

(1988) 12 CAL CK 0029

In the Calcutta High Court

Case No : Income-tax Reference No. 267 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Bata India Ltd.

RESPONDENT

Date of Decision : 06-12-1988

Acts Referred:

Income Tax Act, 1961 — Section 35B, 35B(1)

Citation : (1989) 79 CTR 116 : (1989) 178 ITR 669 : (1989) 44 TAXMAN 312

Hon'ble Judges : Suhas Chandra Sen, J; Baboo Lall Jain, J

Bench : Division Bench

Advocate : A.C. Moitra and B.K. Naha, for the Appellant; R.L. Saha, for the Respondent

Judgement

S.C. Sen, J.—This is a case where the Commissioner has come up on reference on the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that if the purpose of the conference held in India was promotion of exports, the expenses on the conference qualified for weighted deduction u/s 35B of the Income Tax Act, 1961, notwithstanding that the expenses were incurred in India ?"

2. The assessment year involved is 1972-73 for which the relevant year of account is the calendar year 1971. The assessee claimed that it held a conference at Calcutta for promotion of export styled "Export for 1971". For this, the assessee incurred an expenditure of Rs. 2,60,000 for visiting personnel from foreign countries in connection with the conference. In the course of the assessment proceedings, the assessee claimed that it was entitled to weighted deduction in respect of expenses incurred u/s 35B of the Income Tax Act, 1961, ("the Act"). The Income Tax Officer asked for particulars of the conference that was held and came to the conclusion that it was in the nature of a routine programme and he did not accept the assessee's contention that the conference was held for promotion of export. He, therefore, rejected the assessee's claim

for weighted deduction.

3. The Appellate Assistant Commissioner was of the view that it was unnecessary to go into the question whether the conference was held for the purpose of export promotion inasmuch as the expenses on which the weighted deduction had been claimed were incurred entirely in India. u/s 35B, the assessee was not entitled to any deduction in such a case.

4. The Tribunal, on further appeal, following the principles laid down by another Bench of the Tribunal passed in IT Appeal No. 1400 (Bom) of 1972-73, held that, for the purpose of obtaining weighted deduction u/s 35B, it was not necessary that the activities should be carried out outside India or that the expenses must be incurred outside India. The Tribunal held that the Appellate Assistant Commissioner was wrong in holding that the assessee was not entitled to weighted deduction as the conference was held in India and the expenditure was incurred in India. The Tribunal ordered "we, therefore, set aside the order of the Appellate Assistant Commissioner and send the matter back to him to decide whether the expenses claimed by the assessee were incurred for the purpose of export promotion and, if so, to allow weighted deduction to the assessee".

5. It appears from Section 35B, as it stood at the material time, that for the purpose of obtaining weighted deduction, the expenditure had to be incurred wholly and exclusively on the objects mentioned in Sub-clauses (i) to (viii) of Sub-section (1)(b) of the section. Sub-clause (ix) of subsection (1)(a) is a residual clause which provides for weighted deduction of expenditure incurred wholly and exclusively on "such other activities for the promotion of the sale outside India of such goods, services or facilities as may be prescribed".

6. Mr. Moitra, appearing for the Revenue, has not seriously disputed the proposition that weighted deduction cannot be refused merely because expenditure was incurred in India. Among the various clauses under Sub-section (1)(b) of Section 35B, only Sub-clause (iii) specifically provides that the expenditure that qualified for weighted deduction in connection with distribution, supply or provision outside India of such goods, services or facilities will not include expenditure incurred in India in connection therewith. It has, however, been made specifically clear in that very subsection that expenditure on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit will have to be granted weighted deduction wherever the expenditure was incurred.

7. Mr. Moitra argued that Sub-clause (ix) which is the residuary provision was not attracted in this case because the other activities for promotion of sale mentioned in this sub-clause can only be such activities as may be prescribed by the rules. If no rule has been framed for granting deduction for any activity not specifically mentioned in Sub-clauses (i) to (viii), the expenditure incurred in connection with such activity cannot be allowed as deduction until and unless rules were framed for this purpose.

8. I fail to see how this question can at all arise in the facts of this case. This point was not raised before the Tribunal nor did the Tribunal go into this controversy at all. The question does not arise out of the order of the Tribunal. The Tribunal has merely remanded the case to the Appellate Assistant Commissioner to find out whether the expenses claimed by the assessee were for the purpose of export promotion and, if so, allow weighted deduction to the assessee. All the purposes mentioned in Sub-clauses (i) to (viii) are activities for the promotion of the sale outside India. The language employed in Sub-clause (ix) "such other activities for the promotion of the sale outside India ..." clearly implies that the activities mentioned in Sub-clauses (i) to (viii) are also activities for the purpose of promotion of sale outside India. In other words, apart from the activities which may be prescribed under Sub-clause (ix), the other activities specifically mentioned in Sub-clauses (i) to (viii) are also for export promotion. The activities mentioned in Sub-clauses (i) to (viii) do not cease to be activities for the promotion of the sale outside India of such goods, services or facilities because the expression "activities for promotion of sale outside India" has not been specifically used in any of these sub-clauses. Advertisement or publicity outside India in respect of goods, services or facilities, obtaining information regarding markets outside India for such goods, services or facilities, distribution, supply or provision outside India of such goods, services or facilities, maintenance "outside India of a branch office or agency for the promotion of the sale outside India of such goods, services or facilities or for carriage of goods to their destination outside India or insurance of goods in transit, maintenance of a branch office or agency for export promotion, preparation and submission of tenders for supply and provision outside India of such goods, services or facilities, furnishing samples or technical information outside India for promotion of export sale, foreign travel for promotion of sale outside India, actual performance of services outside India in connection with the execution of any contract for supply outside India of goods, services or facilities are all instances of "activities for the promotion of sale outside India" of goods, services or facilities.

9. Therefore, merely because the Tribunal has directed the Appellate Assistant Commissioner to decide whether the expenses clarified by the assessee were incurred for the purpose of export promotion, it cannot be inferred that the Tribunal has directed the Appellate Assistant Commissioner to examine whether the items of expenditure were allowable under Sub-clause (ix) of Sub-section (1) (b) of Section 35B. The Tribunal has remanded the case to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner will now have to examine the activities in connection with the expenditure that was incurred by the assessee and will have to decide whether such activities come within the ambit of any of the sub-clauses mentioned in Sub-section (1)(b) of Section 35B.

10. In that view of the matter, the question referred is answered in the affirmative and in favour of the assessee.

11. There will be no order as to costs.

B.L. Jain, J.

12. I agree.