



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE Nos.87 & 88 OF 2003
(Appeal Nos. 78 & 79/03)

Commissioner of Income Tax,
Chennai. ...

Appellant

-vs-

SICAL LOGISTICS Ltd.,
Chennai. ...

Respondent

(Name of the respondent substituted
vide order dated 31.01.2007)

Appeals against the orders dated 25.02.2003, made in ITA Nos.2519/Mds/95 & 510/Mds/96, on the file of Income Tax Appellate Tribunal, Madras 'C' Bench.(ITA Nos. 175/95-96, dated 20.2.96 on the file of the Commissioner of Income Tax Appeals-II Madras against PAN/GIR No.47-069-CZ-2997 dt.29.11.95 on the of Assistant Commissioner of Income Tax, Central Circle II (5) Madras-34.

For appellant : Mr.J.Narayanaswamy,
Standing Counsel.

For respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyanar.

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

These appeals are by the Revenue, against the order of the Tribunal, relating to the assessment year 1991-92.

2. The substantial questions of law raised in these appeals are as follows :



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1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the warehouse receipts, service charges, interest, financial charges, lease rents etc. do not form part of the total turnover for the purpose of deduction under Section 80 HHC ?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the amounts received out of local sales do not form part of the total turnover for the purpose of deduction under Section 80 HHC ?

3. The assessment of the assessee company was revised under Section 263 of the Income Tax Act, directing the assessing authority for recalculating the benefit under Section 80 HHC, after including the warehouse receipts, service charges, interest, financial charges, lease rents etc., in the total turnover. Accordingly, by an order dated 29.11.1995, assessment was re-done. Aggrieved of this, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) -II. However, the same was dismissed *in limine*, considering the fact that the appeal itself was against the order of revision made by the Commissioner of Income Tax and, as such, it could not be adjudicated upon. Aggrieved, the assessee preferred an appeal before the Tribunal.

4. It may be noted that the assessee preferred two appeals, one against the order passed by the CIT under Section 263 of the Act and the other against the order rejecting the appeal *in limine*, filed against the order of the assessing authority, directing the CIT to give effect to the order under Section 263 of the Act.

5. The Tribunal allowed the appeals of the assessee, directing the assessee to work out the export profits alone in accordance with the decision of this Court in *CIT v. Madras Motors Ltd.*, (2002) 257 ITR 60.

6. Learned Standing Counsel for the Revenue submitted that the Tribunal erred in excluding the warehouse receipts, service charges, interest, financial charges, lease rents etc. from the total turnover, to work out the profits under Section 80 HHC.

7. It is submitted that the explanation clause (baa) of the explanation was inserted by Finance (No.2) Act, 1991 with effect from the assessment year 1992-93, defining the term 'profits and gains of business'. Such clause provides that profits and gains of a business are to be reduced by 90% and the brokerage cover, interest, rent charges or any other receipt of the similar nature are to be included



in such profit. Hence, interest, rent etc., earned during the course of a business activity in respect of an assessment year prior to insertion, shall be deducted under this section.

8. Learned Standing Counsel for the Revenue fairly brought to the attention of this Court the decision reported in *CIT v. Madras Motors Ltd.*, (2002) 257 ITR 60, where, under similar circumstances, this Court rejected the plea of the Revenue.

9. Taking note of the fact that the domestic sales are to be excluded, the Tribunal directed for the deduction to be worked out with reference to the export profits in accordance with the decision referred to above.

10. In the light of the said direction, which is in accordance with the decision of this Court, we do not find any merit in the second question. As regards the first question as well, having regard to the amendment brought in with effect from 01.04.1992, these appeals fail.

11. Appeals are dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. THE ASSISTANT REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
RAJAJI BHAVAN, BESANT NAGAR,
CHENNAI.
2. THE COMMISSIONER OF
INCOME TAX (APPEALS-II) MADRAS.
3. THE ASSISTANT COMMISSIONER
OF INCOME TAX,
CENTRAL CIRCLE II (5) ,MADRAS-34.



4. THE COMMISSIONER OF INCOME
TAX, CHENNAI.

+1cc to Mr.R.Vijayaraghavan, Advocate Sr 5590
+1cc to Mrs. Pushya Sitaraman, Advocate Sr 6172

AKM (CO)
km/22.3.

T.C. (A) Nos.87 & 88 OF 2003