
(1999) 11 KAR CK 0065

In the Karnataka High Court

Case No : Income-tax Reference Case No. 287 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Surinder Kumar Khanna

RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Income Tax Act, 1961 — Section 80 HHC, 80 HHC (2) (b)

Citation : (2001) 250 ITR 673 : (2001) 119 TAXMAN 574

Hon'ble Judges : V.K. Singhal, J; T.N. Vallinayagam, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant;

Judgement

1. The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated May 29, 1997, for the assessment year 1992-93 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in directing the Assessing Officer to allow deduction u/s 80HHC in respect of export of blocks of granite, cut and polished to certain extent only, for the assessment year 1992-93 ?"

2. The facts of the case are that the assessee is in the business of export of granite blocks. It claimed deductions u/s 80HHC on the export income. The same was however refused by the Assessing Officer on the ground that the assessee exports merely blocks of granite without getting them cut and polished as is required under the provisions of the Twelfth Schedule to the Income Tax Act, 1961. The Commissioner of Income Tax (Appeals) upheld the order of the Assessing Officer. During the course of the further appeal filed by the assessee before the Income Tax Appellate Tribunal, the Income Tax Appellate Tribunal noticed that in the accounts of the assessee for the relevant year, expenses to the extent of Rs. 53,001 on cutting and dressing of the granite blocks and of Rs. 46,300 on polishing thereof, had been shown. The Tribunal thus came to the conclusion that there was no doubt about the fact that the granite blocks actually

exported by the assessee were cut and polished to some extent at least. By following its earlier order dated May 19, 1997, in I. T. A. No. 162/Bang of 1996, in the case of God Granites, therefore, the Income Tax Appellate Tribunal held that the assessee is entitled to the deduction u/s 80HHC. The Tribunal, therefore, reversed the decisions of the lower authorities and directed that the deduction u/s 80HHC be allowed to the assessee on the export of granite blocks, as per the provisions of law.

3. The matter of God Granites referred by the Tribunal came up for consideration before the Division Bench of this court in CIT v. God Granites [1999] 240 ITR 343 and after considering the judgment of the Supreme Court in the case of Stonecraft Enterprises Vs. Commissioner of Income Tax, , it was observed that (page 352) :

" Stonecraft Enterprises Vs. Commissioner of Income Tax, , was concerned with the assessment years 1985-86, 1987-88 and 1988-89. Section 80HHC(2)(b) excluded the application of the section to "minerals and ores". This was the position until March 31, 1991. It was only with effect from April 1, 1991, the words "other than processed minerals and ores specified in the Twelfth Schedule" were added by the Finance (No. 2) Act of 1991. Hence, until March 31, 1991, there was no question of claiming any exemption in respect of the profits from exports of minerals and ores. The only argument available to the assessee was that granite was not a mineral. If granite was not a mineral, then the non-application of the section would not have been attracted and, consequently, the assessee claimed exemption. The assessee's argument was that granite was not a mineral. The Supreme Court rejected the contention of the assessee and held that granite is a mineral. Reference to the circular dated November 1, 1995, by the Supreme Court was purely tangential. The circular obviously has relevance only after April 1, 1991, when an exception was made in respect of minerals and ores specified in the Twelfth Schedule. It seems the attention of the Supreme Court was not drawn to the fact that a crucial amendment was made with effect from April 1, 1991, and the circular, if at all, had relevance only in respect of the period after April 1, 1991. The Supreme Court has also recorded a finding that there was nothing on record to indicate that what the assessee exports is value added granite. The Supreme Court had therefore declined to examine the question. On the contrary in the present case there is a positive finding of the Tribunal that the assessee did in fact do cutting and dressing, including some polishing and that what was exported was dimensional granite blocks which are a valued added item. The case of Stonecraft Enterprises Vs. Commissioner of Income Tax, , would not make any difference to the arguments advanced in the present case".

4. Since this court has already upheld the decision given by the Tribunal in God Granites" case, deduction was allowed by the Tribunal in the case of this assessee. The reference is, accordingly, answered in favour of the assessee and against the Revenue.

5. The petition stands disposed of with the above observations.