IN THE HIGH COURT OF MADRAS

Tax Case (Appeal) Nos. 183 and 184 of 2008

COMMISSIONER OF INCOME TAX, COIMBATORE

Vs

M/s ELGI EQUIPMENTS LTD

Elipe Dharma Rao and M Venugopal, JJ

Dated: April 29, 2011

JUDGEMENT

Per: Elipe Dharma Rao:

Since the issue involved in both these Tax Appeals are one and the same and they are inter-connected, they were heard together and disposed of by this common judgment.

2. At the time of admission, though four substantial questions of law were framed, the Bench had admitted these appeals on the second question of law alone, which is as follows:-

"whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that technical service charges and tyre retreading receipts do form part of the export business and are eligible for deduction under Section 80HHC?"

3. The facts culled out from the pleadings are as follows :-

The assessee filed return under Section 139(1) of the Income Tax Act, 1961 (in short "the Act") and the same was processed under Section 143(1) of the Act. Thereafter, under Section 154 of the Act, an order was passed after finding that while computing deduction under Section 80 HHC of the Act, the assessee had included contract / rent income, lease operations, which were not related to the business and a sum of Rs.1,75,41,697/- was netted against interest payments and treated expenditure towards VRS as capital expenditure and disallowed the expenses. The Assessing Officer also disallowed various claims under different heads including 90% of technical service charges and tyre retreading charges. Aggrieved by the aforesaid order, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who, by a common order dated 28.02.2005 allowed some of the claims of the assessee and rejected some, thereby allowed the appeals in part. Aggrieved by the order of the appellate authority, the assessee as well as the Revenue preferred appeals before the Income Tax Appellate Tribunal (in short "the Tribunal"). The Tribunal, on consideration of the submissions made by both sides, dismissed the appeals preferred by the Revenue and allowed the appeals filed by the assessee. Aggrieved by the order of the Tribunal, the Revenue has come forward with the present appeal.

4. In these appeals, though four substantial questions of law had been raised by the Revenue, this Court, at the time of admission, following the earlier decisions of the Supreme Court answered Question Nos. 1, 3 and 4 against the Revenue and formulated the aforesaid Substantial Question No.2, which relates to claiming of technical service charges, for consideration.

5. With respect to this issue, the Assessing Officer in paragraph 3.2 of the order dated 19.11.2004, under the heading in respect of deduction under Section 80HHC, has held that the explanation offered by the assessee is not convincing as this is a company doing mainly the business of manufacturing of compressors and garage machineries, a part of which was exported; that income from lease operation is treated as not falling in the main business activities of the assessee and hence, the deduction under Section 80HHC was recomputed by excluding this and other income and arrived at the taxable amount of Rs.4,26,16,843/-. The appellate authority as well as the Tribunal, following the decision of the *Commissioner of Income-Tax vs. Bangalore Clothing Co. [260 ITR 371]*, allowed the claim of the assessee and held that service charges and receipts should not have been reduced while working out the adjusted profits.

6. Learned Standing Counsel appearing for the Revenue submitted that aforesaid decision relied on by the Appellate Authority as well as the Tribunal is not applicable to the facts of the case. He further submitted that the principle laid down by the Hon'ble Supreme Court in *Commissioner of Income-tax v. K.Ravindranathan Nair [295 ITR 228]*, is directly applicable to the facts of the present case.

7. Before delving into the contentions raised, it would be profitable to note down the relevant provisions of the Act, particularly Section 80HHC of the Act, which is as follows :-

"80HHC. Deduction in respect of profits retained for export business: -

....

....

(4C) The provisions of this section shall apply to an assessee, -

(a) for an assessment year beginning after the 31st day of March, 2004 and ending before the 1st day of April, 2005;

(b) who owns any undertaking which manufactures or produces goods or merchandise anywhere in India (outside any special economic zone) and sells the same to any undertaking situated in a special economic zone which is eligible for deduction under section 10A and such sale shall be deemed to be export out of India for the purposes of this section.

Explanation.- For the purposes of this section, --

....

....

(ba) 'total turnover' shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962):

Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression 'total turnover' shall have effect as if it also excluded any sum referred to in clauses (iii-a), (iii-b) and (iii-c) of Section 28;

(baa)'profits of the business' means the profits of the business as computed under the head 'Profits and gains of business or profession' as reduced by;

(1) ninety per cent of any sum referred to in clauses (iii-a), (iii-b) and (iii-c) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;"

8. From a reading of the aforesaid Section, it is seen that under Clause (baa)(1), 90% of any amount referred to in clauses (iii-a), (iii-b) and (iii-c) of Section 28 of the Act or any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits. The said expression 'included in such profits' indicated that the said processing charges formed part of the gross total income being business profits. This has been clarified by Clause (baa) of the said Explanation which inserted the definition of 'profits from business' in the said Section 80-HHC(3) of the Act.

9. From the above, it is apparent that any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits. In the present case, we are concerned with the question whether the technical service charges and tyre retreading receipts would form part of the export business and are eligible for deduction under Section 80HHC. The Section makes it clear that any other receipt of a similar nature should be included in such profits.

The assessee deals with the business of manufactur of Air compressors & Service Station Equipments and part of the manufactured products was also exported. The assessee has stated that income from lease operations is also one of the business activities and it should be considered as income derived out of the business and, therefore, eligible for deduction under Section 80HHC. The Assessing Officer, who was not convinced with the aforesaid statement made by the assessee, proceeded to treat the technical service charges and tyre retreading receipts as part of the export business on the footing that the assessee has been mainly doing the business of manufacturing of compressors and garage machineries and a part of which was exported. This finding of the Assessing Officer gets ample support from the decision of the Supreme Court in Ravindranathan Nair case.

10. In the said case, the learned Addl. Solicitor General appeared on behalf of the Department, contended that in view of Explanation (ba) read with Explanation (baa) to Section 80HHC of the Income-tax Act when the said processing charges were includible in the business profits, the same were also simultaneously includible in the total turnover. According to him, Section 80 HHC provided for export profits and that in order to compute the quantum of eligible deduction under Section 80HHC of the

Income-tax Act, the Department was right in including the processing charges in the business profits and if such charges constituted part of business profits then such charges cannot be excluded from the total turnover. That, business profits, under the above formula, were required to be calculated in accordance with clause (baa) of the said Explanation. According to the learned counsel, keeping in mind the provisions of Explanation (ba) and Explanation (baa) it is clear that what was includible in the business profits in the above formula had to be included also in the total turnover. Therefore, according to learned counsel, the Tribunal as well as the High Court had erred in holding that the processing charges were not includible in the total turnover. He also relied on the judgment of the *Rajasthan High Court in CIT vs. Sharda Gum and Chemicals [(2007) 288 ITR 116]*.

11. The Hon'ble Supreme Court, on consideration of the submissions and the provisions of law laid that, held that the processing charges, which was part of gross total income, was an independent income like rent, commission, brokerage, etc. and, therefore, 90 per cent of the said sum had to be reduced from the gross total income to arrive at the business profits and since the said processing charge was an important component of business profits, it also had to be included in the total turnover in the said formula to arrive at the business profits in terms of clause (baa) to the said Explanation. In the case before the Supreme Court, it was held that the processing charges were included in the gross total income from cashew business and that even according to the assessee the said charges constituted an important component of gross total income from cashew business.

12. Ultimately, the Supreme Court has observed as follows :-

"23. In our view, for the above reasons, the said processing charges, which was part of gross total income, was an independent income like rent, commission, brokerage, etc. and, therefore, 90% of the said sum had to be reduced from the gross total income to arrive at the business profits and since the said processing charge was an important component of business profits, it also had to be included in the total turnover in the said formula to arrive at business profits in terms of Clause (baa) of the said Explanation."

13. Following the above judgment of the Supreme Court, the finding of the Assessing Officer that the assessee was mainly doing the business of manufacture of compressors and garage machinaries, part of which was exported and the income from lease operation is treated as not falling in the main business activities and hence, the deduction under Section 80HHC was recomputed excluding the business and other income, is well founded.

14. With regard to the judgment relied on by the learned counsel for the assessee in *Southern Sea Foods Ltd. vs. Joint Commissioner of Income Tax [288 ITR 151],* the Supreme Court without answering the issue on merits, had dismissed the SLP on the ground that the High Court has followed its previous judgment, which has become final and no appeal has been filed. Therefore, in view of the judgment in *295 ITR 228* (cited supra), with respect, we are unable to follow the judgment of the Supreme Court.

In view of the above, the substantial question of law is answered in favour of the Revenue and the Appeals are allowed.No costs.