IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

ITR No.29 of 1981

THE COMMISSIONER OF INCOME TAX PATIALA

Vs

THE ROADMASTER INDUSTRIES OF INDIA (P) LIMITED, RAJPURA

Adarsh Kumar Goel, Rakesh Kumar Jain And Daya Chaudhary JJ.,

Dated: July 3, 2009

Appellant rep by: Mr. Rajesh Katoch, Standing Counsel with Mr. Sanjay Bansal, Sr. Advocate
Respondent rep by: Mr. Parshant Bansal, Advocate

Income Tax – Expenditure incurred by way of sea freight not eligible for weighted deduction in terms of sub-clause (iii) of Section 35B (1)(b) of IT Act, 1961 – Sub-clause (viii) being a general provision cannot be applied when a specific provision debars eligibility – A general provision cannot override a specific provision – Principle in legal maxims *Generalia specialibus non derogant* and *Generalibus specialia derogant* followed – Judgments passed in earlier cases on this issue overruled .

Reference answered in favour of Revenue

JUDGEMENT

Per: Adarsh Kumar Goel J.:

1. This reference has been placed before us in pursuance of order of the Division Bench dated September 17, 2004.

2. Out of the three questions referred by the Income Tax Appellate Tribunal for opinion of this Court under section 256(1) of the Income Tax Act, 1961 (in short, 'the Act'), for the assessment year 1975-76, two questions have been answered by the Division Bench and one of the questions has been referred for consideration to larger Bench. The said question is as under:-

“1. Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the assessee company was entitled to weighted deduction under section 35B(1)(b) on expenditure incurred by way of sea freight amounting to Rs.6,41,758/-?

3. The assessee, inter-alia, derived income from export and made a claim for weighted deduction under section 35B in respect of sea freight for transportation of the goods from India to their destination. The Assessing Officer and the appellate authority declined the claim for the deduction but the Tribunal allowed the same following its decision for the assessment year 1974-75 in respect of the same assessment year. The said view of the Tribunal was affirmed by this Court in Commissioner of Income tax v. Roadmaster Industries of India Pvt. Limited, (1993) 202 ITR 968.

4. The Division Bench considering the present reference observed that the sea freight had been specifically made ineligible for weighted deduction under sub clause (iii) of Section 35B and in that situation, Clause (viii) could not be invoked, as was allowed in the earlier judgment of this Court, supra. The Division Bench observed that once the matter was subject matter of a specific provision, a general provision could not apply to nullify the effect of a special provision. The relevant observations of the Division Bench are as under:-

“A perusal of sub clause (iii) shows that any expenditure incurred on carriage of goods to other destination outside India has clearly been excluded from the purview of weighted deduction under section 35B. Expenditure on Sea freight clearly falls under this category. However, in Assessment Year 1974-75, this Court had upheld the assessee’s claim under sub clause (viii). Sub clause (viii), prima facie, shows that it entitles an assessee to claim weighted deduction on expenses incurred on performance of service outside India in connection with or incidental to execution of any contract for supply outside India of such goods, services or facilities. This appears to be in respect of residuary expenses which are not dealt with in earlier clauses. When Sea freight has been specifically made ineligible for weighted deduction under sub clause (iii) above, it cannot be allowed under the general provisions of sub clause (viii). According to us, a general provision cannot override a specific provision. We have, therefore, our doubts about the correctness of the view taken by this Court in the case of Roadmaster Industries of India Pvt. Limited (supra).

Accordingly, we are of the view that this question deserves to be decided by a larger Bench.”

5. We have heard learned counsel for the parties.

6. To determine the question referred, it will be appropriate to refer to the statutory provision of Section 35B(1)(b), which, at the relevant time, stood as under:-

“(b) The expenditure referred to in clause (a) is that incurred wholly and exclusively on –

(i) advertisement or publicity outside India in respect of the goods, services or facilities which the assessee deals in or provides in the course of his business;

(ii) obtaining information regarding markets outside India for such goods, services or facilities;

(iii) distribution, supply or provision outside India of such goods, services or facilities, not being expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit;

(iv) maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities;

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

(vi) furnishing to a person outside India samples or technical information for the promotion of the sale of such goods, services or facilities;

(vii) traveling outside India for the promotion of the sale outside India of such goods, services or facilities, including traveling outward from, and return to, India;

(viii) performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside of such goods, services or facilities; and

(ix) such other activities for the promotion of the sale outside India of such goods, services or facilities; as may be prescribed;"

7. A perusal of the above provision shows that the scheme of the section is to provide for weighted deduction of expenditure mentioned in various sub clauses. Sub Clause (iii) expressly excludes expenditure incurred in India in connection with distribution, supply or provision outside India of goods, services or facilities and expenditure (wherever incurred) on the carriage of such goods to destination outside India or on insurance of goods while in transit. The said clause, thus, would negative the claim of the assessee. However, in the judgments of this Court in Road Master Industries of India (supra), which was followed in Commissioner of Income tax v. Indo Asian Switchgears (P) Limited, (1996) 221 ITR 65, while accepting the interpretation of Clause (iii) as excluding the claim for expenditure on carriage of goods by sea to destination outside India, claim was allowed under Clause (viii), holding that expression "performance of service outside India in connection with or incidental to execution of any contract for supply outside India", was wide enough to include even expenditure on freight, even if expressly excluded under Clause (iii).

8. Learned counsel for the assessee submitted that once the expenditure was incidental to the execution of the contract for supply of goods, notwithstanding exclusion of Clause (iii), claim would be covered by Clause (viii), as rightly held in the earlier two DB judgments.

9. We are unable to accept the submission made on behalf of the assessee.

10. Following principles of interpretation are well-settled:-

(i) A statute has to be read as a whole and effort should be to give full effect to all the provisions;

(ii) Interpretation should not render any provision redundant or nugatory;

(iii) The provisions should be read harmoniously so as to give effect to all the provisions;

(iv) If some provision specifically deals with a subject matter, the general provision or a residue provision cannot be invoked for that subject.

11. The above principles have been compiled in a concise form in a well-known treatise on the subject “Principles of Statutory Interpretation” by Justice G.P.Singh, Tenth Edition, Wadhwa Publication, at Page 137 as follows:-

“(b) Inconsistency and repugnancy to be avoided; harmonious construction It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid “a head on clash” between two sections of the same Act and, “whenever it is possible to do so to construe provisions which appear to conflict so that they harmonise”. It should not be lightly assumed that “Parliament had given with one hand what it took away with the other”. The provisions of one section of a statute cannot be used to defeat those of another “unless it is impossible to effect reconciliation between them”. The same rule applies in regard to sub sections of a section. In the words of GAJENDRAGADKAR,J.: “The sub sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonable possible to do so, and to avoid repugnancy”. As stated by VENKATARAMA AIYAR,J.: “The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction”. That, effect should be given to both, is the very essence of the rule. Thus, a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not harmonious construction. To harmonise is not to destroy. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The question as to the relative nature of the provisions general or special has to be determined with reference to the area and extent of their application either generally or specially in particular situations. The principle is expressed in the maxims Generalia specialibus non derogant, and Generalibus specialia derogant. If a special provision is made on a certain matter, that matter is excluded from the general provision. Apart from resolving conflict between two provisions in the Act, the principle can also be used for resolving a conflict between a provision in the Act and a rule made under the Act. Further, these principles have also been applied in

resolving a conflict between two different Acts and in the construction of statutory rules and statutory orders."

12. Applying the above principles to the present case, permitting the expenditure under Clause (viii) would render exclusion thereof under Clause (iii) nugatory. Such an interpretation cannot be accepted.

13. We are, thus, unable to accept the interpretation that the assessee will be entitled to deduction under Clause (viii) in respect of claim specifically disallowed under Clause (iii) of section 35B (1) of the Act. We, therefore, over-rule the view taken in the earlier DB judgments of this Court in Roadmaster Industries of India and Indo Asian Switchgears (supra).

14. We answer the question referred in favour of the revenue and against the assessee.

15. The matter may now be placed before the Division Bench for further orders.