi & Co. (supra) and the other decisions cited by the learned Departmental Representative. In our view, there is nothing in the circular issued by the CBDT, which mitigates against or goes beyond the interpretation placed by the Hon'ble jurisdictional High Court on the provisions of section 80HHC. Under the provisions of section 80HHC as they applied to the relevant assessment years, the export profit had to be worked out on the basis of the proportion of export turnover to the total turnover. Such a working cannot be strictly described as profits derived from export of goods and merchandise because the exact profits can be worked out only by having a separate P&L; a/c for the receipts and expenses relating to the export activity. Proportion of export turnover to total turnover is a rough and ready method adopted for facility of implementation and, therefore, such export profit cannot be strictly described as profits derived from exports. This is the import of the words used in para 4 of the CBDT's circular. The observation contained in para 4 of the CBDT's circular is no authority for allowing deduction in respect of profits derived from activities totally unconnected with export activities. We are in this respect bound by the ratio laid down by the jurisdictional High Court., The revenue's appeals thus have merit and have to be allowed.

10. In regard to the contention of the learned authorised representative relating to sale of gunny bags, we find that income therefrom has been treated as a part of

export profit in the assessment for the assessment year 1991-92.

11. In view of the foregoing, the revenue's appeals are allowed and orders of the learned Commissioner (Appeals) are set aside and those of the learned assessing officer are restored.

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