

(2012) 05 CAL CK 0022

Calcutta High Court

Case No: Income Tax A. No. 253 of 2003

Berger Paints India Limited

APPELLANT

Vs

Commissioner of Income Tax,
Kolkata-IV, and Another

RESPONDENT

Date of Decision: May 17, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 2(24)(x), 36(1)(va), 43B, 80HHC, 80O

Citation: (2012) 4 CALLT 198

Hon'ble Judges: Kalyan Jyoti Sengupta, J; Joymalya Bagchi, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

K.J. Sengupta, J.

The above appeal was admitted by an order dated 1st January, 2003 on the following substantial questions of law:

(i) Whether on a proper interpretation of section 80-O of the I.T. Act the Tribunal was justified in confirming the action of the Assessing Officer in restricting the deduction under the said provision to Rs. 12,59,063/- by deducting foreign travel expenses of Rs. 4,22,000/- from the net amount of Rs. 29,40,126/- received by the appellant/petitioner in convertible foreign exchange in India towards fees for Management Services rendered by the appellant/petitioner outside India?

(ii) Whether on the facts and in the circumstances of the case and on a correct interpretation of the relevant provisions of the I.T. Act read with the Companies Act, 1956 and the principles of law laid down by the Hon'ble Supreme Court of India in the case of Chainrup Sampatram-versus-Commissioner of Income Tax as also the other decisions of the Hon'ble Supreme Court of India and of the Hon'ble Gujarat High Court the Tribunal was justified in confirming the action of the Assessing Officer in disallowing the claim for deduction of Central Excise Duty and Customs

Duty amounting to Rs. 26,31,619/- being the difference between the levies of aforesaid nature pertaining to closing stock of Rs. 8,19,83,897/- and the opening stock of Rs. 7,93,52,278/- of finished goods, work-in-progress and raw materials which was actually paid within the relevant previous year?

(iii) Whether on a correct interpretation of the relevant provisions of law and the principles of law laid down by the Hon''ble Supreme Court of India the Tribunal was justified in confirming the action of the Revenue Authorities in disallowing the claim of deduction of Central Excise Duty and Customs Duty pertaining to closing stock which amount has been debited to Profit & Loss Account and also credited to the Profit & Loss Account in the shape of valuation of closing stock and which amount has actually been paid during the relevant previous year by relying upon the decision of this Hon''ble Court in the case of the appellant/petitioner in ITR 498?

(iv) Whether on a proper interpretation of the provisions of section 43-B read with sections 36(1)(va) and 2(24)(x) of the I.T. Act and the object and/or purpose for which section 43-B has been inserted in the I.T. Act and the principles of law laid down by this Hon''ble Court the Tribunal was justified in upholding the disallowance of contributions of Rs. 1,54,572/- being the employees' share and employer's share to the Family Pension Fund on the ground of delay in depositing the said contribution for the months of April and July, 1995?

The aforesaid appeal was admitted for hearing impugning judgment and order of the learned Income Tax Appellate Tribunal. "D" Bench, Kolkata in relation to assessment year 1996-97 in I.T.A. 674 (Cal) of 2000. By the impugned judgment and order learned Tribunal partly granted reliefs to the appellant and rejected partly.

2. The short fact is required to be stated to appreciate this case accordingly the same is as follows:-

The appellant had and still has been carrying on business of manufacturing and sale of paints, varnishes and enamels and heavy duty coatings, powder coatings and so on. In course of the carrying on of the said business the petitioner also exports its products outside India and received in convertible foreign exchange in India towards fees for management services rendered outside India.

3. For carrying on business the appellant had to import raw materials from outside India on which the appellant pays Customs Duty. The goods which have been manufactured by the appellant is also exigible to Excise Duty on which the appellant has to pay the same under the Central Excise Act, 1944 at the time of removal of the goods from its factory. As the method of accounting of the appellant is mercantile it prepares profit and loss account showing liability to pay Customs and Central Excise, Duty as and when liability to pay accrues. In valuing the closing stock in respect of raw material, work in progress, and finished goods remaining unsold on which the appellant has paid Customs Duty and/ or the Central Excise Duty the appellant included these two duties with the value relatable to such stock. The appellant

credits the profit and loss accounts with value of the said unsold stock inclusive of the said two duties.

4. For the assessment years 1996-97 relevant previous years being the financial year 1995-96 the appellant duly filed returns claiming amongst other deduction u/s 80-O of the I.T. Act on the grounds that the appellant received in convertible foreign exchange in India towards fees for management service rendered outside India. The appellant also claimed amongst other deduction of Central Excise Duty and Customs Duty amounting to Rs. 26,31,619/- being the difference between the levy of Customs Duty and Central Excise Duty on closing stock and opening stock of finished goods, remaining unsold, work in progress and raw materials. The appellant also claimed deduction u/s 43-B of the Act for contributions made to the Family Pension Fund.

5. In his assessment order dated 23rd February, 1999 the Assessing Officer disallowed amongst others claim u/s 80-O of the I.T. Act on the gross amount of convertible foreign exchange received by the appellant in India towards fees for management services rendered outside India by reducing therefrom the amount of Rs. 4,22,000/- being the expenditure incurred in India for the purpose of foreign travel, and the sum of Rs. 26,31,619/- on account of Central Excise Duty and Customs Duty in respect of closing stock, finished goods remaining unsold, work in progress and raw materials which the appellant had actually paid during the previous year as also a sum of Rs. 77,286/- being the employees' contribution and another sum of Rs. 77,286/- being the employer's contribution to the Family Pension Fund on the ground of alleged delay in depositing the same u/s 43B of the I.T. Act read with sections 2(24)(x) and 36(1)(va) thereof. Thereafter the matter was taken to the Commissioner of Income Tax (Appeals). The Commissioner of the Income Tax (Appeals) granted part relief however sustained the disallowance u/s 80-O of the I.T. Act and disallowance on account of Customs Duty and Central Excise Duty relatable to closing stock of raw materials, work in progress and finished goods amounting to Rs. 26,31,619/- as also sum of Rs. 77,286/- and sum of Rs. 77,286/- being the contributions to the Family Pension Fund u/s 43B of the Act.

6. Not being satisfied with the order of the Commissioner of Income Tax (Appeals) the appellant approached the learned Tribunal. By the impugned judgment and order the learned Tribunal upheld disallowance made in respect of deduction u/s 80-O of the I.T. Act and the same was allowed. The learned Tribunal also upheld disallowance of the aforesaid sum of Rs. 26,31,619/- being the amount of Central Excise Duty and Customs Duty relatable to closing stock of raw materials, work in progress and finished goods which was actually paid by the petitioners during relevant previous year and claim deductible as per the provisions of section 43B of the I.T. Act on the ground and the same was also covered by the decision.

7. We have gone through the impugned judgment and order of the learned Tribunal and it appears that learned Tribunal while rendering decision has recorded as follows:-

Sri Kausik Mukerjee, appearing on behalf of the assessee, has admitted, in all fairness, that grounds No. 1 and 2 have been decided against the assessee by relying upon the decision of the Calcutta High Court.

8. The first ground taken before the learned Tribunal is relatable to restricted amount of deduction of Rs. 12,59,063/- out of Rs. 29,40,000/- received by the appellant in convertible foreign exchange in India u/s 80-O of the Act. The second ground relates to the disallowance of the appellant's claim for deduction of Excise Duty and Customs Duty on payment basis u/s 43B amounting to Rs. 26,31,619/- being the difference between the levies as above pertaining to closing stock of Rs. 8,19,83,897/- and opening stock of Rs. 7,93,52,278/- of finished goods, work in progress on raw materials.

9. Ground No. 4 relates to the deduction of the Customs and Excise Duty, on stock of raw materials and finished goods lying in bond, which was actually paid before filing of return. This plea raised on the point was accepted and relief was granted following the decision in case of the same assessee in Appeal Nos. 727 and 1707 (Cal) of 2000 in earlier years. As per as the points relatable to delay in depositing of Family Pension Fund is concerned it was decided against the appellant following the decision of Delhi Tribunal reported in 81 ITD.

10. The ground No. 6 before the learned Tribunal related to inclusion of a sum of Rs. 37,67,32,378/- representing the Excise Duty within the ambit of "total turnover" in the ratio of export turnover to total turnover for the purpose of computation of deduction u/s 80HHC. This issue was decided against the assessee following the decision of this Court in case of [Commissioner of Income Tax Vs. Chloride India Ltd. \(now Chloride Industries Ltd.\)](#), of ."

11. Dr. Pal, learned Senior Counsel, in spite of aforesaid recording of the learned Tribunal, urges that the decision by the learned Tribunal in earlier case has already been taken to the Supreme Court and the matter is pending before the Hon'ble Supreme Court. Moreover, the other decisions relied on by the learned Tribunal in relation to the aforesaid issues should not be accepted by this Court as his client is contemplating to take action against such decision. He contends that in the meantime there has been a change in legislation and this Court should take into consideration of the same.

12. We are of the view when the issues in relation to deduction u/s 80-O on account of the fees for management services received outside India and the deduction of Excise Duty and Customs Duty on payment basis u/s 43B, were not pressed before the learned Tribunal by the learned counsel for the assessee rather conceded to accept the decision of CIT (Appeals), we think that this Court cannot reopen the issue. Mere pendency of the appeal in connection with computation of deduction u/s 80HHC before the Supreme Court cannot be a ground for taking different decision by this Court to accept the contention of Dr. Pal. This Court at the most if

not agreeable to the decision of the earlier Division Bench, could refer the matter to the Larger Bench on the same issue. It would not be prudent for this Court to do so even if we were to take decision differently from the earlier one as the matter is subjudice before the Hon"ble Supreme Court which is the final Arbitrar in this matter. Therefore we are not expressing any opinion on this issue at all nor we are expressing any opinion in the case of [Commissioner of Income Tax Vs. Chloride India Ltd. \(now Chloride Industries Ltd.\)](#), of as said decision has not been challenged and we do not find any reason to differ with the same. We, therefore, dismiss this appeal without granting any relief.

Joymalya Bagchi, J.

I agree.