

(1991) 12 GUJ CK 0022

In the Gujarat High Court

Case No : Income-tax Reference No. 289 of 1980

M.M. Khambhatwala

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-12-1991

Acts Referred:

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

Citation : (1992) 107 CTR 59 : (1992) 198 ITR 140

Hon'ble Judges : R.C. Mankad, Acting C.J.; J.N. Bhatt, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; M.J. Thakore, for the Respondent

Judgement

R.C. Mankad, Actg.C.J.

1. The assessee, a registered partnership firm, carries on the business of manufacturing hair oils and perfumes. It also export large quantities of hair oils outside India. In the year of account relevant to the assessment year 1974-75, it incurred an expenditure of Rs. 69,228 for carriage and insurance of the goods exported. In the year of account relevant to the assessment year 1975-76, it incurred an expenditure of Rs. 1,17,959 for carriage and insurance of the goods exported. In the year of account relevant to the assessment year 1976-77, it incurred an expenditure of Rs. 10,301 for insurance and Rs. 58,375 for the carriage of the goods which were exported. The assessee, in the course of the assessment for each of the three assessment years, did not claim weighted deduction in respect of the said expenditure u/s 35B of the Income Tax Act, 1961, ("the Act for short). Therefore, the question of allowing weighted deduction u/s 35B did not arise before the Income Tax Officer. In the appeals before the

Appellate Assistant Commissioner, however, the assessee pressed the above claims. The Appellate Assistant Commissioner for the reasons

recorded in his order, Allowed the claims. The Revenue, being aggrieved by the decision of the Appellate Assistant commissioner, preferred

appeals before the Income Tax Appellate Tribunal. The Tribunal, by its common order for the assessment years 1974-75, 1975-76 and 1976-77,

held that the assessee's claims for weighted deduction in respect of freight and insurance charges u/s 35B were not allowable. In the Results, it set

aside the decision of the Appellate Assistant Commissioner in respects of the said claims made by the assessee. In the background of the above,

facts, the following two questions have been referred to us for our opinion u/s 256(1) of the Act, at the instance of the assessee :

(1) Whether the expenses incurred in India relating to carriage and insurance of goods meant for export amounting to Rs. 69,226 for the

assessment year 1974-75 and amounting to Rs. 1,17,959 for the assessment year 1975-76 were not entitled to weighted deduction u/s 35B of the

Income Tax Act, 1961 ?

(2) Whether the expenses incurred in India for the assessment year 1976-77 relating to carriage and insurance of good meant for export amounting

to Rs. 10,301 and Rs. 58,375 were not entitled to weighted deduction u/s 35B of the Income Tax Act, 1961 ?

2. The question which arises for our consideration is whether the assessee is entitled to claim deduction as provided in section 35B(1) of the Act.

Section 35B(1) provides for export markets, development allowance. Clause (a) of section 35B(1) enacts that, if any expenditure (not being in the

nature of capital expenditure or personal expenses of the assessee) referred to in clause (b) has incurred by an assessee, he shall, subject to the

provisions of 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. Clause (b) (iii) of section 35B(1) reads as follows :

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

(iii) Distribution, supply or provisions 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.

3. The above provision came up for consideration before the Madhya Pradesh High Court in CIT v. K. N. Oil Industries [1982] 134 ITR 651

Considering the aforesaid provisions, the Division Bench of the Madhya Pradesh High Court observed as Follows (At pages 653 and 654) :

The words "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" were inserted in clause (b) (iii) of section 35B(1) by the Finance

Act, 1970, with effect from 1st April, 1968. The first part of this clause which reads "distribution", supply or provision outside India of such goods,

services or facilities" deals with the expenditure which qualifies for grant of development allowance. The second part of the clause which starts with

the words "not being" and which was added by the Finance Act, 1970, deals with the expenditure which is not to be taken into account in granting

the development allowance. The second part of the clause, in our opinion, has to be read as "not being expenditure incurred in India in connection

therewith, or not being expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such

goods while in transit". The presence of a comma after the word "facilities" and the omission of a comma after the word "facilities" and the

omission of a coma after the words "in connection therewith" and the presence of the word "or" before the words "expenditure (wherever

incurred)" supports this construction. Further, a reference to clause (a) of section 35b(1) will show a similar style of drafting in the words "not

being in the nature of capital expenditure or personal expenses of the assessee". These words clearly mean not being in the nature of capital

expenditure or not being in the nature of personal expenses of the assessee. Similar interpretation is to be adopted of the words "not being"

occurring in the second part of clause (b) (iii). In our opinion, expenditure, on the carriage of goods to their destination outside India and on the

insurance of the good while in transit cannot be taken into account for the grant of weighted deduction. This is how the clause has been read by the

Madras High Court in Commissioner of Income Tax Vs. Kasturi Palayacat Co., and

by three leading Commentaries : Iyengar on Income Tax, 6th

Edition, Vol. I, p. 861 : Sundaram's Law of Income tax, 11th Edition, Vol. 2, pp. 1162-1163 and Chaturvedi and Pithisaria's Income tax Law,

2nd Edition, Vol. I, pages 653 and 654. The second part of clause (b) (iii), as rightly stated by Sampath Iyengar, excludes from the computations,

of export markets development allowance the following :

(a) expenditure incurred in India in connection with the distribution, supply to provision of the goods, etc., outside India;

(b) expenditure wherever incurred for the carriage of the goods to their destination outside India; and

(c) expenditure incurred to insure the goods while in transit.

Learned counsel for the assessee relied upon the observations in Aiyar's Income Tax Act, 2nd Edition, p. 544. This does support learned counsel,

but for the reasons already stated by us, we are unable to agree with the meaning of the section as given in this book.

4. We fully agree with the view taken by the Madhya Pradesh High Court. We, therefore, hold that the assessee is not entitled to weighted

deduction on the expenditure which it has incurred for carriage and insurance of the goods exported. In other words, we confirm the view taken by

the Tribunal. We, therefore, answer both the questions which have been referred to us for our opinion in the affirmative and against the assessee.

Reference answered accordingly with no order as to costs.