

(2006) 10 KAR CK 0016
In the Karnataka High Court
Case No : ITA No. 78 of 2000

Kabadi Enterprises

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Income Tax Act, 1961 — Section 80 HHC, 80 HHC (1), 80 HHC (3)

Citation : (2007) 207 CTR 448 : (2007) 290 ITR 610 : (2007) 164 TAXMAN 394

Hon'ble Judges : R. Gururajan, J;N. Ananda, J

Bench : Division Bench

Advocate : S. Parthasarathi, for the Appellant; E.R. Indrakumar, for M.V. Seshachala, for the Respondent

Judgement

1. The assessee is before us in this appeal.

2. The assessee filed return of income for the assessment years 1988-89 and 1989-90, declaring Rs. 1,82,155/- and Rs. 3,69,879/- respectively. The Assessing Authority while concluding the assessment for the year 1988-89, included the interest concerned Rs. 1,97,821/-while quantifying the relief u/s 80HHC of the Income Tax Act (for short, "the Act") by holding that interest cannot be treated as business income. Similarly, for the assessment year 1989-90, he denied the benefit of Section 80HHC insofar as the interest income is concerned. Aggrieved by the same, the assessee filed two appeals. The Assessing Authority passed a common order. The Assessing Authority accepted the contention of the assessee with regard to interest income, job work tailoring and nomination profits for the purpose of benefit u/s 80HHC of the Act. The revenue moved the Tribunal. The appeal of the revenue was accepted. It is in these circumstances, the appellant-assessee is before us.

3. The assessee has raised the following two questions of law for our consideration:

(1) Whether on the facts and in the circumstances of the case, the interest, job

tailoring receipts and nomination profit earned by the appellant in the course of its business could be excluded from the business profits for the purpose of quantification of relief u/s 80HHC of the Act?

(2) Whether for the purpose of deduction u/s 80HHC of the Act, the profit exclusively earned in export business alone had to be considered as held by the Tribunal when Section 80HHC(3) provides otherwise?

4. Heard Sri S. Parthasarathi, learned Counsel for the appellant-assesses. He would say that in terms of Section 80HHC of the Act, the assessee is entitled for deduction in respect of profit return for export business. He would further say that while calculating three items namely the interest, job work tailoring and nomination profit are also eligible as business income. This has been negated by the Assessing Authority. According to him, the Appellate Commissioner is justified in providing relief in respect of the three items as well. He finds fault with the findings of the Tribunal, He would rely upon a Judgment of this Court in ITRC No. 280/1998 c/w ITRC Nos. 281-285/1998 dated 09.03.2005.

5. Per contra, Sri E.R. Indrakumar, learned Counsel appearing for Sri M.V. Seshachala, learned Counsel supports the order of the Tribunal.

6. After hearing, we have carefully seen the provisions of law in the light of the arguments placed before us.

7. Section 80HHC is a special provision providing deduction in all export business. Section 80HHC(1) would read as under:

80HHC(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provision of this section, be allowed, in computing the total income of the assessee, deduction of the (profits) derived by the assessee from the export of such goods or merchandise....

8. Section 80HHC(3) would read as under:

80HHC(3) For the purposes of Sub-section (1)-

(a) where the export out of India is of goods or merchandise manufactured by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;

(c) where the export out of India is of goods or merchandise manufactured by the assessee and of trading goods, the profits derived from such export shall-

(i) in respect of the goods or merchandise manufactured by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee; and

(ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods;.

9. A combined reading of these two provisions would show deduction is permissible with reference to an income provided. The said income has some link or nexus to the export in terms of Section 80HHC of the Act

10. Let us see as to whether the three items namely interest, job tailoring receipts and nomination profit would fit into Section 80HHC(3) of the Act for the purpose of quantification of relief. The Assessing Authority has negated the contention in terms of his order. The Appellate Commissioner has chosen to accept the same. The Tribunal has chosen to reject the same. The Tribunal in the impugned order, notices Section 80HHC and thereafter the Tribunal would hold that unless there is a relationship of interest income to the export business, the appellant is not entitled for deduction u/s 80HHC of the Act. This principle of law cannot be doubted. The material facts would show that interest in terms of the material on record was obtained out of temporary deposit made by the assessee in the Bank in terms of the order of the Assessing Authority. The material on record would not show that this interest income is referable to the export business. No nexus or link is pointed out by the assessee for the purpose of deduction u/s 80HHC of the Act. The Tribunal is therefore justified in denying the benefit of exemption of tax in terms of Section 80HHC of the Act. We find no legal error insofar as interest amount is concerned. The learned Counsel would rely on a Judgment of this Court in ITRC No. 280/1998 c/w ITRC Nos. 281-285/1998 dated 09.03.2005. We have carefully seen the facts in the said case. Facts in the said case would show that the assessee had received some amounts from foreign customers by way of advance in respect of the exports to be made by it. The amount is referable to export business. After noticing this factual aspect of the matter, the Division Bench would hold that the said deposit is available for quantification of relief in terms of Section 80HHC(3) of the Act. The Division Bench has noticed that the deposit amount was towards export transaction and in that view of the matter, the case of the assessee was accepted. The facts in that case would stand on a different footing than the fact put before us. In these circumstances, the said Judgment is not available to the assessee.

11. Insofar as the nomination profit and job tailoring receipts are concerned, we see that the Appellate Commissioner has chosen to say that there exists some link or nexus in terms of his order. But, however, the Tribunal has not chosen to consider the link or nexus for the purpose of benefit in terms of Section 80HHC of the Act. In the circumstances, we are of the view that a fresh finding is necessary at the hands of the Tribunal insofar as these two items are concerned.

in terms of Section 80HHC of the Act We deem it proper to remand the matter to the Tribunal.

12. In the result, this appeal is partly accepted. First Question of law is partly answered in favour of the revenue, insofar as the interest income is concerned. Insofar as job tailoring receipts and nomination profit are concerned, questions of law are not answered. Similarly, second question of law is also not answered on the facts of this case. As mentioned earlier, the matter is remitted back to the Tribunal for re-decision. Both parties are to appear before the Tribunal, without waiting for any notice on 15.11.2006. The Tribunal is to consider the case afresh in the light of the Commissioner's order and in the light of Section 80HHC of the Act with regard to benefit available or not in the case on hand, without in any way being influenced by its earlier order or this order. The Tribunal is to complete the proceedings within five months thereafter. Ordered accordingly. No costs.