
Commissioner of Income Tax Vs Travel Corporation of India Ltd.

Income-tax Application No. 733 of 1991

Court: Bombay High Court

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.