
(2004) 03 KAR CK 0050
In the Karnataka High Court
Case No : IT Appeal No. 419 of 2002

Commissioner of Income Tax and Another	APPELLANT
Vs	
Bharat Earth Movers Ltd.	RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Income Tax Act, 1961 — Section 260 A, 80 HHC, 80 HHC (1), 80 HHC (3) (a)

Citation : (2004) 188 CTR 488 : (2004) 268 ITR 232

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; K.P. Kumar, for King and Patridge, for the Respondent

Final Decision : Dismissed

Judgement

R.V. RAVEENDRAN, J.—This appeal by the Revenue u/s 260-A of the Income Tax Act, 1961 ("Act" for short) is filed against the order dt. 28th. June, 2002, passed by the Tribunal, Bangalore Bench, in ITA No. 550/Bang/1999 relating to the asst. yr. 1996-97. The respondent assessee is a Government Company.

2. The question of law involved in this appeal is whether sales-tax collected by the assessee on its sales, should be treated as part of "total turnover" for the purpose of computing the profits derived from export, for claiming deduction u/s 80HHC of the Act.

3. Sub-section (1) of Section 80HHC entitles an assessee engaged in the business of export, to claim deduction of the profits derived by it from export, in computing its total income, in accordance with and subject to the provisions of that section. Sub-section (3)(a) of Section 80HHC provides how "profits derived from export" should be arrived at. It provides that profits derived from 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. The said provision is given

effect by adopting the following formula :

Profit of export = Profits of business x Export Turnover ----- Total
Turnover
Explanations (baa), (b) and (ba) to Section 80HHC define these three terms, profits of business, export turnover and total turnover, for purposes of Section 80HHC. Explanation (ba) to Section 80HHC provides that for the purpose of Section 80HHC, "total turnover" shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station.

The proviso thereto provides that the expression "total turnover" shall have effect as if it also excluded any sum referred to in Clauses (iiia), (iiib) and (iiic) of Section 28. While "total turnover" is defined by an "excluding" definition, the term "export turnover" is defined in Clause (b) of Explanation by an extensive definition as meaning the sales proceeds received in, or brought into, India by the assessee in convertible foreign exchange, of any goods or merchandise to which Section 80HHC applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station. There is no dispute as to how the "profits of business" or the "export turnover" is to be arrived at. But, there is a dispute as to how the "total turnover of the business of the assessee" should be arrived at, for calculating the profit of export.

4. According to the assessee, the total turnover refers to the total sales turnover and does not include sales-tax, excise duty etc. On the other hand, according to the Revenue, the total turnover should be given the same meaning as is given in the sales-tax laws where the term total turnover includes sales-tax and excise duty. The effect of the respective contentions can be easily understood from the following illustration :

Rs.

Profits of Business

=

50,000

Export Turnover

=

2,00,000

Total Sales Turnover (without Sales-tax & Ex. Duty)

=

4,00,000

Total Sales Turnover (with Sales-tax & Ex. Duty)

=

5,00,000

Profits of Export (according to assessee)

50.000 x 2,00,000

4,00,000

= 25,000

Profits of Export (according to Revenue)

50.000 x 2,00,000

5,00,000

= 20,000

5. In this case, the assessee while computed the profit of exports in terms of Sub-section (3) in the return submitted, had excluded the sales-tax from the total turnover. The AO passed an order of assessment dt. 25th Feb., 1999, wherein he added the sales-tax collected by the assessee to the trading receipts to arrive at the total turnover. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who by an order dt. 25th June, 1999, upheld the order of the AO. The further appeal filed by the assessee was allowed by the Tribunal holding that total turnover shall not include the sales-tax collected by the assessee for the purpose of calculating eligible amount of deduction u/s 80HHC of the Act. The Tribunal followed the decision of the Bombay High Court in Commissioner of Income Tax Vs. Sudarshan Chemicals Industries Ltd., Rathi Engineering Works and Klockner Windsor (I) Ltd., . The said order is challenged by the Revenue contending that sales-tax collected during the assessment year by the assessee should form part of the "total turnover" for purposes of calculating the deduction u/s 80HHC.

6. Reliance is placed by the Revenue on the decisions of the Supreme Court in George Oakes (Private) Ltd., Addison and Co. (Private) Ltd. and Rane (Madras) Ltd. Vs. State of Madras, and State of Kerala Vs. Ramaswami Iyer and Sons, to contend that sales-tax collected on sales should be included in the "total turnover".

6.1 In George Oakes (supra) the Supreme Court was considering the question whether additional sales-tax levied u/s 3(2) of Madras General Sales-tax Act, 1939 can be included in the turnover relating to the special goods and resultant sum taxed at 6 pies for every rupee. The answer depended on the definition of "turnover" under the Madras General Sales-tax Act, 1939 and Section 2 of the Madras General Sales-tax (Definition of Turnover and Validation of Assessments) Act, 1954. Section 2 of the 1954 Validation Act provided that in the case of sales made by a dealer before 1st April, 1954, amounts collected by him by way of tax under the Madras General Sales-tax Act, 1939, shall be deemed to have formed

part of his turnover. In the course of its decision, the Supreme Court referred to and reiterated the observations made in its earlier decision in *George Oakes (P.) Ltd. Vs. State of Madras*, wherein the validity of 1954 Validation Act had been upheld. It was observed that in laws dealing with sales-tax, turnover includes tax. The Revenue relies on the following observations made in that context:

"Therefore, in calculating the total turnover, there is nothing wrong in treating the tax as part of the turnover, because "turnover" means the amount of money which is turned over in the business".

But the said decision made it clear that the said observations were made in the context of sales-tax laws. The said decision is therefore of no assistance in interpreting the term "total turnover" used in Section 80HHC(3).

6.2 In *Ramaswamy Iyer & Sons (supra)* the Supreme Court held that Clause (1) of Rule 7(1) of the Travancore-Cochin General Sales-tax Rules, 1950 which excluded sales-tax from net turnover, (inserted w.e.f. 1st April, 1951) was inapplicable for computing the taxable turnover for assessment years prior to that date. It was further held that in the absence of an express provision in the ST Act at the material time, which obliged the taxing authority to exclude the amount of sales-tax collected by the dealer, from the taxable turnover, "turnover" included the sales-tax received by the dealer as part of the price. Here again, the decision was rendered with reference to the provisions of local sales-tax law and is of no assistance to interpret the term occurring in Section 80HHC.

7. In *S. Mohan Lal Vs. R. Kondiah*, , the Supreme Court stated the principle relating to interpretation of words used in a statute, with reference to their definitions in other enactments, thus :

"It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; more so if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand it is a sound, and, indeed, a well-known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear."

(emphasis, italicized in print, supplied)

In *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others*, , the Supreme Court observed :

"...decisions rendered with reference to construction of one Act cannot apply with reference to the provisions of another Act, unless the two Acts are in *pari materia*,"

Therefore, the term "total turnover" used in Section 80HHC of IT Act, should be understood and interpreted vis-a-vis the definition of "export turnover", with reference to their definitions in Explns. (b) and (ba) to Section 80HHC. The interpretation should be contextual and not with reference to the definition under sales-tax law, particularly when the "total turnover" is defined under the sales-tax law in contradistinction from the term "turnover" and "taxable turnover" in a totally different context.

8. In fact, the question whether the words "total turnover" in Section 80HHC include sales-tax has been directly considered by the Bombay High Court in *Commissioner of Income Tax Vs. Sudarshan Chemicals Industries Ltd., Rathi Engineering Works and Klockner Windsor (I) Ltd.*, and the Calcutta High Court in *Subikash Roy Vs. Smt. Leena Chatterjee*, .

8.1 In *Sudarshan Chemicals (supra)* a Division Bench of the Bombay High Court referred to the extensive, definition of "export turnover" in Clause (b) and the negative definition of the term "total turnover" in Clause (ba) and held that a combined reading of the two definitions showed that they included anything which has a nexus with the sale proceeds, and excluded everything which had no nexus with the sale proceeds. It was further held that the term "total turnover" should be restricted to such receipts which have an element of profit in it and consequently, only the actual sales price alone is relevant and anything charged by way of excise duty and sales-tax cannot be taken into account, as they do not have any element of profit. Referring to the formula in Sub-section (3) of Section 80HHC for calculating the profit of export, it was pointed out that export turnover is the numerator and the total turnover is the denominator; and that sales-tax and excise duty which do not form part of the export turnover cannot also form part of total turnover as both the numerator and denominator should contain the same components. The Court further observed: "In the circumstances, we are of the view that in order to ascertain the export profits, the above two items (sales-tax and excise duty) cannot be introduced to inflate the total turnover artificially in order to reduce the benefit which an assessee is entitled to ... Even according to the accounting principles, such levies do not form part of the profit and loss account. In fact, they are shown as liability in the balance sheet. In the circumstances, the above two items cannot be included in the total turnover. We prefer this interpretation as it advances the object sought to be achieved by the legislature. Lastly we are of the view that sales-tax and excise duties are levied under separate enactments which have different objects. We are concerned with Section 80HHC which is a separate code by itself. Hence, the general definition of the word turnover or the case law dealing with the said definition under the Sales-tax Act which is a state levy, cannot be imported into Section 80HHC of the IT Act". 8.2 In *Chloride India (supra)*, a Division Bench of the Calcutta High Court reiterated the principle thus :

"On a combined reading of Clause (b) and Clause (ba) of the Explanation to Section 80HHC we find that both the export turnover and total turnover include

anything which has a nexus with the sale proceeds and they excluded everything which has no nexus with the sale proceeds. It is the intention of the legislature that u/s 80HHC the profits from export should not be taxed and for that purpose a formula was introduced whereby, in case the business is of composite nature, the proportionate profit relatable to the export business would be found out by multiplying the profits of a business by the export turnover and dividing the product by the total turnover..... if the denominator was to include octroi, sales-tax and excise duty and if the numerator excluded those items the formula would certainly become unworkable. In our view octroi, excise duty and sales-tax cannot have any element of profit and as such those items cannot be included in the total turnover. If contrary view is taken that will make the object sought to be achieved by the legislature nugatory... ..In our view, the interpretation of the word "turnover" as defined under Sales-tax Act cannot be given effect to while interpreting the expression "total turnover" under the IT Act."

The said decisions have been followed by the Madras High Court in (2002) 257 ITR 60 and the Kerala High Court in Commissioner of Income Tax Vs. K. Rajendranathan Nair, K. Raveendranathan Nair and Smt. T.C. Usha, . The Revenue has not brought to our attention, any decision taking a contrary view with reference to Section 80HHC.

9. Sub-section (3) of Section 80HHC refers to the "total turnover of the business" and the "export turnover" to determine the profit on the export turnover in regard to which deduction is allowed under Sub-section (1) while computing the total income of the assessee. Sub-section (3) makes it clear that the "profit of export" for purposes of Sub-section (1) is not the "actual" profit of exports, but such percentage of the total profit of business, corresponding to the percentage of export turnover to the total turnover. In other words, what Sub-section (3) says is that if export turnover constitutes 30 per cent of total turnover, the profits of export" should be taken as 30 per cent of total profits of business. The said method of calculation of profit of export is given in view of the obvious difficulties in calculating the actual profit with reference to the exports alone. Further, the normal human tendency is to inflate the expenditure and reduce the profit so as to reduce the tax burden. But, where a particular profit (like export profit) is excluded from the total income to be taxed, the tendency would be to increase the quantum of such export profits. In other words, where an assessee has profits from internal sales and from export, the legislature expected an attempt to increase the profit from export transactions and decrease the profit from non-export transactions. To avoid such evasions and at the same time ensure the grant of incentive for exports, the legislature made a provision for determining the profits from exports, in proportion to the ratio which the turnover of exports bears to the total turnover. Consequently, it follows that if the export turnover does not have the elements of sales-tax or excise duty, the total turnover should also not have the said inputs. In the circumstances, to include excise duty and sales-tax for arriving at the total turnover, when sales-tax and excise duty do not form part of the export turnover, would be illogical and

arbitrary.

10. The word "total" is affixed to the word "turnover", not with the intention of adding sales-tax, entry tax, excise duty etc., to the "turnover", but in contradistinction from "export turnover". When we keep in mind that the "total turnover" is used in the formula to determine the percentage of export turnover so that the same percentage can be applied to the export profits, it becomes clear that both should have same components. Therefore, if sales-tax does not form part of one, it has to be excluded from the other.

Any attempt by the assessee to increase the export profit, or any attempt by the Revenue to decrease the export profit, should be resisted, having regard to the clear words of Sub-section (3) and the Explanations to Section 80HHC. While logic need not always be the basis for a taxing provision, it does not follow that a taxing provision logically made, should be interpreted illogically or asymmetrically, merely because it is a taxing statute. We therefore respectfully agree with the consistent and logical interpretation adopted by the Bombay and Calcutta High Courts and reject the interpretation put forth by the Revenue.

11. As a consequence, we find that the order of the Tribunal is in order and does not call for interference. The appeal is, therefore, rejected.