

(1998) 02 MAD CK 0142

In the Madras High Court

Case No : Tax Case No. 1995 of 1984 (Reference No. 1460 of 1984)

Lucas TVS Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Income Tax Act, 1961 — Section 35B, 35B(1), 40

Citation : (2000) 242 ITR 136

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The questions referred for our decision at the instance of the assessee in respect of the assessment of its income for the assessment year 1978-79 are :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the weighted deduction u/s 35B is not allowable on : (1) interest on packing credit, (2) certificate expense, and (3) inspection agency fee ?

2. Whether the Tribunal was right in holding that while arriving at the ceiling u/s 40(c) the reimbursement of the medical expenses should be taken into account ?"

2. The second question may first be disposed of as it is submitted by counsel that the law has been laid down by this court on a similar question considered in the case of Rane (Madras) Ltd. Vs. Commissioner of Income Tax, wherein it was held that the medical reimbursement pay was required to be taken into account while invoking the provisions of Section 40(c) of the Income Tax Act. We, therefore, answer the second question in the affirmative, in favour of the Revenue and against the assessee.

3. The first question, relates to the extent to which the assessee can claim allowance for export markets development. The claim is made u/s 35B of the

Income Tax Act. That section is titled "export markets development allowance". The expenditure can be claimed for weighted deduction on such items as are set out in Sub-clauses (i) to (ix) of Section 35B(1)(b) of the Act. For the purpose of determining the scope of those sub-clauses, it is necessary to keep in mind that the weighted deduction is available to the assessee under any of the heads mentioned in Clause (b) of Section 35B(1) of the Act, only in so far as it relates to the development of export market. The weighted deduction that can be claimed under this section is not available for the actual sales, but, is meant for enabling the assessee to claim an additional benefit by way of weighted deduction for the general expenditure which was incurred for the purpose of developing the export market.

4. The interest on credit obtained by the assessee for financing its manufacturing operations intended to produce goods that are exported is not an item of expenditure which can be regarded as expenditure for development of the export market, as it is an item of expenditure which is directly connected with the manufacturing operations. A similar view was taken by this court in the case involving this very assessee in *Lucas TVS Ltd. Vs. Commissioner of Income Tax*, . The assessee is, therefore, not entitled to claim the benefit of Section 35B of the Act in so far as the interest paid by it on packing credit is concerned.

5. The other two items in dispute relate to the expenditure incurred on inspection agency fee paid in India, and the expenditure on account of certificates of origin given in India. Both these items relate to the actual exportation of goods sold by the assessee in the export market and they are not in the nature of expenditure incurred for the purpose of developing the export market.

6. Learned counsel for the assessee, however, submitted that the assessee is entitled to claim the expenditure so incurred under Sub-clause (vi) of Section 35B(1)(b) of the Act which refers to expenditure incurred wholly and exclusively on "furnishing to a person outside India samples or technical information for the promotion of the sale of such goods, services or facilities". This sub-clause refers to the furnishing of samples of goods and not the actual sale of the goods. It refers to technical information not in general, but technical information for the purpose of the promotion of the sale of goods, services and facilities. For technical information, there is no necessity whatever for securing a certificate of origin or a report of an inspection agency. The technical information is information which is within the knowledge of the assessee, and which is only communicated to the person who may be resident abroad and who has some role to play in development of the export market for the goods, services or facilities provided by the assessee. The words "technical information" cannot be read in isolation. It is only such technical information as is provided for the promotion of the sale of the goods, services and facilities that can be considered under the provision.

7. Learned counsel, in support of his submission, placed reliance on the judgment of the Division Bench of the High Court of Calcutta in the case of *Union*

Carbide India Ltd. Vs. Commissioner of Income Tax, , wherein it was held that export agency inspection fees and fees paid for obtaining certificate as to the quality of the goods amounted to technical information on the quality of the products sought to be exported, and as the production of such certificate was essential for the saleability of the goods in the foreign market, such expenditure even though incurred in India was eligible for weighted deduction. Having gone through the judgment, with great respect, we are unable to concur with the view that export inspection agency fee paid in India for the inspection of goods actually exported by way of sale, is eligible for consideration u/s 35B of the Act. We are also unable to subscribe to the view that the expenditure incurred on account of the certificate of origin given in India is eligible for weighted deduction u/s 35B of the Act. As pointed out earlier, Section 35B of the Act is only concerned with the expenditure incurred by an assessee on development of the export market and not with the actual sale of the goods or with particular sales. This is evident from a perusal of the various sub-clauses of Section 35B(1)(b) of the Act, which, inter alia, refer to publicity outside India in respect of the goods, obtaining information regarding markets outside India for such goods, the expenditure incurred on distribution, supply or provision outside India of such goods or facilities, maintenance outside India of a branch office or agency, preparation and submission of tenders, furnishing of samples and technical information, travelling outside India and performance of services outside India which are incidental to the execution of the contract for the supply outside India of such goods. Export inspection agency fee as also the expenditure incurred on obtaining certificates of origin cannot be brought under any of the heads mentioned in Section 35B of the Act. Had this expenditure been incurred outside India, the assessee would have been eligible to claim the same u/s 35B(1)(b)(iii) of the Act, if it related to the distribution or supply of goods outside India.

8. Learned counsel invited our attention to the observations made by this court in the earlier case of the assessee in Lucas TVS Ltd. Vs. Commissioner of Income Tax, to the effect that the assessee may need technical verification and reports on the quality and specification of the goods by experts including the export agency, as it may have the necessity of furnishing the same to the buyer outside India and, therefore, Section 35B(1)(b)(vi) of the Act is not confined to expenditure incurred outside India. We find that, in that decision, there is no mention of the fact that Clause (b) of Sub-clause (vi) relates only to technical information for the promotion of sale of such goods and not technical information with regard to the goods actually sold and exported.

9. When a person enters into an export contract for the sale of goods, it is the normal practice for the buyer to require a certificate of origin as also a certificate by a reputed inspection agency and such documents are required to be submitted by the exporter for operating a letter of credit that may have been opened by the buyer or as part of the documentation to be sent to the buyer in terms of the contract. Such documentation would be part of the requirements of the contract of sale of specific goods and cannot be regarded as expenditure

incurred in furnishing technical information for the promotion of the sale of goods.

10. The Tribunal and the authorities below have rightly held that the claim for weighted deduction of the expenditure incurred by the assessee on export inspection agency fee paid in India and expenditure incurred on obtaining certificates of origin in India are inadmissible u/s 35B of the Act.

11. We, therefore, answer the first question referred to us in the affirmative, in favour of the Revenue and against the assessee. The Revenue shall be entitled to costs of the sum of Rs. 500.