

(2004) 08 KL CK 0056

High Court Of Kerala

Case No: IT Ref. No. 112 of 1998

Commissioner of Income Tax

APPELLANT

Vs

A.M. Moosa, Bharath Sea Foods

RESPONDENT

Date of Decision: Aug. 2, 2004**Acts Referred:**

- Income Tax Act, 1961 - Section 253, 28, 80HHC, 80HHC(3)

Citation: (2004) 191 CTR 441 : (2005) 272 ITR 29 : (2004) 141 TAXMAN 49**Hon'ble Judges:** S. Sankarasubban, J; A.K. Basheer, J**Bench:** Division Bench**Advocate:** P.K.R. Menon and George K. George, for the Appellant; C. Kochunny Nair and Dale P. Kurien, for the Respondent

Judgement

S. Sankarasubban, J.

This reference arises from a reference made by the Tribunal, Cochin Bench. Reference is at the instance of the Revenue. Questions of law that arise in this case are regarding the interpretation to be given to some of the provisions in Section 80HHC of the IT Act (hereinafter referred to as "the Act"). The questions of law are as follows :

"(1) Whether, on the facts and circumstances of the case, the Tribunal was justified in entertaining the additional ground raised by the assessee on an issue which had not been disputed earlier before the AO or the first appellate authority ?

(2) Whether, on the facts and circumstances of the case, the Tribunal is right in law in holding that the payment received from the export houses under the agreements could. not partake the nature of receipt towards "charges" mentioned in Clause (baa) of Explanation to Section 80HHC ?

(3) Whether, on the facts and in the circumstances of the case, and on an interpretation of Section 80HHC(3) would the assessee be entitled to the deduction

in an amount equal to 90 per cent of the sums referred to in Clause (iiia) (not being profits on sale of a licence acquired from any other person) and Clause (iiib) and Clause (iiic) of Section 28, the same proportion as the export turnover bears to the total turnover to the business carried on by the assessee ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal is right in its interpretation of the terra "profits of business" ?

(5) Whether, on the facts and in the circumstances of the case, the assessee is entitled to the benefit of Section 80HHC of the IT Act ?"

Section 80HHC of the Act itself begins by saying deduction in respect of profits retained for export business. Section 80HHC says as follows :

"(1) Where an assessee, being an Indian company or a person other than a company resident in India, is engaged in the business of export out of India of 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, a deduction of the profits derived by the assessee from the export of such goods or merchandise".

Thus, Section 80HHC of the Act gives some advantage to persons, who are in the export field. Sub-section (3) of Section 80HHC of the Act gives an indication as to how to compute the income. Sub-sections (3)(a), (b) and (c) of Section 80HHC of the Act (only relevant portion) states as follows :

(a) Where the export out of India is of goods or merchandise manufactured by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) Where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;

(c) Where the export out of India is of goods or merchandise manufactured by the assessee and of trading goods, the profits derived from such export shall:

(i) in respect of the goods or merchandise manufactured by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee; and

(ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods :"

There is a proviso to Sub-section (3) of Section 80HHC of the Act which says that the profits computed under Clause (a) or Clause (b) or Clause (c) of this sub-section shall be further increased by the amount which bears to ninety per cent of any sum referred to in Clause (iiia) (not being profits on sale of a licence acquired from any other person), and Clauses (iiib) and (iiic) of Section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee. Actually what happened in this case is that there was no profit, The assessee suffered a loss with respect to Sub-section (3)(a), (b) and (c). The assessee wants to interpret the word "profit" under Sub-section (3) of Section 80HHC of the Act as to include even a loss. It was further submitted that even if there was a loss under Sub-section (3)(a), (b) and (c), the proviso clearly says that the profits shall be further increased by the amount which bears to ninety per cent of any sum referred to in Clause (iiia) (not being profits on sale of a licence acquired from any other person) and Clauses (iiib) and (iiic) of Section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee. The AO held that since there was no profit, the assessee is not entitled to the benefit of the proviso.

2. The matter was taken in appeal before the CIT(A) and the order passed by him is produced as Annex. B. It held that there was no profit under Sub-section (3) (a), (b) or (c). Then it went on to consider whether the proviso will help the assessee. It refers to the argument made by the learned counsel for the assessee that if the profit derived from export under Clauses (a), (b) and (c) of Sub-section (3) of Section 80HHC of the Act is a negative figure, it shall be ignored and the positive figure computed under the proviso has to be allowed as a deduction. According to the CIT(A), the view taken by the AO was correct. It held that since there was no profit, the assessee is not entitled to any benefit u/s 80HHC of the Act.

3. The matter was taken before the Tribunal. The order of the Tribunal says thus : "In our considered view, as the exercise is only to quantify the "profits of the business" in terms of the definition given, one is not empowered to arrive at a loss in such an exercise. If loss is confronted with as a result of the exercise, the same should be ignored and should not merit consideration. In the light of the discussions, we hold that the assessee did not have the statutory "profit of business" as defined in the Explanation and, therefore, in terms of the main provisions of Sub-section (3) he is not entitled to the deduction of such profit (which is nil) there being no profits. The learned chartered accountant concedes this point before us. However, he urges that the assessee would be entitled to the deduction of an amount as provided for in the proviso to Sub-section (3)". The Tribunal says that in the facts and circumstances of the case, the word "profit" will include loss also and so, it held that the benefit of the proviso will be accrued to the assessee. In the above view of the matter, the Tribunal held that the assessee is entitled to the benefit of the proviso taking the profit as loss. It is this judgment that is agitated before us.

4. In the nature of the facts in this case, our duty is only to find out what should be the meaning given to the word "profit" in the proviso. Of course, arguments were made by the assessee stating that the provisions of the IT Act have to be liberally construed, especially, in this case when boost is given to the exporters. According to us, the interpretation given by the Tribunal is not correct. When there is no difficulty in understanding the word used in the statute, it is not necessary to go and find out what is the nature of the provisions. According to us, the word "profit" has to be given its natural meaning.

5. We are of the view that, as a matter of fact, the interpretation given by the CIT(A) is correct. The profit mentioned in the proviso is clearly a profit and not loss.

6. So far as the first question of law is concerned, it cannot be said that the Tribunal cannot raise additional issue since it is a pure question of law. Question Nos. 2 and 3 deal with the same thing and we are of the view that the interpretation give by the Tribunal is not correct. They are answered in favour of the Department and against the assessee.

IT Reference is disposed of as above.