
(2002) 11 DEL CK 0085
In the Delhi High Court
Case No : IT Ref. No. 321 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Ivory Mart

RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Income Tax Act, 1961 — Section 35B

Citation : (2003) 179 CTR 613 : (2004) 265 ITR 409 : (2004) 135 TAXMAN 85

Hon'ble Judges : Sharda Aggarwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : R.D. Jolly and Ajay Jha, for the Appellant; None, for the Respondent

Judgement

D.K. Jain, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal, New Delhi (for short the Tribunal), has referred u/s 256(1) of the IT Act, 1961 (for short the Act), the following question for our opinion :

"Whether, on the facts and circumstances of the case, the assessed is entitled to weighted deduction u/s 35B on sales made in India though against foreign currency in asst. yr. 1976-77 ?"

2. The material facts as emerging from the statement of the case drawn up by the Tribunal are as follows :

The assessed, a registered firm, deals in handicraft items, including ivory and jewellery. In its return of income for the asst. yr. 1976-77, for which the previous year ended on 31st March, 1976, the assessed claimed weighted deduction u/s 35B of the Act in respect of the expenses incurred by it on the sales made in India to foreign tourists against foreign currency amounting to Rs. 2,31,221. However, while framing assessment for the said assessment year, the AO disallowed the said claim on the ground that weighted deduction under the said section could be allowed only on the expenses incurred on export sales.

Aggrieved, the assessed preferred appeal to the Commissioner of Income Tax

(Appeals) [for short CIT(A)]. Following the order of the Tribunal in the case of India Handicrafts Emporium, the CIT(A) granted partial relief to the assessed under the said section. Being aggrieved, the Revenue took the matter in appeal to the Tribunal. The Tribunal, following the decision of the Special Bench in the case of J. Hem Chand & Co. v. ITO (1982) 1 SOT 150 (Bom)(SB), dismissed the Revenue's appeal, On Revenue's moving an application u/s 256(1) of the Act, the aforementioned question has been referred.

3. We have heard Mr. R.D. Jolly, learned senior standing counsel for the Revenue. There is no appearance on behalf of the assessed.

4. The issue raised in the present reference is no longer rest integra. In Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., while disapproving the logic of the decision of the Special Bench of the Tribunal in J. Hem Chand (supra), the apex Court observed that when claim for weighted deduction is made it is for the assessed to satisfy the ITO that the expenditure falls in one of the sub-clauses of Clause (b) of Section 35B(1). Their Lordships of the Supreme Court held that the expenditure which qualifies for deduction u/s 35B(1)(b)(iii) will have to be the expenditure incurred outside India in connection with distribution, supply or provision outside India of such goods, services or facilities. No weighted deduction u/s 35B can be allowed to the assessed for expenditure incurred in India in connection with sale of goods in India. As noted above, in the present case, the Tribunal has found that the entire expenditure on which the assessed had claimed weighted deduction was incurred in India on sales effected in India. Support is also lent to this view by a decision of the Supreme Court in Commissioner of Income Tax Vs. Chika Ltd., .

5. Following the ratio of the aforementioned decision of the apex Court, the question referred is answered in the negative i.e., in favor of the Revenue and against the assessed.

6. The reference stands disposed of with no order as to costs.