

(1989) 09 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 20 of 1983

HMM Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-09-1989

Acts Referred:

Income Tax Act, 1961 — Section 35B

Citation : (1990) 82 CTR 317 : (1990) 184 ITR 236

Hon'ble Judges : Sukhdev Singh Kang, J;Jai Singh Sekhon, J

Bench : Division Bench

Advocate : G.C. Sharma, Pardeep Aggarwal, Lakhinder Singh and S.S. Mahajan, for the Appellant; Ashok Bhan, Senior Advocate and A.K. Mittal, for the Respondent

Judgement

Jai Singh Sekhon, J.—The following question has been referred for the opinion of this court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), at the instance of the assessee :

"Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that no weighted deduction is allowable in respect of inspection and supervision charges, bank charges, cost of excise revenue stamps and miscellaneous expenses and also for 50% of expenditure on stationery ?"

2. A brief resume of facts relevant for disposal of this reference is that the applicant-assessee is a limited company. The controversy relates to the Income Tax assessment year 1977-78 for which the relevant previous year ended on March 31, 1977. In the course of the assessment proceedings, the assessee had claimed weighted deduction u/s 35B of the Act in respect of expenditure amounting to Rs. 10,62,723. The Income Tax Officer allowed the claim of the assessee in respect of all the items other than freight expenses, octroi duty, insurance charges, loading and unloading charges and conveyance charges, While doing so, the Income Tax Officer had obtained the prior approval of the

Inspecting Assistant Commissioner as envisaged u/s 144B of the Act. The Commissioner of Income Tax finding the said order erroneous and prejudicial to the Revenue served a notice dated September 8, 1980, u/s 263 of the Act and after considering the assessee's reply in response to the said notice passed an order directing the Income Tax Officer to revise the assessment while withdrawing weighted deduction in respect of expenditure amounting to Rs. 38,536 comprising the following items :--

Rs.

(i) Charges paid for inspection and supervision of export goods

:

23,315

(ii) Bank charges paid for export

:

6,173

(iii) Cost of excise revenue stamps and hundi papers for export documentation

:

330

(iv) Cost of stationery used in connection with export

:

881

(v) Miscellaneous expenditure incurred in connection with export

:

7,837

3. The assessee challenged this order of the Commissioner of Income Tax before the Tribunal. The claim of the assessee for weighted deduction u/s 35B of the Act was dismissed except in respect of stationery in the light of the Special Bench decision dated June 17, 1978, in I. T. A. Nos. 3255 and 3330 of 1976-77 in the case of J. Hem Chand and Co. The Special Bench had held that the assessee is not entitled to any relief u/s 35B of the Act on the following items :

Rs.

(i) Charges paid for inspection and supervision of export goods

:

23,315

(ii) Bank charges paid for the export

:

6,173

(iii) Cost of excise revenue stamps and hundi papers for export documentation

:

330

(iv) Miscellaneous expenses incurred in connection with export

:

7,837

4. Feeling aggrieved against the said order of the Tribunal, the assessee filed an application u/s 256(1) of the Act for making a reference to this High Court on two points. The Tribunal did not refer the question regarding the jurisdiction of the Income Tax Commissioner u/s 263 of the Act but referred the above referred question for the opinion of this court.

5. Mr. G. C. Sharma, learned senior advocate appearing on behalf of the petitioner, contended that the provisions of Section 35B of the Act were enacted by the Legislature in order to encourage export of goods outside India for earning foreign exchange and thus he maintained that the relief was given by the Legislature on certain items to the assessee-exporter in order to enable him to compete in the foreign market with similar goods manufactured in other countries. Further, he maintained that the expenses incurred by the assessee on the charges paid for inspection and supervision of export goods, bank charges paid for export, cost of excise revenue stamps and miscellaneous expenses incurred in connection with export would be covered by Section 35B(1)(b), Clause (iii). Mr. Ashok Bhan, learned senior advocate, on the other hand, maintained that this controversy is fully settled by the decision of the Division Bench of the Calcutta High Court in *Organon (India) Limited Vs. Commissioner of Income Tax*, .

6. The relevant provisions of Section 35B as it stood at the relevant time read as under :

"35B. Export markets development allowance.--(1) (a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India has incurred after the 29th day of February, 1968, whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in Clause (b), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year :

Provided that in respect of the expenditure incurred after the 28th day of February, 1973, by a domestic company, being a company in which the public are substantially interested, the provisions of this clause shall have effect as if for the words "one and one-third times", the words "one and one-half times" had been substituted.

(b) The expenditure referred to in Clause (a) is that incurred wholly and exclusively on-

(i) advertisement or publicity outside India in respect of the goods, services or facilities which the assessee deals in or provides in the course of his business ;

(ii) obtaining information regarding markets outside India for such goods, services or facilities ;

(iii) distribution, supply or provision outside India of such goods, services or facilities, not being expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit ;

(iv) maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities ;

(v) preparation and submission of tenders for the supply or provision outside India of such goods, services or facilities, and activities incidental thereto ;

(vi) furnishing to a person outside India samples or technical information for the promotion of the sale of such goods, services or facilities ;

(vii) travelling outside India for the promotion of the sale outside India of such goods, services or facilities, including travelling outward from and return to, India ;

(viii) performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities ;

(ix) such other activities for the promotion of the sale outside India of such goods, services or facilities as may be prescribed."

7. A bare perusal of the above referred provisions of this section leaves no doubt that relief has been given from the imposition of tax on expenditure incurred on advertisement, publicity in obtaining information, distribution, supply, etc., outside India and not within the country. Clause (iii) specifically excludes expenditure incurred in India in connection with the distribution, supply, services or facilities as well as expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit. Thus, the intent of the Legislature is very clear regarding the assessee being not entitled to any relief on expenditure on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit

even outside India. Under these circumstances, the Tribunal rightly upheld the order of the Income Tax Commissioner regarding the assessee being not entitled to any weighted deduction on the expenses incurred upon charges paid for inspection and supervision of the goods, bank charges paid for export, cost of excise revenue stamps and hundi papers for export documentation besides other miscellaneous expenditure incurred in connection with export. The Tribunal, however, in respect of cost of stationery used in connection with export which amounted to Rs. 881 held that the assessee's claim ought to have been disallowed by the Commissioner of Income Tax in respect of 50 % of the same.

8. Similar view was taken by the Calcutta High Court in *Organon (India) Limited Vs. Commissioner of Income Tax*, in respect of freight and insurance charges by relying upon the earlier decision of that court in *Bharat General and Textile Industries Ltd. Vs. Commissioner of Income Tax*, .

9. The Calcutta High Court, in *Bharat General and Textile Industries Ltd. Vs. Commissioner of Income Tax*, , has dealt with the matter as follows :

"The substitution of Sub-clause (iii) of Section 35B(1)(b) by the Finance Act, 1970, with effect from April 1, 1968, i.e., the date from which Section 35B was introduced, makes it clear that the expenditure on the distribution, supply or provision outside India of the goods, services or facilities dealt in or provided by the assessee in the course of his business (which is one of the heads of expenditure specified in Section 35B(1) as qualifying for the grant of export markets development allowance) shall not include any expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of the goods to their destination outside India or on the insurance of the goods while in transit. It appears to us that there are three prohibitions in Sub-clause (iii) of Section 35B(1)(b). Firstly, expenditure incurred in India in connection with distribution, supply or provision outside India of such goods, services or facilities. Secondly, expenditure whether incurred in India or outside India, on the carriage of such goods to their destination outside India (i.e., freight, etc.) and thirdly, expenditure, whether incurred in India or outside India, on the insurance of such goods while in transit.

Having regard to the provisions of Section 35B(1)(b)(iii) and the decisions referred to above, items like clearing and forwarding charges paid by the assessee in Indian ports on goods exported to foreign countries, expenditure on the carriage of goods to their destination outside India or on the insurance of such goods while in transit are not, allowable for weighted deduction u/s 35B(1)(b)(iii) inasmuch as they were incurred in India. We are, therefore, of the view that the Tribunal was right in holding that the expenditure on freight, loading charges, insurance, etc., incurred in connection with export business was not entitled to weighted deduction. We, therefore, answer the second question in the affirmative and in favour of the Revenue."

10. In that case, the Calcutta High Court had relied upon the decisions of the

Madhya Pradesh High Court in CIT v. K. N. Oil Industries. [1982] 134 ITR 651 as well as in D and H Secheron Electrodes Pvt. Ltd. Vs. Commissioner of Income Tax, .

11. For the foregoing reasons, we are of the view that the Tribunal was right in holding that on the expenditure on inspection and supervision of export goods, bank charges, cost of excise revenue stamps and hundi papers and miscellaneous expenditure, the assessee was not entitled to weighted deduction. We, therefore, answer the question in the affirmative, i.e., in favour of the Revenue. There is no order as to costs.