(2014) 02 CAL CK 0114

Calcutta High Court

Case No: ITA No. 356 of 2003

Flender Limited		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Feb. 20, 2014

Hon'ble Judges: Sudip Ahluwalia, J; G.C. Gupta, J

Bench: Division Bench

Advocate: R.N. Bajoria, Senior Advocate, N. Banerjee (Pal) and A. Gupta, Advocate for the Appellant; P.K. Bhowmick, Advocate for the Respondent

Judgement

1. The appeal is directed against a judgment and order dated 29th August, 2003 passed by the learned Tribunal rejecting the contentions of the assessee. The assessee has come up in appeal. As regards the business activities of the assessee, the Assessing Officer in his assessment order has found as follows:

The assessee company is engaged in manufacturing of gear boxes coupling and standard accessory in their factory at Calcutta. Most of the assessee''s customers are industries like Cement, Papers, Power House, Railways, Mining etc. The assessee has also got a software business called Computer Aided Design Software at Chennai. This was established as a separate line of activity in Chennai to export 100% of its product.

In computing the income of the assessee, the Assessing Officer computed the income arising out of the business in respect of gear box etc under the heading "A" and in respect of the software business under the heading "B". In other words, these two different activities were differently treated even in the assessment order. The CIT (A) proceeded on the basis that "obviously there is no absolute clarity in the language of the Section, otherwise all this debate about the interpretation of the term "total turnover of the business" would not have arisen at all. There is, however, no material difference between the language of Section 80HHC(3) and that of Section 80HHE(3)."

The CIT(A) concluded that "there is hardly any scope to argue that the total turnover for the purpose of computation of eligible profit under sub Section (3) of Section 80HHE will only be the turnover in respect of the business of computer software and the turnover in respect of the business of gear boxes, couplings and spares is to be disregarded."

2. The learned Tribunal, agreeing with the views expressed by the CIT (A) and relying on the judgment in the case of Commissioner of Income Tax Vs. Parry Agro Industries Ltd. (formerly CWS (India) Ltd.), upheld the views of the CIT(A) and added that in arriving at the admissible deduction u/s 80HHE the Assessing Officer has also to take into account the negative profit arising out of the business of gear box. The questions in the circumstance, which arise for determination, are as follows:

[a] Whether there is any material difference between Section 80HHC(3) and Section 80HHE(3)?

[b] Whether the turnover and profit or loss arising out of the business of gear box etc. is to be taken into account for the purpose of determining admissible deduction u/s 80HHE(1)?

3. In so far as the first question is concerned, it was pointed out by Mr. Bajoria, learned Senior Advocate appearing for the appellant, that Section 80HHC contemplates a case where the assessee is engaged "in the business of export out of India of any goods or merchandise except" "minerals and mineral oil", whereas Section 80HHE contemplates a case where the assessee is engaged "in the business of export of computer software or in the business of providing technical services outside India."

4. Mr. Bajoria submitted that it is altogether erroneous to proceed on the basis that the sections operate in the same field or are intended to cover the same activity. Therefore, the ratio of the judgments arising out of any interpretation of Section 80HHC cannot be applied to any question arising out of Section 80HHE.

5. Mr. Bhowmick, learned advocate appearing for the Revenue, submitted that the decided cases appear to have proceeded in the line that the questions arising out of Section 80HHE are to be decided on the basis of the judgments rendered dealing with the problems arising out of Section 80HHC.

6. We have considered the respective submissions advanced by the learned advocates for the parties. We are of the opinion that the submissions made by Mr. Bajoria must be accepted in answering the first question formulated above. Section 80HHC is a provision intended to encourage export of any goods or merchandise except minerals and mineral oil. The aforesaid provision is general in nature. If there was no material difference between Sections 80HHC and 80HHE, there was no reason to legislate Section 80HHE because export of computer software in any event would have been covered by Section 80HHC. The fact that the legislature took pains

to specifically provide for computer related business separately, is a pointer to show that the provisions contained in Section 80HHE are specific and were carved out from the general category of export of goods appearing from 80HHC. There is, as such, no reason to treat them identically nor is it open, in our opinion, to hold that there is no material difference between the language of 80HHC(3) and that of Section 80HHE(3). There may not be any material difference between sub-Section 3 of each of the aforesaid sections but they certainly operate in different fields. The objects of operation of the aforesaid two sections are altogether different. Therefore, in deciding a question arising out of Section 80HHE, if the judgments rendered in the cases arising out of Section 80HHC are to be applied then a wrong result is bound to follow. We are, as such, of the opinion that the first question, formulated above, must be answered in the affirmative and in favour of the assessee.

7. In so far as the second question is concerned, Mr. Bajoria drew our attention to a judgment of the Delhi High Court in the case of C.I.T. vs. Padmini Technologies Ltd., reported in 33 taxmann.com 668 (Delhi)=254 CTR 611. The assessee, in the case before Delhi High Court, was running and managing two separate units. One of the units was engaged in the business of multimedia including exports thereof and the other unit was engaged in the manufacture of PET jars. The Delhi High Court held that the expression total turnover of the business would only mean that total turnover of the goods to which the section applies. In the aforesaid case, the claim was made for deduction u/s 80HHC. Therefore, this judgment is not an authority for the purpose of deciding the issue, which has arisen before us.

8. Sub-Section (1) of Section 80HHE, in so far as the same is material for our purpose, provides as follows:

Section 80HHE.

(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of,--

(i) export out of India of computer software or its transmission from India to a place outside India by any means;

(ii) providing technical services outside India in connection with the development or production of computer software,

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 to the extent of the profits, referred to in sub-section (1B),] derived by the assessee from such business:

Sub-Section (3) of Section 80HHE provides as follows:

(3) For the purposes of sub-section (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

9. From a combined reading of the aforesaid two sub-sections it can be said that the business referred to in sub-Section (3) is the business appearing from sub-Section (1). What did the legislature have in mind while using the word "business" has not been left unidentified. In sub-Section (1), the word "business" has itself been defined in clauses (i) and (ii) of sub-Section (1) quoted above. Therefore, the conclusion is bound to be that the turnover of business which can be taken into account is only the turnover of the computer software or in respect of providing technical service as the case may be. Any reference to Section 80HHC for the purpose of understanding the mechanism of sub-Section (3) of Section 80HHE is likely to lead to wrong conclusion. The legislature, in this case, was only concerned with respect to deductions allowable in respect of profits from export of computer software etc. which is also the title of the section and a pointer to show the intention of the legislature.

10. The object of providing the mechanism in sub-Section 3 for the purpose of computing the profits was to provide adequate safeguard to prevent jugglery or manipulation of the books of account. In a case where the exporter is also engaged in the same business in the domestic market, it may not be very difficult for him to manipulate the books of account in such a manner so that the entire or major part of the profit is shown to have arisen from the export business and on that basis he could inflate his claim for deduction u/s 80HHE. In order to stop any such attempt, the legislature has provided for a special mechanism for the purpose of assessing the profits from out of which deductions can be claimed. Deductions were obviously provided for in order to generate foreign exchange.

11. We are, as such, of the opinion that neither the turnover nor the profit nor loss arising out of the business activity relating to gear box had anything to do with the computation of the admissible deduction u/s 80HHE(3). Therefore, the second question, formulated above, is answered in the negative and in favour of the assessee.

12. The appeal is, thus, disposed of.