

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.5 of 2006

Commissioner of Income Tax III,
Coimbatore. ... Appellant

Vs.

M/s.Kiran Processors
Kiran Garden, Arulpuram,
Palladam Raod, Tirupur. ... Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 7.3.2005 in ITA No.191(Mds.)/2000 for the assessment years 1996-97 against the Order of The Commissioner of Income Tax (Appeals), Coimbatore dated 25.11.1999 in ITA.No.117-C/99-2000 against the Order of the Joint Commissioner of Income Tax Special Range II, Coimbatore dated 9.3.1999 in PAN/GIR K-S01/SR-11/98-99/CBE.

For Appellant : Mr.N.Muralikumaran
Sr. Standing Counsel

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA Nos.191(Mds.)/2000 dated 7.3.2005.

2. The Revenue is the appellant. The assessee is a textile processor and exporter of hosiery fabric. The assessee filed return of income on 29.11.1996 and after completing assessment on 9.3.99, the assessing officer excluded the dyeing charges in terms of Explanation (baa) to Section 80HHC of the Act, and held that when 90% of the dyeing charges were excluded from the profits, the deduction under Section 80HHC became negative and accordingly, disallowed the same. The assessee went on appeal before the Commissioner of Income-Tax (Appeals), who partly allowed the appeal by directing the assessing officer to exclude the dyeing

charges from the total turnover and also to exclude only the profit element of the dyeing charges from the profit of the business for the purpose of computation of deduction under Section 80HHC. The appellate Tribunal, on appeal by the Revenue, held that even though there was a nexus between the business of the assessee and the dyeing charges received, as the order of the Commissioner of Income-Tax (Appeals) has not been challenged by the assessee, there is no merit in the appeal and accordingly, dismissed the same.

3. Hence, the present appeal by the Revenue raising the following substantial questions of law:

" Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that only 90% of the profit element in the dyeing charges received by the assessee could be reduced from the profits of business for computation of deduction u/s 80HHC ignoring the plain terminology of the Explanation (baa) to Section 80HHC under which 90% of the miscellaneous receipts had to be reduced from the profits of business in arriving at the deduction u/s 80HHC ? "

4. In the case on hand, it is not in dispute that the dyeing charges are received in the course of the manufacturing activity of the goods exported and therefore, there is a nexus between the dyeing charges received by the assessee and the goods exported.

5. When a similar issue came up for consideration, this Court by order dated 3.1.2006 made in T.C.(A) No.37 of 2003 (SOUTHERN SEA FOODS LTD. v. JOINT COMMISSIONER OF INCOME TAX), held that the income derived for freezing and processing of marine products, - but for that operation the export cannot be made - is an income earned by using the entire undertaking of the company i.e., machinery and power and other manufacturing and administrative set up and therefore, the freezing and processing charges would definitely form part of one of the components of business profits, as the activity of freezing and processing would have a direct and immediate nexus to the activity of export.

6. As rightly held by both the authorities below, the dyeing charges were received by the assessee company in their capacity as both a textile processor and an exporter of hosiery fabric and hence, the dyeing charges are one of the main trading receipts and it employs special machinery and incurs substantial expenditure in the form of inputs like dyes, chemicals, fuel, wages, etc. and therefore, it cannot be treated as something in the nature of brokerage, commission or other receipts, which are not related to the main activity of the business attracting Explanation (baa) to Proviso to Sub Section (4A) of Section 80 HHC.

7. Further, it is seen from the order of the Commissioner of Income-Tax (Appeals) that the assessing officer was directed to exclude the dyeing charges from the total turnover and to exclude only the profit element of the dyeing charges from the profit of the business for the purpose of computing deduction under Section 80HHC. Since that order of the Commissioner of Income-Tax (Appeals) has not been challenged by the assessee, as rightly held by the Tribunal, the Revenue may not have any grievance at all and hence, we find no merit in this appeal.

8. Accordingly, following the ratio laid down by this Court in the above decision, finding no substantial question of law arises for our consideration, the appeal stands dismissed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sra

To

- 1.The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "D"
Chennai Rajaji Bhavan, III Floor,
Besant Nagar, Chennai 90.
 - 2.The Secretary, Central Board
of Direct Taxes, New Delhi.
 - 3.The Commissioner of Income Tax
(Appeals), Coimbatore.
 - 4.The Joint Commissioner of
Income-tax, Special Range-II,
Coimbatore.
 5. The Commissioner of Income Tax III,
Coimbatore.
- + 1 CC to Mr. N.Muralikumaran, Advocate SR NO 3894

tej(co)
gp/2.3.

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