

(1993) 04 BOM CK 0056

Bombay High Court

Case No: Income-tax Application No. 733 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Travel Corporation of India Ltd.

RESPONDENT

Date of Decision: April 7, 1993

Acts Referred:

- Income Tax Act, 1961 - Section 256(2), 35(1A), 35B, 80MM, 80MM(2)

Citation: (1994) 209 ITR 555 : (1993) 70 TAXMAN 421

Hon'ble Judges: Sujata V. Manohar, J; S.H. Kapadia, J

Bench: Division Bench

Advocate: F.V. Irani, G.S. Jetley, for the Appellant;

Judgement

Smt. Sujata Manohar J.

1. This is an application u/s 256(2) of the Income Tax Act, 1961, for a direction to the Income Tax Appellate Tribunal to state the case and raise and refer to this court the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessee is providing technical know-how as provided in section 80MM(2) of the Income Tax Act and, therefore, is entitled to weighted deduction u/s 35B of the Act ?"

2. The assessee, Messrs. Travel Corporation of India Limited, carries on the business of a travel agency. The assessee claimed weighted deduction in terms of the provisions of section 35B, as then in force respect of a sum of Rs. 47,33,229. The assessment year was 1979-80. This claim was made on the basis that the assessee was providing technical know-how to persons outside India. The Tribunal has allowed this claim.

3. Under the Explanation to section 35(1A) as then in force, the provision of technical know-how has the meaning assigned to it in sub-section (2) of section 80MM. u/s

80MM(2), the provision of technical know-how has been defined, inter alia, at clause (iv) as the imparting of any information concerning industrial, commercial or scientific knowledge, experience or skill. The Tribunal has found that the information which the assessee was imparting to its foreign clientele included drawing up the best possible itinerary at the lowest possible rates; suggesting and programming places of interest in India and also modes of travel available; acquainting the foreign tourists with weather conditions in different places of interest; advising them on boarding and lodging facilities available at such places, etc. The assessee was also providing facilities for holding conferences and workshops and it also conveyed to potential foreign tourists, information through pamphlets and publications. The Tribunal held that imparting of such information would fall under clause (iv) of section 80MM(2) because this would certainly be information concerning commercial expertise and skill. In view of these findings of fact, the Tribunal has further directed the Income Tax officer to examine the claim of the assessee and allow weighted deduction on eligible expenditure under the provisions of section 35B. Therefore, the Income Tax Officer is required to determine expenditure which would qualify u/s 35B and to grant weighted deduction accordingly.

4. In view of these direction given by the Tribunal, we need not go into the contention raised on behalf of the Department relating to whether the expenditure is incurred outside India or not or whether it falls under the other requirements of section 35B because these are yet to be examined. The question which is before us relates to whether the assessee is engaged in the business of providing technical know-how in the light of the definition of this term u/s 80MM(2). Looking to the findings of fact given by the Tribunal relating to the nature of activities carried on by the assessee, in our view, the Tribunal has rightly come to the conclusion that the assessee has carried on the business of imparting information concerning commercial knowledge, expertise or skill. In this view of the matter, we discharge the rule.