(2010) 08 MAD CK 0070

In the Madras High Court

Commissioner of Income Tax-VI — APPELLANT

Vs

Electromags — RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0070

Hon'ble Judges : M.M. Sundresh, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Patty B. Jaganathan, for the Appellant;

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The Revenue has come forward with these appeals, raising the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that sales tax and excise duty

have to be excluded from the total turnover for the purpose of computing the deduction u/s 80HHC in relation to export profits?

2. The question is no longer res integra, inasmuch as the same is now covered by the decision of the Hon''ble Supreme Court reported in

Commissioner of Income Tax, Coimbatore Vs. Lakshmi Machine Works, . The Hon''ble Supreme Court has answered the question as under in

paragraph 18.

18. ...The object of the legislature in enacting Section 80-HHC of the Act was to confer a benefit on profits accruing with reference to export

turnover. Therefore, ""turnover"" was the requirement. Commission, rent, interest, etc. did not involve any turnover. Therefore, 90 per cent. of such

commission, interest, etc. was excluded from the profits derived from the export.

Therefore, even without the clarification such items did not form

part of the formula in Section 80HHC(3) for the simple reason that they did not emanate from the ""export turnover"", much less any turnover. Even

if the assessee was an exclusive dealer in exports, the said commission was not includible as it did not spring from the ""turnover"". Just as interest,

commission, etc. did not emanate from the ""turnover"", so also excise duty and sales tax did not emanate from such turnover. Since excise duty and

sales tax did not involve any such turnover, such taxes had to be excluded. Commission, interest, rent, etc. do yield profits, but they do not partake

of the character of turnover and, therefore, they were not includible in the ""total turnover"". The above discussion shows that income from rent,

commission, etc. cannot be considered as part of business profits and, therefore, they cannot be held as part of the turnover also. In fact, in Civil

Appeal No. 4409 of 2005, the above proposition has been accepted by the Assessing Officer (see page No. 24 of the paper book), if so, then

excise duty and sales tax also cannot form part of the ""total turnover"" u/s 80HHC(3), otherwise the formula becomes unworkable. In our view,

sales tax and excise duty also do not have any element of ""turnover"" which is the position even in the case of rent, commission, interest, etc. It is

important to bear in mind that excise duty and sales tax are indirect taxes. They are recovered by the assessee on behalf of the Government.

Therefore, if they are made relatable to exports, the formula u/s 80HHC would become unworkable. The view which we have taken is in the light

of amendments made to Section 80-HHC from time to time (the underlining is ours)

3. Having regard to the law laid down by the Hon''ble Supreme Court, the question is answered against the appellant-revenue. The appeals fail and

the same are dismissed. Consequently, M.P. Nos. 1 of 2010 (3 petitions) are also dismissed.