

CASE NO.:
Appeal (civil) 3245 of 2008

PETITIONER:
B. DESRAJ

RESPONDENT:
C.I.T. SALEM

DATE OF JUDGMENT: 01/05/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3245 OF 2008
(Arising out of SLP(C) No. 12697/2007)

B. DESRAJ

...APPELLANT (S)

VERSUS

C.I.T. SALEM

...RESPONDENT(S)

ORDER

Leave granted.

The short question which arises for determination in this Civil Appeal is whether in

the facts and circumstances of the case the Tribunal was right in holding that the deduction

under Section 80HHC in respect of Duty Drawback and Cash Compensatory Support is allowable even though no export was done by the assessee during the assessment year 1991-92.

Briefly stated the facts giving rise to the present dispute are as follows:

Appellant is the sole proprietor of M/s D.R. Enterprises engaged in the business of

export of textiles/fabrics since 1st February, 1980. As part of his business appellant has been

exporting fabrics to Chittagong and Dhaka.

Consequent upon exports made by the appellant, inward remittance came into India in foreign exchange on 21st August, 1989, 11th December, 1989, 28th February, 1990, 16th

March, 1990, 29th March, 1990 and 31st March, 1990. In other words, inward remittance came into India during the accounting year ending 31st March, 1990, (relevant Assessment Year 1990-91). However, appellant received cash compensatory allowance amounting to

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Rs.7,74,785/- on 25th May, 1990 (i.e. in the next accounting year). He also received on the same day Duty Drawback of Rs.35,565/-. In other words, appellant received Duty Drawback and Cash Compensatory Allowance during the accounting year ending 31st March, 1991 corresponding to assessment year 1991-92, with which we are concerned in this Civil Appeal.

In this Civil Appeal we are concerned with the question as to whether the sum of Rs.7,74,785/- + Rs.34,565/- received by the appellant during the Accounting Year ending 31st March, 1991 constitute eligible income under Section 80HHC(3) of the Income Tax Act, 1961 as it stood at the relevant time.

One more fact needs to be mentioned. Assessee was maintaining at the relevant time cash system of accounting. There is no dispute on that aspect.

According to the Assessing Officer, admittedly, appellant had not made export sales during Assessment Year 1991-92 and, therefore, the said Duty Drawback and Cash Compensatory Allowance did not constitute eligible income deductible from the gross total income under Section 80HHC.

Aggrieved by the assessment order the assessee had carried the matter in appeal to the CIT(Appeals) who took the view that the above amounts were admittedly relatable to the sales made during the earlier year ending 31st March, 1990 and consequently, the Income Tax Officer had wrongly rejected the appellant's claim for deduction under Section 80HHC of the Act. This view of the Commissioner was also on the basis of the formula mentioned in Section 80HHC(3) and the Circulars of CBDT No. 564 dated 5th July, 1990 and 571 dated 1st August, 1990 in which it has been specifically mentioned that in computation of deduction under Section 80HHC the business profits would include export incentives. We will come to that formula later on. Suffice it to say that the decision of the Commissioner was

upheld by the Tribunal. Aggrieved by the decision of the Tribunal the department carried the matter in appeal to the Madras High Court vide Tax Case (Appeal) No. 134/2003.

By the impugned judgment the High Court overruled the decision of the Tribunal

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on the ground that during the Assessment Year 1991-92 the assessee had received Cash Compensatory Support and Duty Drawback for the exports made in the earlier year and that there were no exports made in that year and, therefore, the said amounts did not constitute eligible income for deduction under Section 80HHC. Hence, this Civil Appeal by the assessee.

At the outset, it may be stated that by the Finance Act, 1990, the Parliament has clarified that Cash Compensatory Support and Duty Drawback shall be taxable under Section 28 of the Income Tax Act, 1961. By the said Finance Act, 1990, clause (iiib) came to be inserted as one of the incomes chargeable to income tax under the head "business profits" vide Section 28. Clause (iiib) covers cash assistance (by whatever name called) 'received or receivable' by any person against exports under any scheme of the Government of India. At the relevant time an issue arose as to whether cash assistance though includible in business profits under Section 28(iiib) would or would not constitute eligible income for the purposes of deduction under Section 80HHC. Since there was some doubt, CBDT had issued a Circular (see page 35 at page 42 of paper book). By the said Circular, CBDT clarified that export incentives, namely, Cash Compensatory Support and Duty Drawback have to be included in the profits of the business for computing the deduction under Section 80HHC. With the issuance of this Circular the point is no more res integra.

On behalf of the department - respondent, it is submitted that even if Cash Compensatory Support and Duty Drawback constitute part of income chargeable to tax as business profits under Section 28(iiib), still it would not be an eligible income for purposes of deduction under Section 80HHC.

As stated above, at one point of time this controversy did exist which led to the issuance of the said Circular (Annexure P-2 at page 42). Therefore, we have to reject the above argument advanced on behalf of the department.

As stated above, the formula is indicated in Section 80HHC(3). We quote

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hereinbelow the said formula:

"Export turnover sale proceeds actually received in foreign

$$\frac{\text{Profit of the business X (including export incentives)}}{\text{exchange}} \div \text{Total turnover(excluding export incentives)."}$$

The above formula itself shows that business profits includes export incentives. This formula is also indicated in the Circular referred to above issued by CBDT. It indicates that the Parliament as well as CBDT have taken into account the insertion of clause (iiib) in Section 28 by the Finance Act, 1990. Further, it is also relevant to note that by the same Finance Act, 1990, clause (iiib) was inserted into Section 28 and changes were also made in Section 80HHC(3). Therefore, Section 80HHC as it stood at the relevant time was required to be read with Section 28(iiib) because both the Sections have been amended by the same Finance Act of 1990. This vital aspect has not at all been considered by the High Court.

In the circumstances, we are of the view that the words "business profits" in the above formula under Section 80HHC(3) would include Cash Compensatory Allowance and Duty Drawback and accordingly we direct the Assessing Officer to work out the deduction in accordance with the law as it stood during the relevant Assessment Year 1991-92.

For the aforesaid reasons, the assessee succeeds and the Civil Appeal is allowed with no order as to costs.

.....J.
[S.H. KAPADIA]

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New Delhi,J
May 01, 2008 [B. SUDERSHAN REDDY]

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