

(1992) 08 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 1555 of 1991

Tanna Exports and another	Vs	APPELLANT
M.G. Kamat and another		RESPONDENT

Date of Decision : 24-08-1992

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 80HHC

Citation : (1992) 108 CTR 213 : (1993) 202 ITR 219

Hon'ble Judges : Sujata V. Manohar, J; B.N. Srikrishna, J

Bench : Division Bench

Advocate : N.A. Dalvi, for the Appellant; G.S. Jetley, for the Respondent

Judgement

Mrs. Sujata Manohar, J.—The first petitioner is engaged in the business of export of various commodities from India. In addition, the first petitioner also deals in silver. The petitioners also earn income by way of interest on advances made by them to other parties. For the assessment year 1989-90, the petitioners claimed deduction u/s 80HHC and calculated the same in accordance with section 80HHC(3), as it stood at the relevant time. u/s 80HHC(3)(b), as it stood at the relevant time for the purposes of sub-section (1), profits derived from the export of goods or merchandise out of India shall be "in a case where the business carried on by the assessee does not consist exclusively of the export out of India of the goods or merchandise to which this section applies, the amount which bears to the profits of the business (as computed under the head "Profits and gains of business or profession"), the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee."

2. In the assessment proceedings, however, the first respondent has deducted from the total profits, the profits earned by the petitioners from their business of dealing in silver and interest received on account of advances made by them. In respect of this assessment, the appeal of the petitioners is still pending before the Tribunal. The petitioner have prayed that pending the disposal of this appeal, the demand raised by the respondent for the assessment year 1989-90 be kept

in abeyance. Under the interim order which was passed in this petition on July 1, 1991, the respondents stated that they will not take any steps to recover the demand of Rs. 13,82,941 for the assessment year 1989-90, till the disposal of this petition, provided petitioner No. 1 pays Rs. 3 lakhs in respect of the demand for the assessment year 1989-90. The petitioners have accordingly paid Rs. 3 lakhs. In view of this and in view of the somewhat surprising nature of the calculations made by the respondents u/s 80HHC(3)(b), the demand of Rs. 13,82,941 is stayed till the disposal of the appeal.

3. The second contention in the petition relates to an intimation sent to the petitioners u/s 143(1)(a) for the assessment year 1990-91. In the return filed by the petitioners for the assessment year 1990-91, they have claimed deduction u/s 80HHC. After taking into account this deduction, the income returned is Rs. 4,38,480. The respondents, however, have recalculated the deduction claimed by the petitioners u/s 80HHC and have, as a result, "adjusted" the total income to Rs. 51,54,470 and have accordingly claimed by way of tax Rs. 12,07,812 after adjusting the amount already paid. An additional tax u/s 143(1A) has also been levied which forms part of the total tax demand of Rs. 12,07,812.

4. In view of the ratio of the judgment by a Division Bench of this court to which one of us (Mrs. Sujata Manohar J.) was a party, in the case of Khatau Junkar Ltd. and another Vs. K.S. Pathania and another, , such recalculation of adjustment u/s 80HHC is not permissible u/s 143(1)(a). Hence the intimation dated March 21, 1991, exhibit "J", to the petition is set aside. The respondents are directed to prepare and forward a fresh intimation u/s 143(1)(a) in accordance with law and in the light of the above judgment. If any refund is found due as a result of the fresh intimation, the same to be adjusted against the demand for the assessment year 1989-90, subject to the final orders in the appeal for the assessment year 1989-90.

5. Rule is made absolute accordingly.

6. No order as to costs.