(1992) 01 GUJ CK 0029

In the Gujarat High Court

Case No : Income-tax Reference No. 337 of 1984

Commissioner of Income Tax APPELLANT

Vs

Jay Industries RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:

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

Citation : (1992) 104 CTR 196 : (1992) 196 ITR 313

Hon'ble Judges : R.C. Mankad, Acting C.J.;R.K. Abichandani, J

Bench : Division Bench

Judgement

R.C. Mankad, Actg. C.J.

1. The assessee is a registered partnership firm engaged in manufacture and export of Isabgol and export and import of edible oil. The assessee

had exported Isabgol products to foreign countries through commission agents. In the course of Income Tax assessment for the assessment years

1978-79, 1979-80 and 1980-81, the assessee had claimed export markets development allowance or in other words, weighted deduction u/s

35B of the Income Tax Act, 1961 (""the Act"" for short), in respect of certain items of expenditure including expenditure incurred by it by way of

payment of interest to the bank on packing credit. The controversy involved in this reference is confined to interest paid to the bank on packing

credit and, therefore, we need not set out other items of expenditure in respect of which the assessee had claimed weighted deduction. It appears

that the assessee had maintained with its bank an export packing credit loan account and advances from this account were given to it for purchase

of raw materials for manufacturing goods to be exported out of India. The assessee had paid interest on the loans advanced to it from this account known as ""packing credit account"". The assessee claimed that since it had incurred the expenditure by way of payment of interest to the bank on

the said advances which were taken for purchasing raw materials, it was entitled to weighted deduction u/s 35B of the Act. According to the

assessee, this expenditure was incurred in connection with its export business and therefore, it was entitled to weighted deduction under clause (b)

of section 35B(1) of the Act. The Income Tax Officer, however, disallowed the assessees claim which was made in the course of Income Tax

assessment for the assessment years 1978-79, and 1979-80 and 1980-81. In the appeal however, the Appellate Assistant Commissioner of

Income Tax, relying on the decision of the Bombay Bench of the Income Tax Appellate Tribunal in the case of Aayoee Corporation in Appeals

Nos. 393/Bom/1980 and 672/Bom/1981, allowed the assessee''s aforesaid claim. In the Revenue''s appeal, the Income Tax Appellate Tribunal

(""the Tribunal"" for short), relying on the aforesaid decision confirmed the view taken by the Appellate Assistant Commissioner. It is in the

background of the above facts that the following question has been referred to us for our opinion :

Whether, on the facts and in the circumstances of the case, the assessee is entitled to deduction u/s 35B in respect of the interest paid to the bank

on packing credit ?

2. The expenditure which the assessee had incurred in making payment of interest to the bank on its packing credit account would not fall under

sub-clause (iii) of clause (b) of section 35B(1). The assessee had taken loans or advances from the bank for purchase of raw materials to

manufacture goods which were to be exported. Obviously, therefore, it is an expenditure in connection with the supply of goods outside India. It is

not disputed that the expenditure which the assessee incurred was incurred in India. Expenditure incurred in India for supply of goods outside India

would not qualify for weighted deduction as such expenditure is specifically excluded under sub-clause (iii) of section 35B(1)(b). The aforesaid

expenditure, in our opinion, does not fall under any of the other sub-clauses of clause (b) of section 35B(1). That being the position, the assessee

was not entitled to claim weighted deduction in respect of the said expenditure. In our opinion, therefore, the Tribunal has erred in confirming the view taken by the Appellate Assistant Commissioner. We may incidentally mention that the Tribunal has not stated the details of the interest paid to

the bank. All that is stated is that interest was paid on what is described as ""packing credit"". What is meant by ""packing credit"" is also not

explained by the Tribunal. We have, however, assumed that, as in similar other cases, the assessee must have taken loans and advances from the

bank for purchasing raw materials to manufacture goods which were to be exported and it has paid interest on such loans or advances. Entries in

regard to loans and advances taken by the assessee from the bank were made in the account known as ""packing credit account"".

3. In the light of the above discussion, we answer the question which has been referred to us in the negative and against the assessee. Reference

answered accordingly with no order as to costs.