

THE COMMISSIONER OF INCOME TAX

v

M/S. CATAPHARMA (INDIA) PVT. LTD.

JULY 23, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

*Income Tax Act, 1961—s. 80 HHC—Turnover—Computation of—For computing deduction—Whether includes 'Sales tax' and 'Excise duty'—Held: 'Sales tax' and 'Excise duty' cannot be included in the 'total turnover' for computing the deduction—Interpretation of taxing statute.*

*Words and Phrases—'Turnover'—Meaning of, in the context of Income Tax Act, 1961.*

The question for determination in the present appeal was whether 'sales tax' and 'excise duty' are includible in the total turnover for computing deduction u/s 80 HHC of Income Tax Act, 1961.

Dismissing the appeal, the Court

HELD: 'Excise duty' and 'sales tax' cannot be included in the "total turnover". Tax under the Act is upon income, profits and gains. It is not a tax on gross receipts. The object of the legislature in enacting Section 80HHC of the Act was to confer a benefit on profits accruing with reference to export turnover. Therefore, "turnover" was the requirement. Commission, rent, interest etc. did not involve any turnover. Just as interest, commission etc. did not emanate from the "turnover", so also excise duty and sales tax did not emanate from such turnover. Since excise duty and sales tax did not involve any such turnover, such taxes had to be excluded.

[Para 4] [468-F, G, H; 469-A]

*Commissioner of Income Tax, Coimbatore v. M/s. Lakshmi Machine Works, JT (2007) 6 SC 236, relied on.*

*CIT v. Sudarshan Chemical Industries Ltd., (2000) (245) ITR 769 (Bom.), referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3204 of 2007.

A From the Judgment & Order dated 17.07.2006 of the High Court of Judicature at Bombay in Tax Case (Appeal) No. 915 of 2004.

K.P. Pathak, A.S.G., Arijit Prasad and B.V. Balaram Das for the Appellant.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court relating to the question whether sales tax and excise duty form part of the total turnover. Dispute relates to the Assessment year 1997-98.

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3. Background facts in a nutshell are as follows:

While making assessment under Section 143(3) of the Income Tax Act, 1961 (in short the 'Act'), assessing officer included excise duty and sales tax on the total turnover for computing the deduction under Section 80 HHC (3)(b) of the Act. The Commissioner of Income Tax (Appeals), Special Range-1, Nasik (in short the 'CIT' (A), held that while calculating deduction under Section 80HHC amounts of excise duty and sales tax collected by the assessee, are not to be included in the total turnover for the purpose of computing deductions under Section 80HHC. Revenue preferred an appeal before the Income Tax Appellate Tribunal, Pune Bench, Pune, (in short the 'Tribunal'). The appeal was dismissed following a decision of the Bombay High Court in *CIT v. Sudarshan Chemical Industries Ltd.*, (2000) 245 ITR 769 (Bom.). Appeal was preferred by the Revenue before the High Court which by the impugned order dismissed the appeal answering the question raised in the appeal in favour of the assessee and against the revenue.

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4. In the present appeal the stand is that one has to give plain meaning of the word "turnover" in the formula applied for computation. It was urged that there was no need to call for any rule of interpretation or external aid to interpret the said word. In essence, it was urged that having regard to the plain words of the Section 'excise duty' and 'sales tax' ought to have been included in the "total turnover". It is to be noted that a similar plea was raised in *Commissioner of Income Tax, Coimbatore v. M/s. Lakshmi Machine Works*, JT (2007) 6 SC 236. In para 18 it was noted as follows:

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"We do not find any merit in the above contentions advanced on behalf of the Department. It is important to note that tax under the Act

is upon income, profits and gains. It is not a tax on gross receipts. Under Section 2(24) of the Act the word "income" includes profits and gains. The charge is not on gross receipts but on profits and gains properly so-called. Gross receipts or sale proceeds, however, include profits. According to The Law and Practice of Income Tax by Kanga and Palkhivala, the word "profits" in Section 28 should be understood in normal and proper sense. However, subject to special requirements of the income tax, profits have got to be assessed provided they are real profits. Such profits have to be got to be ascertained on ordinary principles of commercial trading and accounting. However, the income tax has laid down certain rules to be applied in deciding how the tax should be assessed and even if the result is to tax as profits what cannot be construed as profits, still the requirements of the income tax must be complied with. Where a deduction is necessary in order to ascertain the profits and gains, such deductions should be allowed. Profits should be computed after deducting the expenses incurred for business though such expenses may not be admissible expressly under the Act, unless such expenses are expressly disallowed by the Act {SEE page 455 of The Law and Practice of Income Tax by Kanga and Palkhivala}. Therefore, schematic interpretation for making the formula in Section 80H HC workable cannot be ruled out. Similarly, purposeful interpretation of Section 80HHC which has undergone so many changes cannot be ruled out, particularly, when those legislative changes indicate that the legislature intended to exclude items like commission and interest from deduction on the ground that they did not possess any element of "turnover" even though commission and interest emanated from exports. We have to read the words "total turnover" in Section 80HHC as part of the formula which sought to segregate the "export profits" from the "business profits". Therefore, we have to read the formula in entirety. In that formula the entire business profits is not given deduction. It is the business profit which is proportionately reduced by the above fraction/ratio of export turnover - total turnover which constitute 80HHC concession (deduction). Income in the nature of "business profits" was, therefore, apportioned. The above formula fixed a ratio in which "business profits" under Section 28 of the Act had to be apportioned. Therefore, one has to give weightage not only to the words "total turnover" but also to the words "export turnover", "total export turnover" and "business profits". That is the reason why we have quoted hereinabove extensively the illustration from the Direct Taxes (Income tax) Ready Reckoner of the

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A relevant word. In the circumstances, we cannot interpret the words  
"total turnover" in the above formula with reference to the definition  
of the word "turnover" in other laws like Central Sales Tax or as  
defined in accounting principles. Goods for export do not incur excise  
duty liability. As stated above, even commission and interest formed  
C a part of the profit and loss account, however, they were not eligible  
for deduction under Section 80HHC. They were not eligible even  
without the clarification introduced by the legislature by various  
amendments because they did not involve any element of turnover.  
Further, in all other provisions of the income tax, profits and gains  
D were required to be computed with reference to the books of accounts  
of the assessee. However, as can be seen from the Income Tax Rules  
and from the above Form No.10CCAC in the case of deduction under  
Section 80HHC a report of the auditor certifying deduction based on  
export turnover was sufficient. This is because the very basis for  
computing Section 80HHC deduction was "business profits" as  
E computed under Section 28, a portion of which had to be apportioned  
in terms of the above ratio of export turnover to total turnover. Section  
80HHC(3) was a beneficial section. It was intended to provide  
incentives to promote exports. The incentive was to exempt profits  
relatable to exports. In the case of combined business of an assessee  
E having export business and domestic business the legislature intended  
to have a formula to ascertain export profits by apportioning the total  
business profits on the basis of turnovers. Apportionment of profits  
on the basis of turnover was accepted as a method of arriving at  
export profits. This method earlier existed under Excess Profits Tax  
Act, it existed in the Business Profits Tax Act. Therefore, just as  
F commission received by an assessee is relatable to exports and yet it  
cannot form part of "turnover", excise duty and sales tax also cannot  
form part of the "turnover". Similarly, "interest" emanates from exports  
and yet "interest" does not involve an element of turnover. The object  
of the legislature in enacting Section 80HHC of the Act was to confer  
a benefit on profits accruing with reference to export turnover.  
G Therefore, "turnover" was the requirement. Commission, rent, interest  
etc. did not involve any turnover. Therefore, 90% of such commission,  
interest etc. was excluded from the profits derived from the export.  
Therefore, even without the clarification such items did not form part  
of the formula in Section 80HHC(3) for the simple reason that it did  
not emanate from the "export turnover", much less any turnover. Even  
H if the assessee was an exclusive dealer in exports, the said commission

was not includible as it did not spring from the "turnover". Just as interest, commission etc. did not emanate from the "turnover", so also excise duty and sales tax did not emanate from such turnover. Since excise duty and sales tax did not involve any such turnover, such taxes had to be excluded. Commission, interest, rent etc. do yield profits, but they do not partake of the character of turnover and, therefore, they were not includible in the "total turnover". The above discussion shows that income from rent, commission etc. cannot be considered as part of business profits and, therefore, they cannot be held as part of the turnover also. In fact, in Civil Appeal No. 4409 of 2005, the above proposition has been accepted by the A.O [ page No. 24 of the paper book], if so, then excise duty and sales tax also cannot form part of the "total turnover" under Section 80HHC(3), otherwise the formula becomes unworkable. In our view, sales tax and excise duty also do not have any element of "turnover" which is the position even in the case of rent, commission, interest etc. It is important to bear in mind that excise duty and sales tax are indirect taxes. They are recovered by the assessee on behalf of the Government. Therefore, if they are made relatable to exports, the formula under Section 80HHC would become unworkable. The view which we have taken is in the light of amendments made to Section 80HHC from time to time."

5. We are in respectful agreement with the view expressed. Appeal is without merit and is dismissed. There will be no order as to costs.

K.K.T.

Appeal dismissed.