

(2002) 10 MAD CK 0019
In the Madras High Court
Case No : Tax Case No. 20 of 1998

Commissioner of Income Tax	Vs	APPELLANT
Viswanathan and Co.		RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Income Tax Act, 1961 — Section 80HH

Citation : (2003) 181 CTR 335

Hon'ble Judges : R. Jayasimha Babu, J; K. Raviraja Pandian, J

Bench : Division Bench

Advocate : J. Nareshkumar, for the Appellant; V.D. Gopal, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us, at the instance of the Revenue, for our consideration is :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the cash assistance, duty drawback and air

subsidy should be treated as income "derived from" the industrial undertaking and included in the business income for the purpose of deduction u/s

80HH of the IT Act, 1961?

The asst. yr. is 1986-87.

2. The items referred to in the question are matters which have been considered in the decision of this Court in the case of CIT v. Jameel Leathers

& Uppers (2000) 246 TR 97 (Mad). The Court held that cash assistance, duty drawback and import entitlements though undoubtedly attributable

to business carried on by the assessee as the assessee would not have been in a position to receive any of those benefits, had the assessee not

been carrying on business, it cannot be said that such income was ""derived

from"" business as to qualify for deduction under Sections 80J and 80HH of the Act. The Court reviewed the applicable law before so holding and referred to and relied upon the decision of the apex Court in the case of *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, wherein it was held that the expression ""derived from"" is narrower than the expression ""attributable to"" as also the decision rendered by the apex Court in the case of *National Organic Chemical Industries Ltd. Vs. Collector of Central Excise, Bombay*, wherein it was held that the word ""derived"" is usually followed by the word ""from"" and, it means get or trace from a source; arise from, originate in; show the origin or formation of.

3. It was pointed out in that judgment that the benefits received by the assessee by way of cash assistance, duty drawback and import entitlements were benefits derived under a scheme formulated by the Government of India and not from the operation of the industrial undertaking, that the industrial undertaking was capable of being operated without the aid of all these incentives and that the incentives were extended to that undertaking by the government only as a matter of policy. The scheme framed by the Government providing for those benefits constituted the immediate source for the benefits that the assessee realised. Though the assessee's right to receive those benefits under those schemes was attributable to the fact that it was running the industrial undertaking, that however did not render such benefit "derived" from the industrial undertaking, the scope of the term ""derived from"" being narrower than the scope of the term ""attributable to"".

4. Learned counsel for the assessee, however, submitted that the CBDT itself had, on 5th July, 1990, issued a circular giving certain clarifications relating to deductions u/s 80HHC of the IT Act, 1961, wherein it was stated that in view of the amendment to Section 28 of the IT Act, by the Finance Act, 1990, by which Clauses (iiia), (iiib) and (iiic) were inserted with retrospective effect, those three import incentives will have to be included in the profits of the business for computing the deduction u/s 80HHC. An illustration has also been given in that circular to further clarify the clarification.

5. In the present case, we are not concerned with Section 80HHC, but with

Section 80HH. Learned counsel submits that that should not make any difference as the words employed in the two sections are the same viz., "derived from". He also invited our attention to the decision of the apex Court in the case of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, . That decision is an authority for only that which it actually decided, but not for what logically appeared to follow therefrom. The circular issued by the CBDT, relied upon by the assessee, does not constitute any estoppel nor does it prevent the Revenue from contending that the scope of the term "derived from" in Section 80HH is narrower than the term "attributable to" and that the benefits accruing to the assessee under the schemes formulated by the Government to reward the location of the industry in a backward area or for having effected exports are benefits which accrued to the assessee under the relevant schemes of the Government, which constitute the immediate source for those benefits and, therefore, such benefits are not to be regarded as having been derived from the industrial undertaking.

6. It is always open to Parliament to prescribe conditions subject to which deductions or rebates from tax can be claimed. The fact that a benefit is given to an assessee, which runs an industrial undertaking, does not imply that all the benefits to be given to such an assessee should be based on all the profits received by that undertaking and not merely a part thereof. When Parliament has made a conscious distinction between the computation of profits and gains from business in the normal course and the computation of such profits and gains of business for the purpose of extending a special benefit to a limited class, it is certainly open to Parliament to prescribe a method or to impose a qualification which is different or is absent from computation of the profits and gains of a business in the normal course for purpose of levy of Income Tax.

7. We do not see any good reason to doubt or depart from the law that has been laid down by this Court in the case of CIT v. Jameel Leathers & Uppers (supra).

8. The distinction between "derived from" and "attributable to", which had been emphasised by the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. v. CTT (supra) has been reiterated by the Supreme

Court in its later ruling in the case of Commissioner of Income Tax,
Karnataka Vs. Sterling Foods, Mangalore, , which reversed the decision of the
Karnataka High Court. The question referred to us is, therefore,
answered in favour of the Revenue and against the assessee.