

**(1970) 12 AP CK 0009**

**Andhra Pradesh High Court**

**Case No:** Case Referred No. 39 of 1968

Commissioner of Income Tax

APPELLANT

Vs

K.S. Subbaiah Pillai and Co. P.  
Ltd.

RESPONDENT

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**Date of Decision:** Dec. 3, 1970

**Acts Referred:**

- Finance (No. 2) Act, 1962 - Section 2(5)
- Income Tax Act, 1961 - Section 154

**Citation:** (1972) 85 ITR 71

**Hon'ble Judges:** Sriramulu, J; Kondaiah, J

**Bench:** Division Bench

**Advocate:** P. Rama Rao, for the Appellant; K. Venkataramiah, for the Respondent

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**Judgement**

Kondaiah, J.

This is a reference by the Income Tax Appellate Tribunal, Hyderabad Bench, u/s 256(1) of the Income Tax Act, 1961 (hereinafter called "the Act").

2. For a proper appreciation of the scope of the reference, it is necessary to refer to the material facts : For the assessment year 1962-63, the assessee, a private limited company, engaged, inter alia, in the export of tobacco, preferred an application u/s 154 of the Act claiming rebate on the turnover of Rs. 10,71,382 pertaining to exports to foreign countries and the commission transactions to the tune of Rs. 25.96 lakhs handled by it on commission basis. The Income Tax Officer granted rebate only on the export turnover of Rs. 7,99,640 out of Rs. 10,71,382. The rebate was refused in respect of the balance turnover of Rs. 2,71,742 on the ground that it relates to a sale to U.P.C.C. Ltd., Calcutta, an intermediary. The commission sales were held to be not eligible for rebate as the assessee was not the owner of goods ultimately exported out of India. The appeal by the assessee to the Appellate Assistant Commissioner was without success. The Appellate Tribunal, on a consideration of the

correspondence exchanged between the assessee and Macmillan, Maxwell & Co. (the assessee's constituents and reputed tobacco dealers and agents in London), found that the assessee was in substance the dealer who really exported the tobacco in respect of Rs. 2,71,742 through the intermediary, U.P.C.C. Ltd., Calcutta, as the assessee was controlling the entire export to France and was responsible for the quality and the intermediary only acted as a conduit pipe through which the transactions were routed, and allowed the rebate in respect of that turnover. On the same logic, the Tribunal held that the assessee was entitled for rebate in respect of commission transactions amounting to Rs. 25.96 lakhs and allowed the appeal. At the instance of the Commissioner of Income Tax, the Tribunal has stated a case for the opinion of this court on the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee-company was eligible for rebate in respect of commission transactions of Rs. 25.96 lakhs by virtue of the provisions contained in Section 2(5) of the Finance Act, 1962 ?"

3. It is contended by Sri P. Rama Rao, the learned counsel for the revenue, that the Tribunal has erred in allowing rebate to the assessee in respect of commission transactions of Rs. 25.96 lakhs as the provisions of Section 2(5) of the Finance (No. 2) Act, 1962, do not entitle the assessee for such rebate. This contention of the department is resisted by Sri Venkataramana Reddy, appearing for the assessee, contending, inter alia, that the source for the commission earned by his client being the export of tobacco, the Tribunal has rightly granted the rebate.

4. In order to appreciate the rival contentions, it is profitable to read Section 2(5)(i) of the Finance (No. 2) Act, 1962 :

"An assessee being an Indian company or any other company which has made the prescribed arrangements for the declaration and payment of dividends within India or an assessee other than a company, whose total income includes any profits and gains derived from the export of any goods or merchandise out of India, shall be entitled to a deduction, from the amount of Income Tax and super-tax with which he is chargeable for the assessment year commencing on the 1st day of April, 1962, of an amount equal to the Income Tax and super-tax calculated respectively at one-tenth of the average rate of Income Tax and of the average rate of super-tax on the amount of such profits and gains included in the total income. "

5. The very object and intendment of the section was to encourage export trade so as to earn foreign exchange which is really in public and national interest. In other words, with a view to give a kind of fillip or incentive to the merchants who indulge in export trade, this concession of rebate relating to the profits and gains derived from the export of any goods or merchandise out of India has been provided by the sovereign Parliament. The persons who are entitled for such rebate are of two kinds, i.e., companies and other assesseees. The companies must be Indian companies or

companies which have made the prescribed arrangements for the declaration and payment of dividend within India, but not others. The requisite qualification for earning this rebate is that the total income must include any profits and gains earned by the assessee or the company, as the case may be, from the export of any goods or merchandise out of India. The rebate is permissible only to the profits and gains derived by the assessee or the company, as the case may be, from the export of any goods or merchandise out of India. The income of an assessee or a company not derived from the export of any goods or merchandise outside India does not earn any rebate u/s 2(5).

6. The answer to the question turns upon the interpretation of the words "whose total income includes any profits and gains derived from the export of any goods or merchandise out of India" used in Section 2(5)(i) of the Finance (No. 2) Act, 1962. The crucial words are "derived from the export of any goods or merchandise out of India". We shall first proceed to examine the meaning of the expression "from the export of goods or merchandise out of India" and thereafter "derived". The meaning of the word "from" as given in *Corpus Juris Secundum*, volume 37, page 1383, is as follows :

"The word has no certain literal or legal meaning that can be accepted as a guide under all circumstances, but receives its shades of meaning from the subject-matter and the context. In its most common applications, it has been said that the word always implies a starting point whether it be of time, place, or condition, and, when used to mark a future event or time, that it does not import contingency, but merely denotes the commencement of a period."

7. The word "from" in the expression "derived from the export" used in Section 2(5) must be construed as referring to the starting point of time or condition to earn profit. In the present case, the profits or gains derived or earned, in order to qualify for the rebate, must have its source from the export of goods outside India. Unless and until the profits are earned by the activity of exporting goods out of India either directly or through an intermediary, the assessee cannot invoke this provision for rebate.

8. The expression used being "derived from the export of any goods or merchandise out of India", the language does not support the plea of the assessee. If really what the assessee contends for is given effect to, it would amount to importing something into Section 2(5) which is not there. We cannot read "derived from the export of goods or merchandise out of India" as derived in respect of or on account of export of goods or merchandise out of India. If really what the assessee canvasses for was the intendment of the legislature, the wording of Section 2(5) would have been different from what it is. As Section 2(5) with which we are concerned provides for rebate which is a kind of concession relating to the taxability of the profits derived by an assessee or a company from export of goods or merchandise out of India, we have to construe the provision strictly so as to take in

only such profits and gains derived by an assessee or a company from the export of goods out of India. All other persons who have either directly or indirectly helped or earned profits in respect of goods which ultimately were exported out of India, are not persons who are entitled for the rebate under this provision. Therefore, we are of the view that the Words "profits and gains derived from the export of any goods or merchandise out of India" must be construed as profits earned or received by an assessee by transporting goods or merchandise out of India. In other words, the profit earned by the exporter is from the foreign buyer who pays for the goods.

9. In the light of the aforesaid discussion, we shall proceed to examine the facts of the present case. Admittedly, the assessee has exported tobacco worth Rs. 7,99,640 directly. It has also exported tobacco to Britain, out of India, of the value of Rs. 2,71,742 through an intermediary, viz., U.P.C.C, Ltd., Calcutta. Hence, in so far as the aforesaid turnover of Rs. 10,71,382 is concerned, the assessee had either directly or through an intermediary exported tobacco out of India and derived profit from such export. Therefore, the assessee is entitled to have rebate u/s 2(5) of the Finance (No. 2) Act of 1962 in so far as the profits and gains derived from the export of tobacco of the value of Rs. 10,71,382 outside the country is concerned.

10. However, the question now for decision is whether the assessee is also entitled for a similar relief in so far as the profits derived by it on commission sales to the tune of Rs. 25.96 lakhs is concerned. True, as contended by the assessee, the goods in respect of whose transactions the assessee earned commission were ultimately exported out of India; but admittedly it was not the assessee who exported those goods but some others who really are entitled for the rebate u/s 2(5) in respect of any profits derived by them from the export of these goods. The Tribunal is not justified in law in thinking that the profits earned by the assessee on commission sales in respect of goods worth Rs. 25.96 lakhs are similar to the gains made by it in exporting the tobacco worth Rs. 2,71,742 through U.P.C.C. Ltd., the intermediary. The nature of the two transactions in both is not one and the same. In one case, the assessee was in substance the dealer who really exported the tobacco through the intermediary as it was, in fact, the assessee who controlled the export to France and was responsible for the quality, and the intermediary acted only as a conduit pipe through which the transactions were routed. In the case of commission sales, it cannot be said that the assessee was an exporter either directly or indirectly. The assessee has nothing to do with the export of the goods worth Rs. 25.96 lakhs outside India on which it earned commission. The assessee, therefore, cannot be called an exporter of those goods. Nor can it be said that the assessee has earned profit from the export of tobacco out of India. As pointed out earlier, the assessee has only supplied tobacco on commission basis to third parties who ultimately exported the goods out of India. The profit derived by the assessee on those transactions can, under no circumstances, be said to have been earned by exporting tobacco out of India. It has in fact supplied tobacco to the dealers within India and the transaction was only within the State. They are only local buyers and no foreign

buyer has paid to the assessee either the sale price or the commission in question. In the instant case, the commission earned by the assessee on these transactions by supplying tobacco to the exporter within India cannot be said to be profit derived from export of the goods or merchandise out of India in order to attract the provisions of Section 2(5). In the circumstances, we are unable to agree with the contention of the assessee's counsel that the assessee had derived the profit on these transactions from the export of goods outside India which, according to him, is the source. We have, therefore, no hesitation to hold that the transactions, in so far as the assessee is concerned, are only commission sales which have no concern or connection with the export.

11. We may also approach the problem from another angle. The assessee who is only a commission agent is not concerned with the profit or loss of the exporter in respect of the goods supplied by him on commission. The assessee is certainly entitled to his commission irrespective of the fact whether the exporter earns profit or incurs a loss by exporting the goods supplied by the supplier outside India. It is the exporter that will ultimately reap the result or consequences of the export of the goods out of India but not the commission agent. The exporter may directly purchase the goods for export and export the same in which case the commission agent will be nowhere in the picture. It is not necessary that there should be commission agents for the purpose of export trade. The exporter may purchase either directly or through the commission agents for the purpose of exporting the goods out of India. If really what the assessee contends for is acceded to it would amount to giving rebate not only to the exporter but also to those persons who have some connection or other with the goods ultimately exported out of India and earned profit out of such transactions. The assessee is admittedly not the owner of the goods, nor have they been exported out of India through it. The right to earn commission has accrued to the assessee on commission sales made within the country irrespective of the goods being exported or not out of India. The assessee is entitled to have the commission for the supply of goods to the exporter even if ultimately the goods are not exported out of India for some reason or other. The section does not contemplate the granting of rebate to the persons responsible for the export of goods belonging to others. We are, therefore, unable to agree with the Tribunal that there is nothing inconsistent in granting rebate to the exporter as well as the commission agent who earned profits as both of them are Indian assesseees, one in the form of a commission agent and the other by way of profits. The view of the Tribunal that the commission earned by the assessee on commission transaction is a profit derived from the export of goods, as the assessee with its extensive contracts was responsible for the export, is erroneous and illegal. Hence, we are clear in our minds that the Tribunal has committed an error in applying the principle relating to the export of tobacco by the assessee either directly or through an intermediary out of India to the present case where the assessee has earned only, as a commission agent, certain profit in respect of the transactions relating to

tobacco which ultimately was exported by some others outside India.

12. For all these reasons, we must answer the question in the negative. The assessee shall pay the costs of the Commissioner. Counsel's fee is fixed at Rs. 250.