**(1993) 06 BOM CK 0002**

**In the Bombay High Court**

**Case No :** Income-tax Reference No. 156 of 1981

Dawn Apparels Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision :** 23-06-1993

**Acts Referred:**
Income Tax Act, 1961 — Section 35B, 37(1)

**Citation :** (1994) 208 ITR 93

**Hon'ble Judges :** V.A. Mohta, J;B.P. Saraf, J

**Bench :** Division Bench

**Advocate :** P.J. Pardiwala, for the Appellant; G.S. Jetley, for the Respondent

## Judgement

V.A. Mohta, J.—u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question at the instance of the assessee :

"Whether the Tribunal erred in holding that the expenditure incurred by the assessee on the travel outside India by the assessee''s director for promotion of exports of the assessee''s goods did not qualify for weighted deduction u/s 35B of the Income Tax Act. 1961 ?"

2. The relevant assessment year is 1976-77, the assessee manufactures wearing apparels. By a resolution dated June 30, 1972, the company decided to sell its entire output to the Dawn Mills Company Limited. There was no condition that the mills should export the goods outside India. There was no material on record to indicate that the output sold by the assessee to the Dawn Mills Company Ltd. was substantially diverted for export.

3. Against the aforesaid factual background, the Tribunal held that the expenditure incurred by the assessee on the foreign tour of Mrs. Almeida, a director, was not entitled to weighted deduction u/s 35B of the Income Tax Act. The finding reached was in the above peculiar factual background. Rightly has the Tribunals held that it would be against the very letter and spirit to grant

weighted deduction in respect of foreign expenditure incurred on foreign tour.

4. Our attention was invited by learned counsel of the assessee to the two decisions - (i) Commissioner of Income Tax, Tamil Nadu-III Vs. C.R. Narayana Rao, and (ii) Gokuldas Exports Vs. Commissioner of Income Tax, , in support of a proposition that weighted deduction cannot be denied only because a particular expenditure did not result in actual export. The legal position on that point is well-settled. The Tribunal has taken note of it.

5. A claim for weighted deduction is dependent upon fulfilment of certain conditions. Those conditions do not exist in this case. It may be mentioned that the assessee has already been granted deduction of the said amount as business expenditure u/s 37(1).

6. Under the circumstances, the questions is answered in the negative, and in favour of the Revenue.

7. There will be no order as to costs.