Hindustan Petroleum Corporation Ltd. Vs Commissioner of Income Tax, Bombay City-I

Court: Bombay High Court

Date of Decision: April 21, 1982

Acts Referred: Finance Act, 1963 â€" Section 2(5)
Income Tax (Determination of Export Profits) Rules, 1962 â€" Rule 2(3)

Citation: (1982) 30 CTR 254 : (1983) 143 ITR 318 : (1982) 11 TAXMAN 79

Hon'ble Judges: Sujata V. Manohar, J; Kania, J

Bench: Division Bench

Judgement

Kania, J.
This is a reference under s. 256(1) of the I.T. Act, 1961 (referred to hereinafter as ""the said Act""). The assessment year with

which we are concerned is 1963-64, corresponding in the case of the assessee to the previous year ended December 31, 1962. The business of

the assessee consists of purchasing crude oil, processing it into petroleum products and selling the same both in the Indian markets and exporting

the same to other countries. During the year under consideration, the assessee had made export sales to the tune of Rs. 1,98,99,745 against its

total sales of Rs. 37,20,15,963. Certain rebate was granted in taxation in respect of profits and gains made on exports to which we shall presently

refer. For the purposes of determining that rebate, the assessee filed before the ITO calculation of export profits as under :

Export profits Rs. 1,98,99,745 x 3,94,91,546

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equal to Rs. 33,08,179.

- 23,80,12,861

2. The assessee took the dividing factor at Rs. 23,80,12,861 by deducting a sum of Rs. 13,50,03,102, being the excise duty paid by the assessee

during the said previous year from the total turnover. It is common ground that the correct figure of the total income of the assessee during the

relevant previous year was Rs. 3,93,55,850. This calculation of the assessee was rejected by the ITO, holding that for determining the dividing

factor or denominator the assessee could not deduct the amount of excise duty from its total turnover as claimed by the assessee. According to the

ITO, the qualifying income for the purposes of calculation of the the rebate was to be calculated as under :

Rs. 1,98,99,745

---------- x Rs. 3,93,55,850 = Rs. 21,05,209.

Rs. 37,20,15,963

3. An appeal preferred by the assessee against the aforesaid order was dismissed by the AAC. The assessee went by way of second appeal

before the Income Tax Appellate Tribunal. The Tribunal also rejected the contention of the assessee that for the purposes of determining the

qualifying income, the assessee was entitled to deduct the amount of excise duty from its sales realisation or total turnover. It is from this decision of

the Tribunal that the following question has been referred to us :

Whether, on the facts and in the circumstances of the case, in ascertaining the amount of ''qualifying income'' for relief u/s. 2(5) of the Finance Act,

1963, read with rule 2(3) of the Income Tax (Determination of Export Profits) Rules, 1962, the entire excise duty payable and paid by the

assessee during the assessment year under consideration or any part thereof should be deducted from the total turnover of the whole business of

the assessee and the fraction be determined accordingly ?

4. It is common ground that the provisions which come up for our consideration in this matter are cls. (i) and (vi) of sub-s. (5) of s. 2 of the

Finance Act, 1963 (referred to hereinafter as ""the said Finance Act""), and sub-r. (3) of r. 2 of the Income Tax (Determination of Export Profits)

Rules, 1962 (referred to hereinafter as ""the said Rules"") :

5. The relevant portion of s. 2(5) of the said Finance Act reads as follows :

In respect of any assessment for the assessment year commencing on the day of April 1, 1963, -

(i) an assessee being an Indian company or any other company which has made the prescribed arrangements for the declaration and payment of

dividends within India or an assessee (other than a company) whose total income includes any profits and gains derived from the export of any

goods or merchandise out of India, shall be entitled to a deduction, from the amount of Income Tax and super-tax with which he is chargeable of

an amount equal to the Income Tax and super-tax calculated respectively at one-tenth of the average rate of Income Tax and of the average rate of

super-tax on the amount of such profits and gains included in the total income;...

(vi) the amount of any profits and gains derived from the export of any goods or merchandise out of India in respect of which deduction of Income

Tax and super-tax is admissible under clause (i) shall be computed in accordance with the rules made by the Central Board of Revenue in this

behalf.

Sub-rule (3) of r. 2 of the said Rules reads as follows :

2(3) Where in the opinion of the Income Tax Officer the profits and gains on such exports cannot be ascertained, the amount of the qualifying

income shall be taken as a fraction of the profits and gains of the whole business of which such exports from a part and included in the total income

(as reduced by the aggregate of the amount of any portion thereof on which Income Tax or super-tax is not payable and the amount in respect of

which a deduction of Income Tax or super-tax has been granted under any provision of the Act), the fraction being proportional to the value of the

turnover of such exports in relation to the total turnover of the business of which such exports form a part.

6. It was the agreed position before the Tribunal that the amounts of profits and gains derived from exports by the assessee, with reference to

which a deduction of tax was admissible under the said Finance Act, had to be calculated in accordance with the provisions of sub-r. (3) of r. 2 of

the said Rules, as such profits and gains could not be ascertained, the assessee not having kept separately accounts of profits and gains of such

business. The submission of Mr. Munim, the learned counsel for the assessee, is that although the said sub-r. (3), did not expressly so provide, the

amount of excise duty paid by the assessee should be deducted from the total turnover because the amount of excise duty in respect of the goods

sold in India did not go to the coffers of the assessee, but was paid by the assessee to the Government. It was submitted by him that since the

export turnover did not include any element of excise duty, the amount of such duty should also be excluded in computing its total turnover, such

duty having been paid on the total turnover. We find the submission to be unsustainable. As pointed out by the Tribunal, many items and factors get

included in determining the value of the total turnover of the business of an assessee like the one before us, some of which might not be included in

the turnover of exports. These items and factors may be known or unknown. Some of those items and factors may be common to the value of the

turnover of exports as also to the total turnover of the whole business of an assessee like the one before us. There may be other items and factors

which may be there in one case, but absent in the other. We totally fail to see how only one particular item, viz., the excise duty could be taken out

of the total turnover in the manner suggested by the assessee. We may point out that, broadly speaking, the export turnover is the total amount

realised by the assessee from its export sales during the year in question and the total turnover is the total amount realised by the assessee from its

total sales. We fail to see how one can take out merely the single item of excise duty from the amount of total turnover as suggested by Mr.

Munim. After all, the excise duty forms part of the sale price and hence gets naturally included in the turnover. In this regard, we may refer to the

relevant observations of the Supreme Court in Hindustan Sugar Mills Ltd. v. State of Rajasthan [1979] 43 STC 13., the said observations run as

follows :

Take for example, excise duty payable by a dealer who is a manufacture. When he sells goods manufactured by him, he always passes on the

excise duty to the purchaser. Ordinarily, it is not shown as a separate item in the bill, but it is included in the price charged by him. The ''sale price''

in such a case could be the entire price inclusive of excise duty because that would be the consideration payable by the purchaser for the sale of

the goods. True, the excise duty component of the price would not bse an addition to the coffers of the dealer, as it would go to reimburse him in

respect of the excise duty already paid by him on the manufacture of the goods. But, even so, it would be part of the ''sale price'' because it forms

a component of the consideration payable by the purchaser to the dealer.

7. In our view, therefore, the Tribunal was right in rejecting the contention of the assessee that the amount of excise duty paid by the assessee

should be deducted from its total turnover in order to determine its qualifying income.

8. In the result, the question referred to us is answered in the negative and against the assessee. The assessee to pay to the Commissioner costs of

the reference.