

D.B. Exports (India) Vs Commissioner of Income Tax

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 22, 1997

Acts Referred: Income Tax Act, 1961 " Section 80HHC, 80HHC(2)
Negotiable Instruments Act, 1881 (NI) " Section 138

Citation: (1997) 140 CTR 502 : (1998) 231 ITR 836 : (1998) 97 TAXMAN 550

Hon'ble Judges: Iqbal Singh, J; Ashok Bhan, J

Bench: Division Bench

Advocate: N.K. Sud, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

Judgement

Ashok Bhan, J.

1. The assessee-petitioner (hereinafter referred to as the petitioner) has filed this petition under Article 226/227 of the Constitution of India for

issuance of a writ of certiorari quashing the order annexure P-15 declining to grant extension of time u/s 80HHC(2)(a) of the Income Tax Act,

1961 (hereinafter referred to as the Act), and a writ of mandamus directing the respondents to grant extension of time as sought by the petitioner

under the aforesaid section.

2. The petitioner is a partnership firm at Phagwara and is assessed within the jurisdiction of the Income Tax Officer, Ward No. 1, Phagwara. It is

engaged in the export of clothes and garments. For the financial year 1993-94 relevant to the assessment year 1994-95, the petitioner made

exports to the tune of Rs. 1,60,14,968. The petitioner being an Indian company who made exports out of India became entitled to deduction of an

amount of profits as provided in the statute from time to time derived by the petitioner from the exports of such goods or merchandise. One of the

conditions for grant of deduction u/s 80HHC is incorporated in Clause (a) of Sub-section (2) of Section 80HHC which reads as under :

(2)(a) This section applies to all goods or merchandise, other than those specified in Clause (b), if the sale proceeds of such goods or

merchandise exported out of India are received in, or brought into, India by the assessee (other than the supporting manufacturer) in convertible

foreign exchange within a period of six months from the end of the previous year or, where the Chief Commissioner or Commissioner is satisfied

(for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months,

within such further period as the Chief Commissioner or Commissioner may allow in this behalf.

3. The period of six months specified in Section 80HHC(2)(a) of the Act was to expire on September 30, 1994. However, up to September 29,

1994, the petitioner had not received payments in convertible foreign exchange to the tune of Rs. 19,78,668 out of the total sales of Rs. 33,15,777

made to seven parties. This amount of Rs. 19,78,668 was held up due to financial constraints faced by the seven parties.

4. The petitioner moved an application on September 29, 1994, for extension of the period for realisation of the sale proceeds u/s 80HHC(2)(a)

of the Act before the Commissioner of Income Tax, Jalandhar (hereinafter referred to as the respondent), explaining the circumstances under

which the extension was being sought. The respondent after going through the petitioner's application and affording an opportunity of hearing

granted extension of time up to January 31, 1995. The petitioner vide letter dated January 31, 1995, informed the respondent that it had received a

certain amount out of the outstanding payments of Rs. 19,78,668 and only a sum of Rs. 5,47,210 was outstanding which the petitioner was making

vigorous efforts to recover. It sought further extension of period. The respondent vide letter dated March 13, 1995, granted further extension up to

April 30, 1995.

5. On June 15, 1995, and June 29, 1995, the petitioner again requested the respondent to grant further extension of time, as it had to file a case in

the civil court against one party for the recovery of Rs. 4,16,016 while the other party promised to remit the payment by first week of July 1995.

The respondent granted further extension up to November 30, 1995. On December 18, 1995, the petitioner asked for further extension of time as

the matter against the concerned party was in progress in court. The respondent again granted further extension of time up to April 30, 1996.

This period was further extended at the request of the petitioner up to August 31, 1996.

6. The petitioner, vide letters dated August 29, 1996, and November 20, 1996, informed the respondent that the concerned party had issued three

cheques out of its NRE account but all the three cheques had bounced and a criminal case against the said party had been launched in the court of

the Addl. Senior Sub-Judge, Phagwara, which had been fixed for hearing on September 4, 1996. In the light of these facts, the petitioner again

requested for further extension of time. This request stands rejected by the impugned order annexure P-15, by the respondent.

7. The petitioner assailed the impugned order, annexure P-15, on the ground that u/s 80HHC(2)(a) of the Act, a discretion is vested in the

respondent to grant extension of time in case the assessee fails to realise the sale proceeds of exports sales within a period of six months from the

end of the previous year due to reasons beyond his control. Such a discretion has to be exercised judiciously which the respondent has failed to

do. The reasons on which the respondent had granted five extensions earlier, continued to be the same and the respondent was duty bound to

grant extension as the petitioner could not realise the sale proceeds within six months or the extended period in spite of strenuous efforts for

reasons beyond his control.

8. In the written statement filed, the stand taken by the respondent is that the request to grant further extension of time was rejected after judicious

application of mind. It was recorded in the order that there was likelihood of prolonged legal battle between the petitioner and the parties from

whom the amount was to be realised. There being no certainty of an early decision, the assessment proceedings could not be held up indefinitely by

allowing extension from time to time. The matter related to the financial year 1993-94 and, therefore, no further extension of time could be granted.

The Income Tax Officer after the refusal of extension of time by the Commissioner of Income Tax rectified his previous order dated June 4, 1996,

in exercise of his powers u/s 154 of the Act, vide order dated March 24, 1997, withdrawing the deduction of export development allowance

which had been granted to the petitioner. The order passed by the Income Tax Officer was appealable. The petitioner has the remedy of filing an

appeal and, therefore, the petition is rendered infructuous.

9. Counsel for the parties have been heard.

10. Section 80HHC of the Act was introduced to provide incentive to Indian companies to export goods for earning foreign exchange. Deduction

in the computation of taxable income of the amount (which has been varying from time to time) is given provided the convertible foreign exchange

was brought into the country. Section 80HHC(2)(a) provides that deduction would be given only if the convertible foreign exchange is brought into

the country within six months of the expiry of the previous year or within the extended period granted by the Commissioner by a written order

stating his reasons therein for grant of time. Extension can be given only if the assessee was unable to bring the convertible foreign exchange for no

fault of his.

11. No exception can be taken to the submission of counsel for the petitioner that discretion by the Commissioner has to be exercised in a

judicious manner. Wherever discretion is vested in a judicial or quasi-judicial authority, the same has to be exercised by that authority in a judicious

and a just manner.

12. In the present case, the Commissioner of Income Tax granted five extensions spreading over more than two years to the petitioner to bring

convertible foreign exchange into the country. Finding that civil as well as proceedings u/s 138 of the Negotiable Instruments Act, 1881, had

started between the petitioner and the defaulting party, which was not likely to conclude soon, further extension in time was declined. Extension has

not to be given on the mere asking. Rather the Section provides that extension can be given only after recording reasons for doing so. The

Commissioner of Income Tax was satisfied that any further extension of time would be futile causing loss to the Revenue. In the facts and

circumstances of the case, it cannot be held that the discretion exercised by the Commissioner of Income Tax was arbitrary or unjust. In our view,

the Commissioner exercised his discretion in a very fair manner. For grant of extension of time, reasons have to be recorded whereas there is no

such requirement for declining the same. But in this case while declining the request, due opportunity was provided to the petitioner and the same

was declined after recording reasons.

13. In case the argument of counsel for the petitioner is accepted then the extension was to be given to the petitioner till the conclusion of

proceedings in the civil court including further appeals to the higher courts, which would take many years to conclude. The Legislature has given a

mandate that deduction has to be given only if convertible foreign exchange is brought into the country within six months of the expiry of the

previous year. Discretion to grant extension is to be exercised only if the assessee is unable to bring the convertible foreign exchange because of no

fault of his. A dispute has arisen between the parties which apart from causing delay can be decided either in favour of the petitioner or the party

opposite. Assessment proceedings could not be kept pending for an indefinite period till the conclusion of civil litigation. Under the Act assessment

proceedings have to be finalised within the time prescribed under the Act, otherwise these become time barred. The purpose of giving incentive is

to bring foreign convertible exchange into the country within a reasonable time. The very purpose of giving incentive by way of deduction in the

computation of taxable income would stand defeated if there is an inordinate delay in bringing convertible foreign exchange into the country within a

reasonable time.

14. For the reasons recorded above, we find no merit in this writ petition and dismiss the same. No costs.