(2001) 12 KL CK 0052

In the High Court Of Kerala

Case No : Income Tax A. No. 98 of 1999

Commissioner of Income Tax — APPELLANT

Vs

T.C. Usha — RESPONDENT

Date of Decision : 11-12-2001

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

Citation : (2004) 187 CTR 661 : (2003) 264 ITR 368 : (2004) 136 TAXMAN 524

Hon'ble Judges : S. Sankarasubban, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; P. Balachandran, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The assessee is engaged in local and export business of cashew kernels. The assessee is admittedly entitled to deduction on export profit provided u/s 80HHC of the Income Tax Act, 1961. As the assessee has local as well as export business of cashew kernels, deduction was granted u/s 80HHC(3) of the Income Tax Act which provides for computation of eligible deduction on export profit. The formula provided under the section is to find out the proportionate profit attributable to export business from total profit computed under the provisions of the Act. In this regard, while computing the total turnover, the Assessing Officer included therein Rs. 10,045 and Rs. 1, 17,483 towards claim for bad quality of raw nuts purchased. According to the assessee, these two amounts though they form part of the income, do not constitute turnover. However, the Assessing Officer rejected the same and the first appellate authority confirmed the inclusion of the amounts in the turnover. On further appeal, the Tribunal held that these items do not form part of the total turnover. The Department has filed this appeal against the order of the Tribunal raising the following two questions of law as substantial questions of law arising from the order of the Tribunal :

"1. Whether, on the facts and in the circumstances of the case, will not the amounts of Rs. 10,045 and Rs. 1, 17,483 received by the assessee towards quality claim and raw nut claim form part of the total turnover of the assessee and the Tribunal is right in law in excluding the two amounts from the total turnover for the purpose of computing the deduction u/s 80HHC of the Income Tax Act ?

2. Whether, on the facts and in the circumstances of the case, and in view of Explanation (ba) to Section 80HHC and Clauses (iiia), (nib) and (iiic) of Section 28, will not turnover take into account all other receipts other than the excluded items of receipts ?"

2. At the time of hearing, senior counsel for the Department contended that even though the items constitute income, they form part of turnover as well. He relied on the decision of the Supreme Court in George Oakes (P.) Ltd. v. State of Madras [1962] 13 STC 98 (mad) and contended that turnover is the amount of money turned over in business. Viewed in that manner, the total turnover referred to in Section 80HHC should include all receipts including the income of every nature, is the contention advanced by him. On the other hand, Sri P. Balachandran, counsel for the assessee, contended that the "total turnover" and "export turnover" referred to in Section 80HHC relate to sales and purchases and therefore the total turnover in that context only means sales and purchases. Therefore, according to him, the damages received for bad quality purchases, though they constitute income, do not form part of the total turnover. We are inclined to accept this view, because the purpose of the formula provided u/s 80HHC is to find out the profit attributable to export turnover, that is the profit on export sales. Moreover, the business income is only reckoned for the purpose of computation of eligible deduction and the business income in the context of total turnover is only the income generated on purchases and sales. Therefore, the total turnover in the context of Section 80HHC is only sales turnover and purchase turnover and not the receipts in the nature of income, which is not attributable to sales. It may be incidentally noticed, though not considered by the Tribunal, that the purchases in respect of which claim for bad quality of raw nut are reflected in the purchase turnover, because such a claim arises only in respect of purchases. Therefore, we do not find any error in the finding of the Tribunal in this regard. Accordingly, the questions are answered against the Revenue, and in favour of the assessee, and the appeal filed by the Department is dismissed.