

(2006) 12 KAR CK 0055
Karnataka High Court
Case No: ITA No. 127 of 2001

Commissioner of
Income Tax

APPELLANT

Vs

Global Corporation
Limited

RESPONDENT

Date of Decision: Dec. 8, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 143 (3), 263, 80 AB, 80 HHC

Citation: (2007) 210 CTR 61 : (2007) 292 ITR 651

Hon'ble Judges: R. Gururajan, J; N. Ananda, J

Bench: Division Bench

Advocate: M.V. Seshachala, for E.R. Indra Kumar, for the Appellant; S. Parthasarathi, for the Respondent

Final Decision: Allowed

Judgement

1. Revenue aggrieved by the order of the Tribunal dated 29.12.2000 passed in ITA No.398 of 2000 in relation to the assessment year 1996-97 is before us.

2. Assessment was concluded u/s 143(3) of the Income Tax Act, 1961 ("the Act" for short) by order dated 31.3.1999. While concluding, the Assessment Authority has allowed the relief u/s 80HHC of the Act. Respondent assessee incurred loss from export of goods. This loss was assessed at. Rs. 1, 42,73,242/-. Against this loss, assessee disclosed be way of sale of licence and duty draw back at Rs. 83,63,431/-. Though the assessee incurred loss from export business, the assessing officer allowed the relief u/s 80HHC of the Act. The Commissioner, noticing that the said order is prejudicial to the interest of the Revenue, issued notice u/s 263 of the Act. Reply was obtained. Thereafter, an adverse order was passed by the revising authority.

Appeal was filed before the Income Tax Appellate Tribunal by the assessee. Appeal stood allowed. Revenue is therefore before us raising the following questions of law:

(a) Whether/ on the facts and circumstances of the case, the Tribunal is correct in law in setting aside the order passed in the assessee's case u/s 263 of the Income Tax Act, 1961 for the assessment year 1996-97 by holding that the relief u/s 80HHC of the Income Tax Act should be allowed even in a case where there is loss from export business?

(b) Whether, on the facts and circumstances of the case, the order passed by the tribunal granting relief u/s 80HHC of the Income Tax Act, 1961 is sustainable having regard to Section 80AB of the Income Tax Act, 1961?

3. Heard Sri Seshachala, learned Counsel for Sri E.R. Indra Kumar, learned Counsel for the Revenue appellant and Sri S. Parthasarathi, learned Counsel for the assessee respondent and perused the material available on record.

4. Assessing Officer has allowed deduction u/s 80HHC of the Act. Noticing the said order, the revising authority initiated proceedings and thereafter he withdrew the relief given u/s 80HHC. When the same was challenged before the Tribunal, Tribunal has chosen to grant relief. Let us see as to whether the Tribunal is justified in passing the impugned order.

5. Section 80HHC reads as under:

80HHC. Deduction in respect of export turnover.-(1) Where the assessee, being an Indian company or a person (other than a company), who is resident in India, exports out of India during the previous year relevant to an assessment year any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, the following deductions, namely:-

(a) a deduction of an amount equal to one per cent of the export turnover of such goods or merchandise during the previous year; and

(b) a deduction of an amount equal to five per cent of the amount by which the export turnover of such goods or merchandise during the previous year exceeds the export turnover of such goods or merchandise during the immediately preceding previous year.

(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 by the assessee in convertible foreign exchange.

(b) The goods or merchandise referred to in Clause (a) are the following, namely:-

(i) agricultural primary commodities, not being produce of plantations;

- (ii) mineral oil;
- (iii) minerals and ores; and
- (iv) such other goods or merchandise as

the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) No deduction under Clause (b) of Sub-section (1) shall be allowed unless the assessee had, during the immediately preceding previous year, exported out of India goods or merchandise to which this section applies.

Explanation.- For the purposes of this section,-

(a) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purpose of the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder;

(b) "export turnover" means the sale proceeds of any goods or merchandise exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962).

6. In [Commissioner of Income Tax Vs. A.V. Thomas and Co. Ltd.](#), a Division Bench of Kerala High Court has ruled that Section 80AB would show that the computation of deduction was geared to the amount of income, but coming to the provisions contained in Section 80HHC quantification of the amount of deduction is geared to the export turnover and not to the income. It further observes that the term "export turnover" was defined as "sale proceeds of any goods", etc. exported out of India. Section 80HHC was introduced by the Finance Act, 1983, to encourage export. The Kerala High Court therefore held that the assessee in that case was entitled to claim deduction u/s 80HHC even if it had suffered loss in its business of export of cardamom.

The Kerala High Court in [Commissioner of Income Tax Vs. V.T. Joseph](#), has chosen to hold that the claim for deduction u/s 80HHC was restricted by the provisions of Section 80AB and that the deduction u/s 80HHC was to be allowed only to the extent of the income from export business included in the gross total income. The claim therein was disallowed.

Subsequently, another Division Bench of v Kerala High Court in Commissioner of Income Tax v. Smt. T.C. USHA (2004) 226 ITR 497 has noticed the judgment of Kerala High Court in [Commissioner of Income Tax Vs. V.T. Joseph](#), judgment of Bombay High Court in [Commissioner of Income Tax Vs. Shirke Construction Equipments Ltd.](#), and also another judgment of the Bombay High Court in [IPCA Laboratories Ltd. Vs. Deputy Commissioner of Income Tax](#). After noticing, the Kerala High Court has

chosen to place reliance on [Commissioner of Income Tax Vs. Shirke Construction Equipments Ltd.,](#).

The Bombay High Court in [IPCA Laboratories Ltd. Vs. Deputy Commissioner of Income Tax,](#) has held the disclaimer could operate only if there was profit u/s 80HHC(1) of the Act, which refers only to positive figure of profit and excludes loss. This matter was taken to the Supreme Court, and the Supreme Court in its judgment in [IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai,](#) has chosen to disapprove [Commissioner of Income Tax Vs. Shirke Construction Equipments Ltd.,](#) and also overruled Commissioner of Income Tax v. Smt. T.C. Usha (2004) 226 ITR 497. The Supreme Court affirmed the decision of Bombay High Court in [IPCA Laboratories Ltd. Vs. Deputy Commissioner of Income Tax,](#).

7. In the light of subsequent judgment of the Supreme Court, in our view, Revenue is right in contending that the relief u/s 80HHC of the Act is available only in the event of no loss in export business. We therefore have no hesitation in answering the questions of law in favour of the Revenue.

8. In the result, appeal is accepted. Questions of law are answered in favour of the Revenue. Ordered accordingly. No costs.