

(1994) 08 MAD CK 0102

In the Madras High Court

Case No : Tax Cases No's. 1153 and 1154 of 1981 (References No's. 597 and 598 of 1981)

Rajan Trading Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-08-1994

Acts Referred:

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

Citation : (1995) 128 CTR 49 : (1995) 214 ITR 335 : (1995) 83 TAXMAN 610

Hon'ble Judges : K.A. Thanikkachalam, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : P.P.S. Janarthanaraja, for the Appellant; N.V. Balasubramaniam, for the Respondent

Judgement

Thanikkachalam, J.—In pursuance of the directions given by this court in T.C.P. Nos. 198 and 199 of 1980 dated November 3, 1980, the Tribunal referred the following questions for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in apportioning the claim u/s 35B for the two assessment years 1976-77 and 1977-78 ?

2. Whether, on the facts and in the circumstances of the case, the applicant is not entitled to the full deduction of the expenditure u/s 35B having regard to the fact that the entire activity of the applicant was export business ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in its view that the commission on exports paid in India is not entitled to relief u/s 35B ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in disallowing any portion of export freight and shipping ?"

2. The references relate to the assessment years 1976-77 and 1977-78 relevant

to the accounting years ending on July 31, 1975, and July 31, 1976, respectively. The assessee-firm derives income from the export of engineering goods. For the assessment year 1976-77, the assessee claimed relief u/s 35B of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on three items, viz., printing and stationery, telephone charges and salaries. The claim was made up to 75 per cent. of the first item and 50 per cent. of the last two items. The total amount of each claim so made came to Rs. 22,786 and the additional deduction claimed was Rs. 7,595. The Income Tax Officer disallowed the entire claim on the ground that all these expenses had been incurred in India.

3. For the assessment year 1977-78 as against the claim for weighted deduction of Rs. 1,51,295, the Income Tax Officer allowed deduction of only Rs. 53,755. In the appeal before the Appellate Assistant Commissioner in addition to the claim on the above items for the assessment year 1976-77 a claim for waited deduction was made in respect of an overall amount of Rs. 7,10,526 consisting of the following items :

4. For the assessment year 1977-78, the claim was made in respect of a sum of Rs. 25,98,830 consisting of the following amounts :

5. The Appellate Assistant Commissioner directed the Income Tax Officer to grant relief u/s 35B of the Act in respect of the entire amount of Rs. 7,10,526 and Rs. 25,98,830. Aggrieved, the Department filed appeals before the Tribunal. The Tribunal held that these expenses would cover not merely export activities but also expenses incurred in connection with procurement of goods, running of the assessee's office in India and for the administration of the firm's activities. The exact amount relatable to the export of goods can only be arrived at on an estimate. In the opinion of the Tribunal, it would be proper to adopt 50 per cent. of this expenditure for 91 per cent. worked out by the assessee as referable to export performance. In this view of the matter, for the assessment year 1976-77, the relief was granted by the Tribunal u/s 35B on an amount of Rs. 52,352 (Rs. 2,116 + Rs. 25,000 + Rs. 196 + Rs. 25,141). So also for the assessment year 1977-78, relief was granted u/s 35B in respect of an amount of Rs. 2,52,671 (Rs. 4,915 + Rs. 5,477 + Rs. 62,845 + Rs. 40,000 + Rs. 90,189). Thus, the appeals filed by the Revenue were partly allowed.

6. Before this court, learned counsel appearing for the assessee submitted that the entire relief claimed u/s 35B of the Act related to export trade and no part of the expenditure related to activities in India. Therefore, according to the assessee, the entire expenditure claimed as weightage deduction is allowable u/s 35B without any curtailment. Learned standing counsel for the Revenue pointed out that even though the assessee was carrying on business in export of goods and the major part of the sale was on the export side, the claim for relief u/s 35B was in respect of items of expenditure which fell under sub-clause (iii) of clause (b) of section 35B(1). According to learned standing counsel, the expenditure incurred in India under this head cannot be allowed and where the expenditure came under carriage or freight or insurance, it should be disallowed. On the

other hand, the assessee's counsel further submitted that the expenditure in respect of which section 35B relief is claimed falls not only under sub-clause (iii) of clause (b), but also under other sub-clauses. Sub-clause (iii), according to the learned counsel, is to be split into two, viz., expenses for distribution and supply or provision outside India where weighted deduction was allowable in respect of expenses incurred outside India in respect of carriage of goods to destinations, it could be disallowed wherever the expenditure is to be incurred, but expenditure on insurance of goods while in transit should be allowed.

7. We have heard the rival submissions.

8. It remains to be seen that section 35B of the Act contemplates the kinds of expenditure by the assessee and the weightage deduction on it. The expenditure could take place in India on goods and services and facilities that are to be exported. There are nine clauses under which expenditure of different kinds is enumerated. The expenditure that occurs in the course of the business of exporting comes under any one of those clauses and satisfies the conditions for obtaining the benefits of the development allowance. The assessee was carrying on the business of exporting engineering goods procuring them from the local market. Analysing the items of expenditure incurred by the assessee, the Tribunal found that the assessee has not given the full details with regard to the expenditure incurred for export trade. Therefore, the Tribunal was of the opinion that the expenditure eligible for weighted deduction u/s 35B has got to be allowed on the basis of the estimate. The Tribunal pointed out that expenditure to the extent of Rs. 55,282 towards postage and telegram, packing, printing and stationery, etc., would come under sub-clause (iii), but the entire expenditure in this regard cannot be related to the export activity covering distribution, supply and provision of goods and services, etc., outside India. The Tribunal further pointed out that expenditure under the head of postage, packing, telephone, electricity, etc., would have to be incurred also in respect of local activities connected with procurement and running to the assessee's establishment. Therefore, according to the Tribunal, the entire amount of Rs. 55,282 cannot be considered as pertaining to export activity. The assessee claims a proportionate amount of 75 per cent. for the reason that out of the overall turnover of Rs. 42.3 lakhs, Rs. 38.5 lakhs constituted export sales coming to 91 per cent. But it remains to be seen that these expenses would cover not merely export activities, but also expenses incurred in connection with procurement of goods, running of the assessee's office in India and for the administration of the assessee-firm's activities. In the absence of proper particulars and details the exact relief to the export of goods can only be arrived at on the basis of the estimate. Considering all these aspects, the Tribunal, following the Full Bench decision of the Tribunal in Income Tax Appeals Nos. 3255 and 3330/(Bombay), held that it would be proper to adopt 50 per cent. of the expenditure for 91 per cent. worked out by the assessee as referable to export performance.

9. Following this methods, out of postage of Rs. 4,232, the Tribunal allowed 50

per cent. as referable to samples, etc. Out of export packing, freight, insurance and other overcharges looking into the fact that the assessee was exporting pumps, pump spare parts, etc., expenditure on samples sent and the amount involved in the same should be a very small percentage compared with the overall value of the sales. Considering all these aspects, on an estimate, the Tribunal allowed a sum of Rs. 25,000 with regard to the samples under the heads of samples packing, freight, insurance. The overcharge of Rs. 196 was stated to be spent outside India. Therefore, this items was held to be eligible for full relief. Since the commission on export of Rs. 38,459 paid in India is not relatable to export trade, relief u/s 35B was not granted. Thus, for the assessment year 1976-77, relief was granted u/s 35B on a sum of Rs. 52,352. So also for the assessment year 1977-78, relief was granted u/s 35B on a sum of Rs. 2,52,672 (trade samples Rs. 4,915, export promotion Rs. 5,471, packing and forwarding Rs. 62,845 and in respect of samples Rs. 40,000) expenditure under electricity, printing and stationery, etc., Rs. 90,180 (half of 34.4 per cent. claim). Thus, in the absence of proper particulars, the Tribunal estimated the expenditure relating to the export trade and allowed 50 per cent. of the expenditure claimed for weighted deduction u/s 35 of the Act. Thus, the relief granted u/s 35B, on the estimated basis, appears to be quite correct and reasonable. Accordingly, we answer the question referred to us for the assessment years under consideration in the affirmative and against the assessee. There will be no order as to costs. Counsel's fee is fixed at Rs. 1,000.