(2004) 12 AHC CK 0182

Allahabad High Court

Case No: Income Tax R. No. 45 of 1988

Khan International Exports P. Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Dec. 6, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 10(17A), 256(1), 28, 80HHC

Citation: (2006) 201 CTR 165 : (2006) 280 ITR 165

Hon'ble Judges: R.K. Agrawal, J; Prakash Krishna, J

Bench: Division Bench

Advocate: Shakeel Ahmad, for the Appellant; A.N. Mahajan, for the Respondent

Final Decision: Disposed Of

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following questions of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act", for opinion of this Court :

"(I) Whether on a true and correct interpretation of Section 10(17A) and also in view of the provisions contained in the "charging sections" under the Income Tax Act, 1961, the Tribunal was legally correct in holding that the "cash incentive" amounting to Rs. 7,45,258 constituted taxable income in the hands of the assessee ?

(II) Whether, on the basis of the material and evidence on record and an a true and correct interpretation of the same the Tribunal should not have held that the sum of Rs. 7,45,258 did not partake of the character of "income" as envisaged under the Income Tax Act, 1961, and was, accordingly, liable to be excluded from the computation of "taxable income" in the hands of the assessee ?

(III) Whether, in case the answer to questions Nos. (I) and (II) are in the negative and against the assessee, on a harmonious construction of the relevant provisions of the Act, the Tribunal should not have held that the sum of Rs. 7,45,258 was liable to be included in the "export turnover" of the assessee so as to entitle it to claim due deduction u/s 80HHC of the Income Tax Act, 1961 ?

(IV) Whether the Tribunal was legally correct in holding the duty draw back (Rs. 23,929) and premium entitlement (Rs. 19,070.69) were in the nature of "income" and were, accordingly, liable to be considered as such in the assessment ?

(V) Whether in case the answer to question No. (IV) is in the negative and against the assessee, on a harmonious construction of the relevant provisions of the Act, the Tribunal should not have held that the sum of Rs. 42,999 (Rs. 23,929 + Rs. 19,070) was liable to be included in the export turnover of the assessee so as to entitle it to claim due deduction u/s 80HHC of the Income Tax Act, 1961 ?

2. The reference relates to the assessment year 1983-84.

3. Briefly stated the facts giving rise to the present reference are as follows :

The applicant is a private limited company and is engaged in the business of export of carpets. In the course of the assessment proceedings it has claimed the cash incentive amounting to Rs. 7,45,258 and duty drawback of Rs. 23,929 and premium entitlement of Rs. 19,070.69 which it had received under the export promotion policy of the Government of India are not a revenue receipt and, therefore not taxable as income at its hand. The Income Tax Officer has held otherwise which order has been upheld up to the stage of the Tribunal.

4. We have heard Sri Shakeel Ahmad, learned Counsel appearing for the applicant, and Sri A.N. Mahajan, learned standing counsel for the Revenue.

5. We find that by the Finance Act, 1990, Clauses (iiib) and (iiic) are inserted in Section 28 of the Act with effect from April 1, 1967, and April 1, 1972, which provided that cash assistance (by whatever name called) and duty drawback received or receivable by any person against exports under any scheme of the Government of India shall be chargeable to Income Tax under the head "Profits and gains of business or profession". In view of the retrospective amendment the cash incentive, duty drawback and premium entitlement received by the applicant has rightly been held to form part of the income from business or profession and accordingly subjected to tax.

6. We, therefore, answer questions Nos. (I) and (II) and (IV) referred to us in the affirmative, i.e., in favour of the Revenue and against the assessee.

7. So far as the question as to whether the amount of cash incentive, duty drawback and premium entitlement received by the applicant can be included in the "export turnover"

and deduction u/s 80HHC of the Act was available or not is concerned, it may be mentioned here that the aforementioned amount has been paid by the Government to the applicant under the "export promotion policy" of the Government of India and therefore it will not form part of the export turnover and deduction u/s 80HHC is not available on such portion of the income.

8. In view of the foregoing discussions, we answer the questions referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.