(1993) 10 BOM CK 0034

In the Bombay High Court

Case No : IT Reference No. 189 of 1992 & Income-tax Reference No. 189 of 1992

Walchandnagar Industries Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 07-10-1993

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

Citation : (1994) 116 CTR 605 : (1994) 206 ITR 328

Hon'ble Judges : D.R. Dhanuka, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Arun Sathe, for the Appellant; G.S. Jetly, for the Respondent

Judgement

DR. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961 ("the Act"), Income Tax Appellate Tribunal has referred the following two questions at the instance of the assessee :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not eligible to weighted deduction u/s 35B(1) of the Income Tax Act, 1961, on Rs. 20,55,145 in respect of interest paid on post-shipment loans ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not entitled to weighted deduction in respect of the professional charges paid for designing for undertaking the export contract u/s 35B(1)(b) of the Income Tax Act ?"

2. The assessee is a limited company engaged in the business of manufacture and sale of sugar, alcohol products, plastic goods, industrial machinery, etc. The relevant assessment year is 1975-76. The assessee also exports its products outside India. The export turnover of the assessee during the relevant previous year was to the tune of Rs. 5 crores. The assessee claimed export markets development allowance ("weighted deduction") u/s 35B of the Act in relation to

expenditure of Rs. 1,97,21,549. The Income Tax Officer allowed the claim of the assessee in respect of some of the items only. The claim of the assessee in respect of some of the remaining items was allowed on appeal by the Commissioner of Income Tax (Appeals) and, on further appeal, by the Income Tax Appellate Tribunal ("the Tribunal"). However, the disallowance of the claim of the assessee for weighted deduction in respect of a sum of Rs. 20,55,145 being interest paid by the assessee to banks in India on loans which were utilised for giving credit to foreign buyers, described in the accounts of the assessee as "interest paid on post-shipment loans" and a sum of Rs. 26,100 being professional charges for designing the export contract was upheld both by the Commissioner of Income Tax (Appeals) and by the Tribunal on the ground that these expenditure did not meet the requirements of section 35B(1) of the Act. Hence this reference at the instance of the assessee.

3. The contention of counsel for the assessee is that the above expenses are covered by sub-clause (viii) of section 35B(1)(b) of the Act. Section 35B(1) provides for allowance of weighted deduction to certain categories of assessees who incur revenue expenditure wholly and exclusively on any of the activities specified in clause (b) thereof. Sub-clause (viii) of clause (b) reads :

"(viii) performance of services outside India in connection with or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities."

4. Thus, in order to fall under clause (viii), it must be : (i) an expenditure incurred wholly and exclusively on the performance of services outside India; (ii) the services should be in connection with or incidental "to the execution of any contract for the supply outside India of such goods, services or facilities" which the assessee deals in or provides in the course of his business.

5. In the instant case, the admitted position is that the interest was paid on loans obtained by the assessee from banks in India for the purposes of its business. The contention of the assessee is that the amount borrowed from the banks was used by it for giving credit to foreign buyers. Such activity, according to him, fall within sub-clause (viii) of section 35B(1)(b) of the Act. We have carefully considered the submissions of counsel for the assessee. The expenditure was incurred by way of interest on loans obtained by the assessee from the banks in India for the purposes of its business. It is difficult to understand as to how such expenditure can be termed as "expenditure incurred wholly and exclusively on performance of services outside India in connection with, or incidental to, the execution of contract for supply outside India of goods of the assessee" The expenditure was clearly an expenditure on loans obtained in India. It had nothing to do with performance of any services outside India in connection with the contract of supply of goods by the assessee outside India. The fact that the amount of loan was utilised for giving deferred payment facilities to the foreign buyers will not make it an expenditure incurred on performance of service outside India. The payment of interest to the banks has

no nexus with performance of service outside India. Moreover, it is for the assessee who claims deduction u/s 35B(1) of the Act to satisfy the authorities by producing requisite material that the particular expenditure was covered by any of the sub-clauses of clause (b) thereof. In the event of his failure, no weighted deduction can be allowed to him.

6. In the instant case, we find that no material whatsoever is available to show that the expenditure of Rs. 20,55,145 was incurred by the assessee on any of the activities specified in sub-clause (viii) of clause (b) of section 35B(1) of the Act. In that view of the matter, we are of the clear opinion that the Tribunal was right in holding that the assessee was not entitled to weighted deduction u/s 35B(1) of the Act on the interest paid by him to the banks in India and shown in the accounts as "Interest paid on post-shipment loans".

7. So far as the amount of Rs. 26,100 being the professional charges paid by the assessee for designing for undertaking the export contract is concerned, counsel for the assessee failed to show how such expenditure can fall in sub-clause (viii) of section 35B(1)(b) of the Act.

8. Having regard to the above discussion, we are of the clear opinion that the Tribunal was justified in not allowing deduction in respect of the two items mentioned in the two questions referred to us. We, therefore, answer both the questions in the affirmative and in favour of the Revenue.

9. Under the facts and circumstances of the case, we make no order as to costs.