
(1999) 04 AHC CK 0070

In the Allahabad High Court

Case No : Income-tax Reference No. 19 of 1982

Commissioner of Income Tax

APPELLANT

Vs

New Light Tannery

RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

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

Citation : (2000) 162 CTR 454 : (2000) 244 ITR 5 : (1999) 107 TAXMAN 526

Hon'ble Judges : R.K. Agrawal, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; Vikram Gulati, for the Respondent

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal has referred the following question of law u/s 256(1) of the Income Tax Act (hereinafter referred to as the Act) for opinion to this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in holding that weighted deduction is permissible u/s 35B(l)(b)(viii) of the Income Tax Act, 1961, in respect of an expenditure incurred in India on insurance, shipment, freight, despatch and clearing and transportation of the goods to their destination ?"

2. The said question of law arises out of the order dated January 2, 1981, passed by the Income Tax Appellate Tribunal in Income Tax Appeal No. 2179 (Alld.) of 1979 relating to the assessment year 1978-79.

3. The facts of the case in brief are that the respondent-assessee is a registered firm and is engaged in the business of tanning of raw hides and sale thereof. It also exports tanned leather.

4. During the assessment year 1978-79, the respondent-assessee claimed weighted deduction u/s 35B of the Act, in respect of the following amounts :

Sl. No.

Amount (Rs.)

Nature

1.

3,322.80

Insurance

2.

99,737.85

Shipment, freight, despatch and clearing expenses

3.

4,146.00

Transportation charges.

5. The Income Tax Officer did not accept the claim of the respondent-assessee for weighted deduction u/s 35B of the Act in respect of the aforesaid items of expenditure. The Commissioner of Income Tax (Appeals), upheld the order of the Assessing Officer. The respondent-assessee filed an appeal against the aforesaid order before the Income Tax Appellate Tribunal. It was pointed out before the Tribunal that the assessee's export contracts were either C.I.F. contracts or C and F contracts. C.I.F. contracts meant cost inclusive of insurance and freight, whereas C and F contract meant cost and freight. According to the respondent-assessee in respect of such contracts under which exports had taken place the amounts claimed by the assessee for weighted deduction were permissible u/s 35B, viz., under its Sub-section (1)(b)(viii) of the Act. On behalf of the Department, it was pointed out before the Tribunal that the nature of the contracts were not looked into by the lower authorities and in any event the items of expenditure for which weighted deduction is being claimed is not allowable under law. However, the Tribunal relying upon the decision rendered on December 24, 1979, passed by the Chandigarh Bench in I.T.A. No. 463 of 1977-78, reported in [1980] T.L.R. 124, allowed the claim of the respondent-assessee.

6. We have heard Shri A. N. Mahajan, learned counsel for the Department, and Shri Vikram Gulati, learned counsel for the respondent-assessee.

7. It is not disputed before us that the respondent-assessee is claiming weighted deduction u/s 35B of the Act in respect of expenses incurred by it towards the insurance, shipment, freight, despatch, clearing and transportation charges which it had incurred for sending the goods outside India. The relevant portion of Section 35B of the Act reads as under :

"35B. (1)(a) Where an assessee, being a domestic company or a person (other

than a company) who is resident in India, has incurred after the 29th day of February, 1968, whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in Clause (b), he shall, subject to the provisions of this Section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year : . . .

(b) The expenditure referred to in Clause (a) is that incurred wholly and exclusively on-- . . .

(iii) distribution, supply or provision outside India of such goods, services or facilities, not being expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit ; . . .

(viii) performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities ; . . ."

8. The Income Tax Appellate Tribunal had allowed the claim of weighted deductions on the aforementioned items of expenditure under Sub-clause (viii) of Sub-section (1)(b) of Section 35B of the Act.

9. From a perusal of Clause (viii) reproduced above, it will be seen that in respect of eligibility for weighted deductions, expenditure should have been incurred wholly and exclusively for performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities. Therefore, the services in connection with which the expenditure is being claimed for weighted deduction under Sub-clause (viii), is necessarily to be performed outside India. The said services may be in connection with the supply outside India of any goods but none the less the services are to be performed outside India.

10. In the present case, it is not in dispute that the item of expenditure incurred by the respondent-assessee is not in connection with any service which it had performed outside India. All the items of expenditure in question have been incurred by the respondent-assessee, in respect of sending the goods outside India and not performing any service outside India in connection with supply of goods. We, however, find that Sub-clause (iii) of Sub-section (1)(b) of Section 35B of the Act specifically excludes expenditure incurred in India in connection with the distribution, supply or provision outside India of such goods, or facilities, or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit. In view of the specific prohibition contained in Sub-clause (iii) of subsection (1)(b) of Section 35B of the Act, wherein expenditure on freight, insurance, etc., incurred on the carriage of such goods to their destination outside India is excluded for being considered for weighted deduction u/s 35B(1) of the Act, the respondent-assessee was not entitled to weighted deduction on the items of

expenditure in question. The Tribunal was not justified in allowing the weighted deductions claimed by the respondent-assessee under Sub-clause (viii) of Sub-section (1)(b) of Section 35B of the Act.

11. Shri A. N. Mahajan learned counsel for the Department, placed reliance upon the decision of the Calcutta High Court in the case of BROOKE BOND INDIA LTD. Vs. COMMISSIONER OF Income Tax., , in support of his submission that in order to claim an item of expenditure to be falling under Sub-clause {viii) of Sub-section (1)(b) of Section 35B of the Act, the assessee has to perform the services outside India and if such service does not take place outside India, the assessee cannot avail of the benefit of this sub-clause and no weighted deduction is allowable. He also relied upon the decision of this court in the case of Commissioner of Income Tax Vs. Baldeo Ram Salig Ram Pvt. Ltd., , wherein this court held that a perusal of Section 35B of the Act, shows that weighted deduction is permissible only in respect of certain specified types of expenditure. The several sub-clauses show that all such expenditure must have been incurred outside India. The further requirement is that such expenditure must have been incurred wholly and exclusively on the specified activity.

12. On the other hand, Shri Vikram Gulati, learned counsel for the respondent-assessee, submitted that it is not necessary that for claiming the benefit of weighted deduction u/s 35B of the Act, the expenditure should necessarily be incurred outside India. It could be incurred inside India but it should pertain to the purposes mentioned in various sub-sections of Section 35B of the Act which purposes are indicated as pertaining to various activities outside India. He relied upon the decision in the case of Commissioner of Income Tax, Bombay City-VI, Bombay Vs. Eldee Wire Ropes Ltd., . In the case of Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., , the Supreme Court had held as under (page 175) :

"In order to get this deduction, the assessee will have to prove that the expenditure was incurred during the previous year wholly and exclusively for the purposes set out in Clause (b) of Section 35B(1). There cannot be any blanket allowance of the expenditure nor can there be any blanket disallowance. Every case has to be discussed specifically and the expenditure must be found to be of the nature mentioned in any one of the sub-clauses. If the expenditure does not fall in any of these categories, it cannot be allowed as a deduction. Some of the sub-clauses provide that if the expenditure is incurred in India, it cannot be allowed but in some of the sub-clauses this requirement is not there. In such cases, the expenditure may or may not be incurred in India. Every case will have to be examined in the light of the provisions of the sub-clauses and the facts proved by the assessee."

13. The same principle is reiterated by the Supreme Court in the case of Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana, . When we examine the items of expenditure claimed by the assessee for weighted deductions in the light of the principles laid down by the Supreme

Court in the case of Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., , we find that the expenditure was incurred by the respondent-assessee in connection with sending the goods outside India. The expenditure was incurred in India. The respondent-assessee claimed the items of expenditure to be falling under Sub-clause (viii) of Sub-section (1)(b) of Section 35B of the Act. So far as the item of expenditure to be covered under Sub-clause (viii) of Sub-section (1)(b) of Section 35B, we are in respectful agreement with the decision of the Calcutta High Court in the case of BROOKE BOND INDIA LTD. Vs. COMMISSIONER OF Income Tax., , that the expenditure should have been incurred on performance of services outside India and only then it would be covered by Sub-clause (viii) referred to above entitling the assessee for weighted deductions. The service is to be performed outside India. Admittedly, in the present case, the alleged service was performed by the respondent-assessee in India and, therefore, the items of expenditure incurred by the respondent-assessee, are not eligible for weighted deduction. We have also considered the various sub-clauses of Sub-section (1){b) of Section 35B of the Act, i.e., Sub-clauses (i) to (ix) but we find that the items of expenditure are not at all covered in any of the sub-clauses of Sub-section (1)(b) of Section 35B of the Act. On the other hand, the items of expenditure in question have been specifically excluded under Sub-clause (iii) of Sub-section (1)(b) of Section 35B of the Act. The Supreme Court, in the case of Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., had held as follows (page 176) :

"The expenditure which qualifies for deduction u/s 35B(1)(b)(iii) will have to be expenditure incurred outside India in connection with distribution, supply or provision outside India of such goods, services or facilities. No deduction u/s 35B can be allowed to the assessee for expenditure incurred in India in connection with sale of goods. There is no dispute that the expenditure was wholly incurred in India."

14. In view of the aforesaid decision of the Supreme Court, since the items of expenditure in question have been incurred in India in connection with supply of goods, no weighted deduction u/s 35B of the Act can be allowed on such expenditure. Thus, we hold that the Tribunal was not justified in holding that the weighted deductions are permissible u/s 35B(1)(b)(viii) of the Act, in respect of the expenditure incurred in India on insurance, shipment, freight, despatch, clearing and transportation charges in respect of the goods being sent to their destination. We, therefore, answer the question of law referred to us in the negative, i.e., in favour of the Department and against the assessee. However, the Department shall be entitled to its costs.