(2007) 01 DEL CK 0033

In the Delhi High Court

Case No : Income Tax A. No''s. 540 and 1702 of 2006

Commissioner of Income Tax APPELLANT

Vs

Crown Computerised Embroideries P. Ltd. RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Income Tax Act, 1961 — Section 260A, 80HHC(1), 80HHC(2), 80HHC(3), 80HHC(4C)

Citation : (2007) 208 CTR 94 : (2007) 289 ITR 151 : (2007) 160 TAXMAN 213

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : J.R. Goel and S.C. Sharma, for the Appellant; O.S. Bajpai and V.N. Jha, for the Respondent

Judgement

1. The Revenue is aggrieved by an order dated July 6, 2005, passed by the Income Tax Appellate Tribunal Delhi Bench "C", in I.T.A. No. 3334/Del/ 2001, relevant for the assessment year 1998-99.

2. The controversy in this case is whether freight charges said to have been incurred by the assessed and recovered by it from its foreign buyer are liable to be included in the expression "indirect cost" for the purposes of calculation of the export turnover in terms of Section 80HHC(3)(b) of the Income Tax Act, 1961.

3. According to the assessed, when it had filed its return, it had inadvertently shown an expenditure of Rs. 30,95,158 incurred by it towards shipment freight as a part of its indirect cost. This was later on corrected by the assessed and a fresh audit report was filed by it.

4. The Assessing Officer did not accept the revised working of loss from export of trading goods and included the amount of Rs. 30,95,158 as a part of the indirect cost incurred by the assessed. The Commissioner of Income Tax (Appeals) decided the appeal preferred by the assessed in its favor. The learned Tribunal upheld the view of the Commissioner of Income Tax (Appeals) and that is how the matter is before us in an appeal u/s 260A of the Act.

5. There is no doubt about the fact that the amount of Rs. 30,95,158 expended by the assessed towards shipment freight was recovered from the foreign buyer and the amount so recovered was deducted by the assessed from its total turnover for the purposes of determining the f. o. b. value of the goods exported.

6. Section 80HHC(3)(b) of the Act is important and it reads as follows:

80HHC. Deduction in respect of profits retained for export business.-(1)...

(3) For the purposes of Sub-section (1)-...

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export.

7. A bare perusal of the above clause shows that direct costs and indirect costs are not to be included for the purposes of calculating the export turnover in respect of trading goods.

8. Export turnover has been defined in Clause (b) of the Explanation to Section 80HHC(4C) as follows:

(b) ''export turnover'' means the sale proceeds, received in, or brought into India by the assessed in convertible foreign exchange in accordance with Clause (a) of Sub-section (2) of any goods or merchandise to which this Section 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 as defined in the Customs Act, 1962 (52 of 1962).

9. It is quite clear from the above that freight or insurance attributable to the transport of the goods or merchandise beyond the customs station is not a part of the export turnover of the goods and Therefore, cannot be included in the profits derived by the assessed from the export of trading goods.

10. As we have already mentioned above, there is no dispute that the shipment freight has been recovered by the assessed from its foreign buyer and, Therefore, no "cost" has been incurred by the assessed. The fact that shipment freight cannot be a direct cost has been accepted by the Calcutta High Court in Commissioner of Income Tax Vs. H.M. Exports Ltd.,

11. The question that is sought to be agitated by learned Counsel for the Revenue is that shipment freight forms a part of the indirect cost.

12. "Indirect costs" has been defined in the Explanation to Sub-section (3) of Section 80HHC of the Act as follows:

Explanation.-For the purposes of this Sub-section,-....

(e) ''indirect costs'' means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover....

13. We are of the view that the shipment freight cannot be included as a part of the indirect cost incurred by the assessed since it is not a part of the export turnover as defined in Clause (b) of the Explanation to Section 80HHC(4C) of the Act. Moreover, it is not a "cost" incurred by the assessed in respect of the goods which are exported. Shipment freight is, in effect, only transportation charges incurred by the assessed which will have to be, as in this case, borne by the foreign buyer. The shipment freight does not go into the cost of the trading goods as far as the asses-see is concerned.

14. Under the circumstances, we are of the view that the Revenue has not raised any question of law much less any substantial question of law which would warrant our consideration u/s 260A of the Act.

15. Dismissed.

