

(1993) 10 BOM CK 0058

Bombay High Court

Case No: Income-tax Reference No. 66 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Associated Cement Co. Ltd.

RESPONDENT

Date of Decision: Oct. 20, 1993

Acts Referred:

- Income Tax Act, 1961 - Section 35B, 35B(1)

Citation: (1994) 116 CTR 593 : (1994) 206 ITR 396 : (1994) 75 TAXMAN 31

Hon'ble Judges: D.R. Dhanuka, J; B.P. Saraf, J

Bench: Division Bench

Advocate: G.S. Jetly, Soli Dastur, for the Appellant;

Judgement

Dr. B.P. Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law to this court at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has rightly held that the assessee is entitled to weighted deduction u/s 35B of the Income Tax Act, 1961, in respect of the expenditure of Rs. 3,95,625 incurred by it on payment of salaries and allowances to its staff engaged in the installation of cement plant in Kuwait?"

2. The controversy in this case pertains to assessment year 1971-72. The assessee-company carries on the business of manufacture and sale of cement. It also acts as miners, metallurgists, builders, contractors, engineers, merchants, importers and exporters and deals in property of all kinds. In the course of its business, the assessee also undertakes investigations to discover places where cement can be profitably made and is engaged in prospecting and research work to obtain prospecting licences. During the previous year relevant to the assessment year 1971-72, the assessee-company entered into a contract for installation of a

cement plant in Kuwait on turnkey basis. It paid salaries and allowances amounting to in Kuwait on turnkey basis. It paid salaries and allowances amounting to Rs. 3,95,625 to the staff engaged by it for submission of tenders and preparation and submission of plans and drawings for the above plant to be set up by it on turnkey basis in Kuwait. The assessee claimed weighted deduction u/s 35B of the Act in respect of the said amount. The Income Tax Officer rejected this claim on the ground that there was no nexus between salaries paid and the object of promotion of exports. However, on appeal, the Appellate Assistant Commissioner of Income Tax allowed the same. The Appellate Assistant Commissioner noticed the fact that the staff was employed by the assessee for preparation of tenders and submission of the same including preparation of technical data and drawings and, therefore, the expenditure incurred thereon was covered by sub-clause (v) of clause (b) of section 35B(1) of the Act. The Revenue appealed to the Tribunal. The Tribunal rejected the appeal, confirmed the order of the Appellate Assistant Commissioner and upheld the allowance of the claim of the assessee in respect of the above amount u/s 35B of the Act. Hence, this reference at the instance of the Revenue.

3. Mr. G. S. Jetly, learned counsel for the Revenue, submits that the expenditure was incurred by the assessee in India and it has no direct nexus with the export of any goods and services out of India and, as such, it does not fall within the ambit of section 35B of the Act. We have carefully considered the above submission. We, however, find it difficult to accept the same in view of sub-clause (v) of clause (b) of section 35B(1) of the Act. u/s 35B of the Act, the assessee specified therein are entitled to weighted deduction in the computation of their taxable income of an amount equal to one and one-third times the amount of the expenditure incurred by them wholly and exclusively on any of the activities specified in the various sub-clauses of clause (b) thereof. Sub-clause (v) of clause (b), which is relevant for our present purpose, is in the following terms :

"(v) preparation and submission of tenders for the supply or provision outside India of such goods, services or facilities, and activities incidental thereto;"

From a plain reading of the above clause, it is clear that the expenditure in connection with the activities mentioned therein may be incurred in India itself. It is not necessary that the tenders should be prepared outside India or expenditure in connection with preparation thereof should be incurred outside India. What is required to be proved is that the expenditure is incurred by the assessee wholly and exclusively on the preparation and submission of tenders for supply or provision outside India of goods, services or facilities, dealt in or provided by him in course of his business and activities incidental thereto. The tenders in this case were prepared for supply of goods and services dealt in and provided by the assessee outside India. There is also no dispute that the expenditure by way of salary of the staff was incurred for the preparation and submission of such tenders, etc. That being so, this expenditure clearly falls within sub-clause (v) of clause (b) of section 35B(1) and the

assessee is entitled to weighted deduction in respect thereof.

4. We, however, feel that the question referred by the Tribunal is too wide and it is necessary to reframe the same to confine it to the real controversy before us. We, therefore, reframe it as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is entitled to weighted deduction u/s 35B of the Income Tax Act, 1961, in respect of the expenditure of Rs. 3,95,625 incurred by it on payment of salaries and allowances to its staff engaged in submission of tenders, preparation and submission of plans in respect of setting up of cement factory in Kuwait on turnkey basis and rendering incidental services in connection therewith ?"

And in view of the foregoing discussion and having regard to the facts of the case set out above, we answer the same in the affirmative, that is, in favour of the assessee and against the Revenue.

5. Under the facts and circumstances of the case, we make no order as to costs.