

(2004) 12 CAL CK 0005

Calcutta High Court

Case No: IT Appeal No. 162 of 2000 14 December 2004

Commissioner of Income Tax

APPELLANT

Vs

H.M. Exports Ltd.

RESPONDENT

Date of Decision: Dec. 14, 2004**Acts Referred:**

- Income Tax Act, 1961 - Section 80HHC

Citation: (2005) 144 TAXMAN 557**Hon'ble Judges:** Sankar Prasad Mitra, J; D.K. Seth, J**Bench:** Full Bench**Advocate:** M.P. Agarwal and S.N. Dutta and R.N. Bajoria and J.P. Khaitan,, for the appearing parties;

Judgement

@JUDGMENTTAG-ORDER

DK. Seth, J.

This appeal was admitted on the ground "whether on the facts and circumstances of the case, the I.T.A.T. was correct in upholding the order of the CIT(A) directing the assessing officer to exclude the freight, insurance etc. beyond the customs point from the amount of "direct costs" while computing the deduction u/s 80HHC?"

2. In relation to this question, Mr. Agarwal pointed out to the definition of ,export turnover" and "total turnover" in clauses (b) and (ba) of the explanation at the end of section 80HHC and submitted that the concept of "total turn over" cannot be applied while finding out the profits derived from export under sub-section (3), clause (b) of section 80HHC. The concept of total turnover is applicable only to clause (a) of sub-section (3) of section 80HHC. Therefore, the freight and insurance attributable to the transport of the goods or merchandise beyond the customs station cannot be excluded from the direct costs, while arriving at the figure of profits derived from export under sub-section(3) clause (b) of section 80HHC.

3. On the other hand, Mr. Bajoria ably assisted by Mr. Khaitan submitted that the concept of "total turnover" is not relevant for the purpose of clause (b) of sub-section (3) of section 80HHC. The concept of "export turnover" as defined in clause (b) of the explanation at the end of the section would be relevant for the purpose. Therefore, according to them, the export turnover is to be reduced by direct and indirect costs attributable to such export after arriving at the figure of the export turnover. In order to arrive at the export turnover, the freight and insurance attributable to the transport of the goods or merchandise beyond the customs stations is to be excluded. Once it is excluded, it cannot be excluded once again or twice over from direct cost since it does not form part of the direct cost. Mr. Khaitan had relied upon the decision in [Commissioner of Income Tax Vs. Sudarshan Chemicals Industries Ltd., Rathi Engineering Works and Klockner Windsor \(I\) Ltd., and CIT v. Chloride India Ltd. \(2002\) 256 ITR 6251](#) in support of the contention.

4. In reply, Mr. Agarwal. pointed out that section 80HHC has undergone certain changes after 1991, which are relevant for the purpose of interpreting the amended provisions incorporating the definitions relied upon by Mr. Bajoria.

5. After having heard the learned counsel for the parties, in our view, the question, which was not directly involved either in the Bombay decision or the Calcutta decision, cited above, can be answered on the same analogy or reasoning given in the said two decisions. That apart the provisions of section 80HHC as was applicable for the assessment year 1993-94 are clear and unambiguous and needs no assistance of any decision. The concept of "total turnover" as rightly contended by Mr. Agarwal cannot be brought about for the purpose of arriving at the export turnover in terms of sub-section (3) clause (b) of section 80HHC.

6. The two definitions-"export turnover" and "total turnover" have been defined to clarify the position in arriving at the profits derived from export in relation to the export turnover and the total turnover as the case may be on the explicit purpose and intention so as to remove the confusion. If freight and insurance attributable to the transport of goods or merchandise beyond the custom point is excludable, it cannot be included in the total turnover. In any case when total turnover is calculated, freight and insurance attributable after the customs point is to be excluded. Similarly, when export turnover is calculated, the freight and insurance attributable after the custom points are to be excluded. In relation to sub-section (3) clause (b), we are not concerned with total turnover. We are concerned with the export turnover, in order to arrive at the figure whereof the freight and insurance attributable after the customs point is excludible and does not form part of the direct costs or indirect costs attributable to such export.

7. The provision is clear if read together. In order to arrive at the profit out of the export, the export turnover is to be reduced by direct costs and indirect costs. Since freight and insurance is not part of the direct and indirect costs, the same cannot be excluded for arriving at the export turnover, as was rightly done by the learned

Tribunal though the expression might be slightly ambiguous.

8. The assessing officer shall assess in terms of the direction by the ITAT in the light of the observation made in this judgment by excluding the freight and insurance after the customs point in order to arrive at the export turnover and then for the purpose of arriving at the profit for export, the export turnover is to be reduced by direct and indirect costs attributable to such export which does not include freight and insurance after customs point once excluded for arriving at export turnover.

9. With these observations the point raised is answered in the affirmative in favour of the assessee.