
(1983) 11 MAD CK 0016
In the Madras High Court
Case No : Tax Case Petition No. 285 of 1983

K. Vensimal and Sons

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-11-1983

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 35B, 35B(1)

Citation : (1986) 157 ITR 807

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : A. Sabayaseelan, for the Appellant; J. Jayaraman and Nalini Chidambaram, for the Respondent

Judgement

Ramanujam, J.—In this reference petition, the assessee seeks a direction from this court to the Tribunal to refer the following two questions

for the opinion of this court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in restricting the claim of relief u/s 35B of 50 per cent. in the

case of salary and rent ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in disallowing the claim u/s 35B of the Income Tax Act in

respect of packing, freight and insurance, cooly, trade expenses and legal expenses and all or any of the above items of expenditure ?

2. The assessee is a firm carrying on business in the export of handloom fabrics. It claimed weighted deduction u/s 35B of the Income Tax Act,

1961, in respect of the following expenditure :

Rs.

Salary 1,35,857
Rent 16,800
Packing 2,67,279
Freight and insurance 9,70,486
Cooly 39,422
Insurance and E.C.& G.C. 81,374
Trade expenses 78,927
Legal expenses 15,000

16,05,146

3. The Income Tax Officer declined to grant the weighted deduction claimed by the assessee. Aggrieved by the order of the Income Tax Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner allowed weighted deduction to the extent of Rs. 75,870. He agreed with the Income Tax Officer with regard to the rest of the claim. Both the Revenue and the assessee filed appeals before the Income Tax Appellate Tribunal. The Tribunal upheld the allowance of the weighted deduction to the extent of 50 per cent. which was allowed by the Commissioner in respect of salary and rent. With regard to packing, freight and insurance and cooly, the Income Tax Tribunal agreed with the Commissioner and held that the assessee is not entitled to any allowance in respect of those items as they will be hit by sub-clause (iii) of section 35B(1)(b) of the Income Tax Act. With regard to the expenditure under the head "Trade expenses" to the extent of Rs. 79,927, the claim was disallowed by the Tribunal agreeing with the Commissioner. The Tribunal also disallowed the claim for weighted deduction with regard to legal expenses to the extent of Rs. 15,000. Aggrieved by the decision of the Tribunal, the assessee seeks to obtain a reference on the two question set out above.

4. According to the learned counsel for the assessee, all the items of expenditure have been incurred only in connection with the export of handloom fabrics, and as the provision for weighted deduction u/s 35B is for the

development of export trade, all the items of expenditure should have been allowed towards weighted deduction u/s 35B of the Act. Alternatively, the learned counsel contends that even assuming that there were some sales in India, having regard to the fact that the local sale of handloom fabrics is only to the extent of one lakh of rupees as against the export value of one crore of rupees and more, all the expenditure should be deemed to have been incurred substantially for effecting export sales. He further submits that even if a proportion is to be worked out, at 99.4 per cent. representing the export sale, the assessee will be entitled to claim 99.4 per cent. of this expenditure as relation to the export sale, and the Commissioner of Income Tax (Appeals) and also the Tribunal are not justified in restricting the deduction to 50 per cent. alone as relating to export sale.

5. It is no doubt true that the Income Tax Officer held that the assessee is not entitled to the relief of weighted deduction in respect of all the items

of expenditure on the ground that these expenditure have been incurred in India and, therefore the assessee is not eligible for weighted deduction

According to the learned counsel, that view can no longer be sustained in view of the decisions in Commissioner of Income Tax, Bombay City-VI,

Bombay Vs. Eldee Wire Ropes Ltd., and Commissioner of Income Tax Vs. Kasturi Palayacat Co., . We have now to see whether all the items of

expenditure incurred by the assessee in India could be allowed as deduction u/s 32B of the Income Tax Act.

6. Section 35B(1)(b) of the Act sets out the details of expenditure which will be eligible for the weighted deduction u/s 35B(1)(a). Clause (b)(iii) of

sub-section (1) of section 35B refers to the expenditure incurred wholly and exclusively on distribution, supply or provision outside India of such

goods, services or facilities. This sub-clause, therefore, contemplates only the expenditure that is incurred wholly and exclusively on distribution,

This shows that if the expenditure has been incurred partly for export and partly for other activities in India, then the entire expenditure cannot have

the benefit of weighted deduction u/s 35B(1)(a), and it is only the expenditure which is referable to the actual export that will be entitled to the

weighted deduction. The same provision excludes expenditure incurred in India in connection with the distribution, supply of provision outside India

or on the insurance of such goods while in transit. Thus, the expenditure like freight, insurance, packing, cooly, etc., incurred in India in connection

with the export cannot be treated as expenditure entitled for weighted deduction.

7. In this case, the Commissioner of Income Tax (Appeals) has specifically found that the expenditure relation to salary and rent has been incurred

in connection with the assessee's other activities in India which included both purchases and sales of handloom goods. He, therefore, found that

the salary paid to the employees and the rent paid to the premises have to be apportioned first towards purchase activities of the assessee which

was of the order of Rs. 1.99 crores, as without purchases, there could be no exports and the employees who have been paid salary, must

necessarily have attended to the activity of purchase as well. Similarly, it was held that the premises for which rent has been paid has been used

both for the activity of purchase as well as for the activity of sale and, therefore, 50 per cent. of the salary and the rent alone should be taken as

exclusively spent in connection with the export sale and the entire salary and rent cannot be taken to have been expended in connection with the

export sale. The Commissioner of Income Tax (Appeals) taking the total expenditure by way of salary and rent as Rs. 1,52,657 adopted 50 per

cent. of the same as expenditure exclusively relatable to sales activities, and based on the proportion of export sales and local sales, the Tribunal

has restricted that the weighted deduction should be 50 per cent. of the 99.4 per cent. On the facts of this case, we are satisfied that the Tribunal

has rightly restricted the relief of weighted deduction to 50 per cent. of the 99.4 per cent.

8. Coming to the insurance premia paid to the Export Credit and Guarantee Corporation, since it is solely and exclusively relatable to the export

trade, the Tribunal has granted the relief in its entirety. In respect of other items, the Tribunal has held that the assessee is not entitled to weighted

deduction as these items clearly fall within the mischief of section 35B(1)(b)(iii) of Act and these items have been specifically excluded. Here again,

we find that the Tribunal is its construction of the provision in section 35B. Any item of expression ""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"". In view if the said exclusion contained in section 35B(1)(b)(iii) of the Act, the assessee cannot claim the weighted deduction in

respect of the said items. The Tribunal, therefore, appears to have come to the right conclusion in this case. Therefore, on reference is called for.

The petition is dismissed. No costs.