

(2014) 06 CAL CK 0086

Calcutta High Court

Case No: ITA 206/2000

C.I.T.W.B.

APPELLANT

Vs

Chloride Industries Ltd.

RESPONDENT

Date of Decision: June 9, 2014**Acts Referred:**

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

Hon'ble Judges: Sudip Ahluwalia, J; G.C. Gupta, J**Bench:** Division Bench**Advocate:** S.N. Dutta, Advocate for the Appellant; J.P. Khaitan, Senior Advocate, Advocate for the Respondent

Judgement

1. The appeal was admitted on 19th June, 2000. The following three questions were framed:

(a) Whether on the facts and in the circumstances of the case the finding of the I.T.A.T. was justified in deleting addition on account of incentive wages, undervaluation of closing stock, deduction u/s 80HHC of the income tax Act, 1961 as well as contribution to Staff Recreation Club?

(b) Assessment year 1988-89 whether on the facts and in the circumstances of the case the I.T.A.T. was justified in deleting addition on account of under valuation of closing stock "due to MODVAT"?

(c) Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the Haldia Export Factory owned by the assessee does not constitute a separate unit and directing the Assessing Officer to give the benefit u/s 80HHC by computing the deduction in accordance with Section 80HHC(3)(b) only instead of the method adopted by the Assessing Officer ?

2. There is consensus at the bar that the issue as regards incentive wages is covered by a judgment of this Court in the case of [Commissioner of Income Tax Vs.](#)

[Machinery Manufacturing Corporation Ltd.,](#) against the revenue.

3. The issue as regards undervaluation of the closing stock was decided in the case of [Commissioner of Income Tax Vs. Indo Nippon Chemicals Co. Ltd.,](#) against the revenue.

4. The question as regards allowability of the expenditure incurred in contributing the staff recreation is covered by the judgment in the case of [Assam Brook Ltd. Vs. Commissioner of Income Tax,](#) against the revenue.

5. Therefore, the only issue which survives is the third question indicated above.

6. Haldia unit may be a separate unit. It may also be true that there are separate books of accounts for that unit. The mere fact that there were separate books of accounts for the Haldia unit is not relevant for the purpose of deciding the question as to whether the deduction has to be worked out on the basis of Clause (b) of sub-Section 3 or Clause (a) of sub-Section 3 of Section 80HHC. According to us, the relevant question to ask is whether the assessee is engaged in a business which consists exclusively of export out of India of the goods or merchandise to which Section 80HHC applies. If this question is to be answered in the affirmative then there can be no escape from the conclusion that the amount of deduction has to be worked out as per Clause (a) of sub-Section 3 of Section 80HHC. In the event the question is to be answered in the negative then there can equally be no escape from the conclusion that the deduction has to be worked out on the basis of Clause (b) of sub-Section 3 of Section 80HHC.

7. The assessee before us is Chloride Industries Limited. It is not in dispute that the assessee before us is engaged in business which does not consist exclusively of export out of India of the goods or merchandise to which this section applies. On the contrary, the assessee admittedly is engaged in business consisting of sale of goods or merchandise to which this section applies both in the domestic market and abroad. Therefore, the deduction has to be worked out following the Clause (b) of sub-Section 3 of Section 80HHC. This is what was done by the CIT (appeal) and subsequently endorsed by the learned Tribunal. We are unable to find any reason to interfere. The question is, therefore, answered against the revenue.

8. The appeal is disposed of.