
(1993) 02 BOM CK 0053

In the Bombay High Court

Case No : Income-tax Reference No. 37 of 1979

M.H. Daryani

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-02-1993

Acts Referred:

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

Citation : (1993) 202 ITR 731

Hon'ble Judges : U.T. Shah, J;B.P. Saraf, J

Bench : Division Bench

Advocate : K.B. Bhujle, for the Appellant; G.S. Jetley, for the Respondent

Judgement

Dr. B.P. Saraf J.

1. By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal, at the instance of the assessee, has referred the following question of law to this court for opinion :

"Whether the expenditure of Rs. 23,137 incurred by the assessee in India of the carriage of the goods to their destination outside India and on the insurance of such goods while in transit qualified for weighted deduction under sub-clause (iii) of section 35B(1)(b) of the Income Tax Act, 1961, as it stood in the assessment year 1973-74 ?"

2. The dispute in this reference relates to the claim of the assessee for weighted deduction u/s 35B(1)(b)(iii) of the Income Tax Act, 1961, in respect of a sum of Rs. 23,137 incurred by it in India on the carriage of goods to their destination outside India and the insurance of such goods while in transit. The assessment year is 1973-74. The assessee is an individual. In the previous, year relevant to the assessment year 1973-74, the assessee carried on the business of export of textiles, mainly the products of the Mafatlal group, to foreign countries. The assessee had claimed weighted deduction under the provisions of section 35B of the Income Tax Act, 1961, among others, on the expenditure of Rs. 23,137

incurred in India as freight and forwarding charges on the carriage of its goods to their destination outside India and on the insurance of such goods while in transit. The claim was disallowed by the Income Tax Officer. The disallowance made by the Income Tax Officer was upheld by the Appellate Assistant Commissioner and the Tribunal. Hence this reference.

3. Section 35B of the Act provides for export markets development allowance. In consider of a weighted deduction in the amount equal to one and one-third times the amount of qualifying expenditure incurred during the previous year. The expenditures which qualify for weighted deduction are those specified in various sub-clause of clause (b) of sub-section (1) thereof. Section 35B(1) as it stood at the material time, so far as relevant, reads as follows :

"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....

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

(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."

4. The underlined portions were inserted by the Finance Act, 1970, with retrospective effect from the date of insertion of the section itself.

5. A close reading of this clause makes it clear that allowance by way of weighted deduction contemplated by clause (a) of sub-section (1) of section 35B is available to an assessee specified therein who claims to fall under sub-clause (iii) of clause (b) only on the ground of the expenditure being incurred wholly and exclusively on "the distribution, supply or provision outside India of such goods, services or facilities which the assessee deals in or provides in the course of his business". By the underlined portion which was inserted by the Finance Act, 1970, with retrospective effect from April 1, 1968, certain expenditure which otherwise might have fallen in clause (b) (iii) were taken out of its ambit by specifically saying so. These expenditure are :

(1) Expenditure incurred in India in connection with the activities mentioned in sub-section in sub-clause (iii), or

(2) Expenditure wherever incurred (i) on the carriage of such goods to their destination outside India, or

(ii) on the insurance of such goods while in transit.

6. Thus, any expenditure incurred by the assessee wholly and exclusively on the distribution, supply or provision outside India of the goods which are not owned by him will not be eligible for weighted deduction under this section if it falls under any of the above heads.

7. There is no dispute in the instant case that the expenditure in question falls under the heads 2(i) and (ii). That being so, in our opinion, the position is absolutely clear that the assessee is not entitled to weighted deduction in respect of these expenditure as claimed and the Tribunal was fully justified in upholding disallowance of the claim.

8. Faced with such a situation, learned counsel for the assessee submitted that this section should be read in a manner beneficial to the assessee. We do not find any force in this submission. The question of adopting the construction of a fiscal statute beneficial to the assessee arises only if the interpretation of such statute is open to doubt. The theory of beneficial interpretation has no application where the language of the statute is clear and explicit. In such a case, the well-settled principle of interpretation is that the statutory provision should be construed according to the plain natural meaning of its language. When the language of a particular provision is clear and according to the plain natural meaning thereof the assessee is not entitled to any rebate, relief or allowance, it is not for the court strain and stretch the language of the statutory provision to enable the assessee to get such relief. Such an approach will be against all accepted principles of interpretation.

9. We are, therefore, of the clear opinion that the principle of beneficial interpretation or interpretation in favour of the assessee has application only in a case where, on a proper interpretation, the court is in doubt about the true scope and ambit of the provision or finds that two equally reasonable interpretations - one in favour of the assessee and the other in favour of the Revenue - are possible. It is only in such cases that the question of accepting one of the two reasonably possible interpretations would arise. The principle of beneficial interpretation has no application in a case where the words of a statute are plain, precise and unambiguous. In that case the courts have no option but to give effect to it.

10. In view of the foregoing discussion, we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee.

11. We make no order as to costs.