
(2001) 07 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 2359 of 1990 30 July 2001

Bank of Baroda

APPELLANT

Vs

H.C. Shrivatsava

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 264, 35B

Citation : (2002) 1 MhLj 385 : (2002) 122 TAXMAN 330

Hon'ble Judges : V.C. Daga, J;S.H. Kapadia, J

Bench : Full Bench

Advocate : F.V. Irani and J.N. Shah, for the Revenue and R.V. Desai, J.P. Deodhar and P.S. Jetly, for the Assessee, for the Appellant;

Judgement

V.C. Daga, J.

Having heard the parties at length, this petition was allowed for the reasons to be recorded subsequently. We, accordingly, give our reasons for allowing the petition.

This petition is directed against the revisional order dated 21-2-1986, passed u/s 264 of the Income Tax Act, 1961 (hereinafter referred to as the Act), holding that the assessee, the petitioner-bank was not entitled to get deduction u/s 35 of the Act in the assessment year 1975-76, in respect of the expenses incurred outside India, and also on its International Division in India.

THE FACTS

2. The facts leading to the present petition may be stated briefly :

The petitioner is one of the leading nationalised banks of the country, engaged in the business of banking and carries on banking operations from its branches situated all over India as well as abroad. At the material time it had 32 foreign branches situate outside India, spread over in several countries of the world. The foreign branches at the relevant time carried on various banking activities such

as accepting deposits, advancing money and other banking services, etc.

3. The petitioner-bank had filed return of income for the assessment year 1975-76 on 20-2-1975 declaring therein income in the sum of Rs. 6,48,75,800. In the return filed the petitioner had not made any claim for weighted deduction u/s 35B in respect of the expenses incurred on maintaining foreign branches as also on its International Division. The assessment for the assessment year 1975-76 was completed u/s 143(3) of the Act, on 11-9-1978 and the income was assessed at Rs. 6,49,08,910. The petitioner-bank neither in the return nor during the course of assessment made any claim for weighted deductions u/s 35B in respect of expenses incurred for maintaining its foreign branches as well as its International Division for the relevant assessment year 1975-76.

4. The petitioner-bank was, subsequently, advised that it would be entitled to a deduction u/s 35B in respect of expenditure outside India for the maintenance of its branches as well as in its International Division in India. It, therefore, preferred a revision application before the respondent No. 1 and requested him to direct the assessing officer to grant necessary deductions u/s 35B.

5. Although, the petitioner's revision application was filed as early as on 21-8-1979, it came to be disposed of sometime on 21-2-1986, i.e., approximately after 6 years. The 1st respondent rejected the said application u/s 264 of the Act with regard to the expenditure incurred on the maintenance of foreign branches on the ground that section 35B(1)(b)(iv) required that the expenditure has to be incurred wholly and exclusively on the maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities. In other words, respondent No. 1 was of the view that the foreign branches of the petitioner-bank were not promoting banking services or facilities but were engaged in normal banking business not amounting to promotions of banking services or facilities. Thus, it was of the view that the petitioner-bank was not entitled to get benefit of section 35B(1)(b)(iv).

6. The respondent No. 1 also held that it was unable to agree with the views expressed by the Tribunal in the petitioner's own case, details of which are referred to in the paragraphs appearing hereinafter. He further held that the petitioner-bank's claim for deductions in respect of expenditure incurred on its International Division was not allowable as the same did not fall within any of the sub-clauses of section 35B.

7. Aggrieved by the aforesaid order, the petitioner-bank preferred an appeal to the Tribunal at Bombay, on 11-4-1986. The said appeal was dismissed by the Tribunal as not maintainable under the provisions of section 253 of the Act. Consequently, the original order passed by the respondent No. 1 on 21-2-1986, has been impugned in this petition.

SUBSEQUENT DEVELOPMENTS

8. The developments, subsequent to the assessment year 1975-76, have significant role to play. The factual developments lie in a narrow compass and they are as under :

(a) During the pendency of the assessment for the year 1975-76 before the 1st respondent, the claim set up by the petitioner-bank for deduction of expenditure incurred on maintenance of its branch offices outside India came to be adjudicated upon by the Tribunal for the assessment years 1976-77 and 1977-78. The Tribunal by order dated 23-8-1983 held that the petitioner would be entitled to relief u/s 35B in respect of expenses incurred on bank facilities and other services rendered by the petitioner outside India. In coming to this conclusion the Tribunal relied upon a decision of the Madras Bench of the Tribunal in the case of Indian Overseas Bank as well as order of the Apex Court; whereby the SLP was dismissed in the case of India Hotels Ltd. Co. Consequently, the Tribunal had reiterated its views expressed in the orders dated 21-5-1983, 2-1-1985, 19-6-1986, August 1988, 15-12-1989. Copies of which were produced on records.

9. The respondent No. 1 had filed reference application before the Tribunal u/s 256(1), and had raised a question as to: whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee-bank was eligible for weighted deduction u/s 35B ? However, the Tribunal rejected the said application for reference for the assessment years 1976-77 to 1981-82 and the said rejection has been affirmed by this court u/s 256(2). In the result, it is clear that orders of the Tribunal referred to hereinabove have become final and conclusive. The same appears to have been accepted even by the revenue.

RIVAL SUBMISSIONS

10. The petitioner-bank contended that at the relevant time it had 32 branches outside India, rendering banking services and it had incurred expenditure aggregating to Rs. 2,51,23,848 for maintenance of these branches outside India. The bank was thus entitled to relief u/s 35B(I)(b)(iv) for the expenditure incurred for maintaining the branches outside India. In addition to this, the bank has also alleged that it was entitled to relief u/s 35B in respect of the expenditure incurred on International Divisions /overseas branches in India who were exercising supervision, control and undertaking the work of their business activities outside India. The learned counsel for the petitioner relied upon decision of the Tribunal, Bombay Bench with regard to the assessment year 1976-77 in the case of the very assessee-bank and prayed that the assessing officer was found to follow the various decisions rendered by the Tribunal in this regard.

11. Per contra, the learned counsel for the revenue contended that the assessing officer relied upon the reports called for from officers exercising jurisdiction at Bombay, wherein it was confirmed by all the officers exercising jurisdiction that

claim u/s 35B had not been accepted by them in any of the cases of other banks. Apart from this, the learned counsel for the respondent has further tried to canvas on the text of section 35B(I)(iv), and contended that the words used in sub-clause (iv) of the said section "for the promotion of" are restricted only to the cases where branch office or agency outside India is "for promotion of the sale outside India of the goods, services, or facilities" dealt in or provided by the assessee in the course of its business. In his submission, the foreign branches of the assessee-bank were being engaged in normal banking business. It could not be said that they were maintained for promoting banking services outside India. He, therefore, contended that the assessing officer was perfectly justified in rejecting the deductions claimed by the bank u/s 35B.

STATUTORY PROVISIONS

12. Before examining the above contentions, it is necessary to have a look at the scheme of the Act :

35B. Export markets development allowance.(1)(a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 29-2-1968, but before the 1-3-1983, whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (b) he shall, subject to the provisions of this section, be allowed a deduction of sum equal to one and one-third times the amount of such expenditure incurred during the previous year :

Provided that in respect of the expenditure incurred after the 28-2-1973, but before the 1-4-1978, by a domestic company, being a company in which the public are substantially interested, the provisions of this clause shall have effect as if for the words "one and one-third times", the words "one and one-half times" had been substituted.

(b) The expenditure referred to in clause (a) is that incurred wholly and exclusively on

(i) to (iii) * * ** **

(iv) maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities;

The Issue

13. In the light of the above rival contentions, the following question arises for our consideration :

1. Whether, in the facts and circumstances, the assessing officer was right in holding that the bank was entitled to weighted deduction u/s 35B of the Act and that for the assessment year 1975-76?

Findings

14. Having considered the rival submissions, section 35B(1)(b)(iv) requires that the expenditure referred to in clause (a) is that incurred wholly and exclusively on maintenance outside India of a branch, office or agency for promotion of the sale outside India of such goods, services or facilities.

15. Turning to the facts of the case at hand, it would be clear that the petitioner renders services and facilities to the overseas and also in India. The petitioner-bank has numerous branches in India as also abroad, which render banking services and facilities. Services are also rendered to Indian customers in overseas countries. If the Indian Overseas Bank, which was similarly circumstanced could be allowed the benefits u/s 35B, the petitioner-bank can also be held entitled to the same benefits being a similarly circumstanced assessee. In the circumstances, we hold that the petitioner-bank was entitled to claim relief u/s 35B.

16. At this juncture, we cannot resist from observing that the judgment delivered by the Tribunal was very much binding on the assessing officer. The assessing officer was bound to follow the judgments in its true letter and spirit. It was necessary for the judicial unity and discipline that all the authorities below the Tribunal must accept as binding the judgment of the Tribunal. The assessing officer being inferior officer vis-a-vis the Tribunal, was bound by the judgment of the Tribunal and the assessing officer should not have tried to distinguish the same on untenable grounds. In this behalf, it will not be out of place to mention that in the hierarchical system of courts which exists in our country, it is necessary for each lower tiers including the High Court, to accept loyally the decisions of the higher tiers. It is inevitable in hierarchical system of courts that there are decisions of the Supreme Appellate Tribunals which do not attract the unanimous approval of all members of the judiciary. But the judicial system only works if someone is allowed to have the last word, and that last word once spoken is loyally accepted. The better wisdom of the court below must yield to the higher wisdom of the court above as held by the Supreme Court in the matter of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, .

17. In the aforesaid backdrop, for the reasons stated hereinabove, the impugned order of the assessing officer dated 21-2-1998 is quashed and set aside. In the result, the writ petition is allowed. Rule is made absolute with no order as to costs.