(2006) 09 DEL CK 0193

In the Delhi High Court

Case No : Income Tax A. No. 231 of 2005

Commissioner of Income Tax — APPELLANT

Vs

General Sales Ltd. — RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:
Income Tax Act, 1961 — Section 80HHC

Citation : (2007) 288 ITR 486 : (2007) 160 TAXMAN 331

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : R.D. Jolly and Rajeev Awasthy, for the Appellant; V.P. Gupta and Basant Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is aggrieved by an order dated June 12, 2003 passed by the Income Tax Appellate Tribunal, Delhi Bench "A" in I.T.A. No. 519/Del/97 relevant for the assessment year 1992-93. Along with this appeal, the Tribunal also heard I.T.A. No. 2640/Del/1997 and disposed of both of them by a common order but we are concerned, for the present, with I.T.A. No. 519/Del/97.

2. The only question that has arisen in this case is with regard to short deduction of the assessed''s claim u/s 80HHC of the Income Tax Act.

3. According to the assessed, it was carrying on the business of export of goods as a trading activity. In addition to this it also claims that it had some other incomes, such as, from receipt of dividend, foreign profits, miscellaneous receipts, receipt from local sales and hotel division.

4. It appears that the turnover of the assessed was about Rs. 39 crores from exports and from local sales in its trading activity. The local sales from trading activity were to the extent of Rs. 5,000 only and the export turnover out of the total turnover was 99.98 per cent. Of course, this does not include the income that the assessed claimed from its other activities.

5. The assessed also claims that it maintained separate books of account in respect of the export activities and also maintained separate books of account in respect of direct cost and indirect cost relating to the export activities as well as to the other activities.

6. It appears that the Assessing Officer did not take the other activities of the assessed into consideration and found that the direct cost and indirect cost claimed by the assessed in respect of its local sales were disproportionately high. According to him the assessed was loading the indirect costs pertaining to the export business on the business for local sales with a view to claim higher deduction u/s 80HHC of the Act. He, Therefore, disallowed the deduction as claimed by the assessed u/s 80HHC of the Act.

7. In appeal, the Commissioner of Income Tax (Appeals) rejected the contentions of the assessed which led the assessed to file an appeal before the Tribunal.

8. The Tribunal considered the entire facts of the case and recorded the statement made at the Bar by learned Counsel for the assessed that the assessed was maintaining separate books of account in respect of its export trade. The Tribunal then held that the expenses attributable to the export business would be identifiable and only such expenses could be taken into consideration for determining the direct cost and the indirect cost incurred by the assessed towards its export activities for calculating the deduction u/s 80HHC of the Act. The Tribunal also considered the alternative situation that in the event the assessed is not maintaining separate books of account, then the expenses would have to be taken in the same ratio in which the export turnover was made by the assessed. Since the facts did not appear to be clear, the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and remanded the matter back to the Assessing Officer to determine the factual position regarding the maintenance of separate books of account in respect of the export activities and thereafter, depending on the finding, proceed to apply the law as laid down u/s 80HHC of the Act to determine to what extent the assessed''s claim of deduction is made out.

9. We are of the view that this direction given by the Tribunal is unexceptionable. The Assessing Officer has to first determine whether the assessed is maintaining separate books of account or not, and depending upon his conclusion, the Assessing Officer would then have to apply the law as laid down u/s 80HHC of the Act. Obviously, the Assessing Officer will evaluate the books of account and determine how much of the expenditure, direct and indirect, is attributable to the export activities of the assessed.

10. We are of the view that the conclusion of the Tribunal does not raise any substantial question of law which merits our consideration. Accordingly the appeal is dismissed.

