

(2002) 11 DEL CK 0132

Delhi High Court

Case No: IT Ref. No. 317 of 1984

Kamal Silk Emporium

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Nov. 14, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 35B

Citation: (2003) 180 CTR 65 : (2003) 179 CTR 65 : (2003) 264 ITR 520 : (2004) 136 TAXMAN 30

Hon'ble Judges: Sharda Aggarwal, J; D.K. Jain, J

Bench: Division Bench

Advocate: Non, for the Appellant; R.D. Jolly and Ajay Jha, for the Respondent

Judgement

D.K. Jain, J.

At the instance of the assessed, the Income Tax Appellate Tribunal, New Delhi (for short the Tribunal), has referred u/s 256(1) of the IT Act, 1961 (for short the Act), the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 61,873 on account of sale of goods to the foreign tourists in return of foreign exchange was eligible for weighted deduction u/s 35B of the IT Act, 1961?"

2. Briefly stated, the background facts leading to the present reference are that the assessed, an individual, carries on business of purchase and sale of silk articles. During the asst. yr. 1977-78, for which the relevant previous year ended 31st March, 1977, the assessed claimed before the ITO weighted deduction u/s 35B of the Act on the expenses amounting to Rs. 1,85,620, on the plea that these expenses were incurred on earning foreign exchange by selling goods to the foreign tourists. The ITO, however, found that in the case of the assessed there was no expenditure either on the sale of the goods outside India or promotion of such sales outside India and hence the question of deduction u/s 35B of the Act did not arise. He,

accordingly, rejected the claim made by the assessed under the said section.

3. Aggrieved, the assessed preferred appeal to the Appellate Assistant Commissioner of Income Tax (for short the AAC) but without any success. But matter was taken up in further appeal to the Tribunal. While dismissing assessed's appeal the Tribunal found that the expenditure incurred by assessed on sales made in India to the foreign tourists in foreign exchange is, not covered under any of the Sub-clauses (i) to (viii) of Section 35B(1)(iii) of the Act. Thus, the Tribunal finally held that the assessed was not entitled (sic-to) weighted deduction under the said section. On assessed's moving application u/s 256(1) of the Act, the aforesaid question has (sic-been) referred

4. No one appears for the assessed. We have accordingly Mr. R.D. Jolly, learned senior standing counsel for the Revenue.

5. The issue raised in the present reference is no longer *rest integra*. In Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., while observing that when claim for weighted deduction is made it is for the assessed to satisfy the ITO that the expenditure falls in one of the sub-clauses to Clause (b) of Section 35B(1), their Lordships of the Supreme Court held that the expenditure which qualifies for deduction u/s 35B(1)(b)(iii) will have to be the expenditure incurred outside India in connection with distribution, supply, or provision outside India of such goods, services or facilities.

6. In view of the said authoritative pronouncement and in the light of the facts found by the Tribunal, no deduction u/s 35B can be allowed to the assessed on the expenditure incurred by him in India on the sales effected in India, even against foreign exchange. We are fortified in our view by the decision of the apex Court in Commissioner of Income Tax Vs. Chika Ltd. . The question referred is, Therefore, answered in the negative i.e., in favor of the Revenue and against the assessed.

7. Since the assessed remains unrepresented, there will be no order as to costs.