Assistant Commissioner of Vs. Classic Diamonds (i) Ltd.

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Oct-28-1999

Reported in : (2000)75ITD245(Mum.)

Judge : M Bakshi, S Tiwari

Appellant : Assistant Commissioner of

Respondent : Classic Diamonds (i) Ltd.

Judgement :

1. The only ground raised in this appeal of the revenue, for assessment year 1992-93, is relating to the claim of deduction under section 80HHC in respect of rough diamonds. The assessee company imports rough diamonds and also purchases some locally and after cutting and polishing these are exported out of India. On scrutiny of accounts the Assessing Officer found that the assessee had returned the rough diamonds amounting to Rs. 33,84,625 without any value addition. He accordingly denied deduction under section 80HHC in respect of that amount treating the export to that extent on account of minerals on which Export promotion deduction is not permissible.

2. The learned counsel for the assessee, during the course of hearing of the appeal before us, explained that out of the rough diamonds imported, some diamonds are found not fit for cutting and polishing and accordingly these are exported as such. The Assessing Officer considered the export of rough diamonds as the export of minerals not falling under the Twelfth Schedule in respect of which

deduction under section 80HHC was not permissible. The assessee had relied upon the CBDT Circular being F.No. 178/206/83-IT(A1) dated 22-5-1984 in support of its claim that diamonds after cutting and polishing are not minerals, but the Assessing Officer has pointed out that the said Circular only says that polished diamonds are not minerals and ores as they have undergone the process of manufacturing. According to the Assessing Officer the Circular does not provide that the rough diamonds are not minerals and ores and as such it does not help the assessee.

Another reason given by the Assessing Officer for disallowance of deduction in respect of rough diamonds is that the purpose of deduction under section 80HHC would be defeated if the raw material imported is re-exported without any value addition.

3. The CIT(A), considering the fact that the claim of the assessee was accepted by his predecessor in assessment year 1990-91, allowed the claim of the assessee in the year under appeal also.

4. The revenue is aggrieved. The learned Departmental Representative invited our attention to section 80HHC(2)(a) and contended that the applicability of section 80HHC has been restricted to all goods or merchandise, other than those specified in clause (b). Clause (b) of section 80HHC(2) provides that the section shall not apply in respect of mineral oil and minerals and ores other than processed minerals and ores specified in the Twelfth Schedule. It was also pointed out that under the Twelfth Schedule (item No. X) the processed minerals and ores are identified as 'cut and polished minerals and rocks including cut and polished granite'. It was contended by the learned Departmental Representative that rough diamonds are other than cut and polished minerals and therefore deduction under section 80HHC is not permissible in respect of such exports. The decision of the CIT(A), it was stated, is thus not in order.

5. The learned counsel for the assessee on the other hand pointed out that in the past the Department has accepted the decision of the CIT(A) on similar issue and there is no change in facts and circumstances of the case and therefore the decision of the CIT(A) may be upheld. The learned counsel further invited our

attention to the Explanation to the Twelfth Schedule which clarifies that for the purposes of the Schedule XII, "processed" in relation to any mineral or ore would include washing and levigation. According to the learned counsel rough diamonds are to be classified as processed minerals and ores under the Twelfth Schedule in respect of which deduction under section 80HHC would be permissible, as the assessee has washed the rough diamonds.

6. We have given our careful consideration to the rival contentions. We wish that the facts of this case were crystal clear which would help us to reach to a fair conclusion. One of the possibilities in this case is that the assessee imports rough diamonds and most of the diamonds are cut and polished and then exported. The diamonds, which are found not suitable for cutting and polishing, may either be returned to the supplier or sold in the open market. If the rough diamonds not found feasible for cutting and polishing are returned to the supplier, then such a transaction, in our view, does not fall within the definition of export out of India. There has been no verification in respect of this aspect of the matter. We got this impression on account of the explanation given before us during the course of hearing as also the finding of the Assessing Officer at Page 3 of his order where he has pointed out that the purpose of deduction under section 80HHC would be defeated if the raw material imported is exported without any value addition. We could have remanded the matter for verification but since the claim of the assessee is disallowable even on other ground, we are not adopting that process.

7. We may proceed on the basis that the sale of rough diamonds out of the imported diamonds not found feasible for cutting and polishing have been sold in the open market outside India, such type of transactions falls within the ambit of exports out of India. The issue that arises is as to whether the assessee is entitled to deduction under section 80HHC in respect of export of such rough diamonds. Section 80HHC provides a deduction in respect of export of goods and merchandise but sub-section (2)(a) prohibits deduction in respect of the export of mineral oil and minerals and ores other than processed minerals and ores specified in the Twelfth Schedule. The Circular of the CBDT relied upon by the assessee before the Assessing Officer, bearing F. No.178/206/83-IT(A1) dated 22-5-1984 clarifies that polished diamonds are not minerals and ores as they have

undergone the process of manufacture. This Circular, though relied upon by the assessee, may support the view of the Department. In the Circular the reason given for not treating the polished diamonds as minerals and ores is that these have undergone the process of manufacture. Thus it is implied that the diamonds which have not undergone the process of manufacture may otherwise fall within the ambit of minerals and ores. The dictionary meaning of minerals (Oxford English Dictionary) is :- a substance obtained by mining :- a substance that is neither animal nor vegetable or inorganic substance. Thus there is no doubt that rough diamonds are minerals. The Twelfth Schedule of the Income-tax Act gives the list of such processed minerals in respect of which deduction under section 80HHC is permissible. Item (x) of the said Schedule reads as under :- "(x) Cut and polished minerals and rocks including cut and polished granite." 8. The dispute involved in this appeal is not relating to cut and polished diamonds but in regard to rough diamonds which are neither cut nor polished. Therefore, the rough diamonds do not fall within the category of excluded minerals and ores under the Twelfth Schedule in respect of which deduction under section 80HHC would be permissible. It was contended on behalf of the assessee that by virtue of Explanation to the Twelfth Schedule the washing and levigation would amount to processing of the minerals and ores and therefore if the rough diamonds have been washed the assessee would be entitled to deduction needs consideration. But we are afraid that the contention advanced on behalf of the assessee may not be well founded. The said Explanation clarifies the meaning of the word "processed". There are several items in the Twelfth Schedule using the word "processed". For example item Nos. (ii) and (iii) specifically uses the word "processed" and the Explanation clarifies as to what is meant by the word "processed". The Twelfth Schedule does not say that every mineral or ore, which is processed, is excluded from the operation of clause 2(a)(b). If it were so then the contention on behalf of the assessee would be acceptable. However, that is not so. The item (x) in the Twelfth Schedule specifically refers to cut and polished minerals and ores and not processed minerals and ores.

In this view of the matter we are of the view that the assessee is not entitled to deduction under section 80HHC on the export of rough diamonds. The mere fact that the CIT(A) has allowed the claim of the assessee in earlier years does not bind us not to decide the issue in accordance with law. Each year is an independent unit of assessment and it is well settled that principles of estopple do not apply to income-tax proceedings. In the year under appeal the decision of the CIT(A) being contrary to our view is set aside and that of the Assessing Officer restored.