
(1998) 06 MAD CK 0102

In the Madras High Court

Case No : T.C. No. 1873 of 1986 (Reference No. 1294 of 1986)

Penner (India) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-06-1998

Acts Referred:

Income Tax Act, 1961 — Section 80HH

Citation : (1999) 239 ITR 480

Hon'ble Judges : N.V. Balasubramanian, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; C.V. Rajan, for the Respondent

Judgement

A. Subbulakshmy, J.—The following questions have been referred to us by the Tribunal at the instance of the applicant u/s 256(1) of the

Income Tax Act, 1961 :

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the cash assistance received from the

Government for the export of goods is not eligible for relief u/s 80HH ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest paid u/s 220(2) of the Act is not an

allowable deduction against the profits of the applicant company ?

2. The assessee is a domestic company in which the public are substantially interested. The assessee-company is carrying on business in the

manufacture and sale of V belts, oil seals, O rings and rubber moulded products, etc. The assessee claimed relief u/s 80HH of the Income Tax Act

and also with regard to the interest paid u/s 220(2) of the Act. The Income Tax Officer negatived the relief sought for by the assessee. The

Commissioner of Income Tax had taken the view that the cash assistance received from the Government by the assessee cannot be regarded as

part of the income derived from the industrial undertaking. The Income Tax Appellate Tribunal had also rejected the relief sought for by the

assessee, thus dismissing the appeal. Hence, the reference had arisen at the instance of the assessee.

3. With regard to the reference No. 1, the assessee contends that the cash assistance received from the Government for the export of goods

comes u/s 80HH of the Act as it is the profit and gain derived from the industrial undertaking.

4. Mr. C.V. Rajan, learned counsel for the respondent, argued that the cash assistance received from the Government would not come under the

purview of Section 80HH of the Act and the assessing authorities have correctly found and negated the claim of the assessee. He further pointed

out that the assistance granted by the Government related only to the export of goods and it will not amount to profit or gain derived from the

industrial undertaking.

5. Counsel for the assessee pointed out that the assistance given by the Government relates to profits and gains of the business as this amount is

also derived from industrial undertaking. In the decision in National Organic Chemical Industries Ltd. Vs. Collector of Central Excise, Bombay, ,

the apex court has held that :

The dictionaries state that the word "derived" is usually followed by the word "from" and it means : get or trace from a source ; arise from,

originate in ; show the origin or formation of. The use of the words "derived from" in item 11AA(2) suggests that the original source of the product

has to be found. Thus, as a matter of plain English, when it is said that one word is derived from another, often in another language, what is meant

is that the source of that word is another word, often in another language. That is the ordinary meaning of the words "derived from" and there is no

reason to depart from that ordinary meaning here.

6. Counsel for the assessee argued that by use of the words "'derived from'" the original source of the product has to be found and the original

source is the production of goods and by taking into account the original source, it can be concluded that the assistance given by the Government

forms part of the profit derived from the industrial undertaking for the purpose of Section 80HH of the Act- He further pointed out that u/s 28,

Clause (iiib) of the Act, the assistance given by the Government also amounts to business income, and so, the cash assistance given by the

Government clearly falls u/s 80HH of the Act. Section 28(iiib) reads :

cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;

7. As per that section, the above income is chargeable to Income Tax under the head ""Profits and gains of business or profession"".

8. Section 80HH of the Act reads as follows :

Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to

which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of

the assessee, a deduction from such profits and gains of an amount equal to twenty per cent. thereof.

9. Counsel for the assessee pointed out that the cash assistance received from the Government comes under the profits and gains of business or

profession and this amount is also includible in the profits and gains derived from the industrial undertaking and the cash assistance given by the

Government clearly falls u/s 80HH of the Act. He further pointed out that as per the Supreme Court decision, the words ""derived from"" suggest

that the original source of the product has to be found and so, this cash assistance or export subsidy is traceable to the origin of the industrial

undertaking and it clearly comes u/s 80HH. The decision reported in National Organic Chemical Industries Ltd. Vs. Collector of Central Excise,

Bombay, , relates to the Central Excises and Salt Act, 194-1, and the use of the words ""derived from"" related to item 11-AA(2) under that Act

and it was held that the words ""derived from"" suggest that the original source of the product has to be found. The wording ""derived from"" cannot

be attributed to the original source of the product to the facts and circumstances of the present case. The decision in Cambay Electric Supply

Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, , distinguishes the expressions ""attributable to"" and ""derived

from"". It has been held in the above decision that (headnote) :

The Legislature has deliberately used the expression "attributable to" having a wider import than the expression "derived from" thereby intending to cover receipts from sources other than the actual conduct of the business of the specified industry.

10. The above decision further states that (page 93) :

It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression

"derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and

buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this

connection, it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned

Solicitor-General, it has used the expression "derived from", as, for instance, in Section 80J. In our view, since the expression of wider import,

namely, "attributable to", has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of

generation and distribution of electricity.

11. From this Supreme Court decision it is well evident that the Legislature wanted to give a restricted meaning for Section 80HH and so, it has

used the expression ""derived from"". So, the expression ""derived from"" used in Section 80HH implies that Section 80HH is confined only to profits

and gains derived from the industrial undertaking. So, the cash assistance received from the Government for export does not come u/s 80HH of

the Act in view of the decision of the Supreme Court reported in *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income*

Tax, Gujarat-II, Ahmedabad, with regard to the expression ""derived from"". So, the cash assistance given only for export cannot be treated as

profit or gain derived from the industrial undertaking for the purpose of Section 80HH of the Act. It has nothing to do with the industrial

undertaking. So, there is no nexus with the industrial undertaking and the cash assistance comes into the picture only at the time of exporting the

goods. It has nothing to do with the working capital for the processing of the goods. So it cannot be stated that the cash assistance given by the

Government amounts to profit or gain derived from the industrial undertaking.

Accordingly, we concur with the view taken by the Tribunal and we answer the first question of law in the affirmative and against the assessee.

12. With regard to the second question of law, in view of the decision in Fenner (India) Ltd. Vs. Commissioner of Income Tax, wherein it is held that (headnote) :

Where tax which is due from the assessee is based on profits and gains of business or profession any interest payable for non-payment of such tax

should also be considered as levied on the basis of such profits, or gains. It cannot be allowed as a deduction.

the interest paid u/s 220(2) of the Act cannot be allowed as a deduction.

13. Accordingly, we answer the second question of law in the affirmative and against the assessee. No costs.