

HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM: HON'BLE SHRI YATINDRA SINGH, C.J.  
HON'BLE SHRI PRASHANT KUMAR MISHRA, J.

ITR No. 15 of 2002

APPLICANT The Commissioner of Income Tax,  
Jabalpur  
VERSUS

RESPONDENT : M/s Itarsi Oil and Flour Mills, Raipur

REFERENCE APPLICATION UNDER SECTION 256 (1) OF THE INCOME  
TAX ACT, 1961

Appearance: Shri Anand Dadariya, counsel for the Applicant  
Shri Shashank Dubey, Senior counsel with Shri Anand  
Mohan Tiwari, counsel for the Respondent.

ORDER  
(10<sup>th</sup> April, 2014)

1. The main point involved in this reference at the instance of the Income Tax Department (the Department) under section 256 (1) of the Income Tax Act, 1961 (the Act), relating to M/s Itarsi Oil and Flour Mills, Raipur (the Assessee) for the assessment year (the AY) 1993-94—revolves around interpretation of sub-section (3) of section 80HHC {80HHC(3)} of the Act. The question is,

'Whether the word 'business' used in Section 80HHC(3) of the Act means all businesses of an assessee or only that business, which is partly or fully doing export business.'

**THE FACTS**

2. The Assessee has two separate units, one is solvent extraction plant and the other is flour mill. The solvent extraction plant (the SE-Unit) is doing export business as well as domestic business; whereas, the flour mill (the F-Unit) is totally doing domestic business only.

3. Section 80HHC of the Act provides some relief to the assessee carrying on export business and allows deductions as mentioned therein. The Assessee is entitled to deductions under this section. The question involved in this reference is, how should it be calculated.

4. Sub-section (1) of section 80HHC {80HHC(1)} of the Act provides deductions; whereas section 80HHC(3) of the Act provides calculation of the amount of the deduction. Under section 80HHC(3) of the Act, the Assessee is entitled to some deductions. This is to be calculated on the following formula:

$$\frac{\text{Profit of the business} \times \text{Export turnover}}{\text{Total turnover of the business}}$$

5. The Assessee filed its return on 31.12.1993. The Assessee calculated deduction by taking the 'Profit of the business' and 'Total turnover of the business' of the SE-Unit only: it did not include the F-Unit.

6. The Assessing Officer (the AO) by its order dated 31.03.1994 did not agree with the Assessee and calculated the deduction by taking the 'Profit of the business' and 'Total turnover of the business' of all businesses of the Assessee namely the profits from the SE-Unit as well as the F-Unit.

7. Aggrieved by the aforesaid order, the Assessee filed an appeal. It was partly allowed by the Commissioner of Income Tax (Appeals) (the CIT-A) on 23.01.1995. However, so far as deduction under section 80HHC of the Act was concerned, the CIT-A accepted the methodology adopted by the Assessee.

8. Against the aforesaid order, the Department filed an appeal before the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur (the Tribunal). It was dismissed on 05.12.1996.

### QUESTIONS INVOLVED

9. The Department filed an application under section 256(1) of the Act to refer the questions to the High Court. This application was allowed on 14.09.2001 and the following two questions have been referred to this court:

(i) Whether on the facts and circumstances of the case, the Tribunal was justified in law in directing the AO to calculate relief under section 80HHC taking into consideration the 'profit of the business' and 'total turnover' of the business carried on by the assessee in respect of its solvent extraction unit alone and directing the AO to ignore the profits and turnover of the Flour Mill.

(ii) Whether the use of the expression "profit of the business" and "total turnover of the business" carried on by the assessee in section 80HHC(3)(a) is restricted to only the profit and turnover of the business of export out of India of any goods or merchandise or is applicable to the total profit and total turnover of all other businesses which may also include non export goods and merchandise.

10. The Tribunal has framed the questions in detail. However, the basic point in both the questions has been mentioned by us in the opening paragraph of the order.

#### THE DECISION

11. In the relevant year, the relevant part of section 80HHC of the Act is reproduced in **Appendix-I**. In a simplified form, it is mentioned as follows:

'80HHC (1) Where an assessee ... is engaged in the business of export ... there shall be allowed ... a deduction of the profits derived by the assessee from the export of such goods...

(2)(a) This section applies to all goods ... other than those specified in clause (b), if the sale proceeds of such goods

exported out of India are received in ... India by the assessee ... in convertible foreign exchange ...

...

3 For the purposes of sub-section (1)—

(a) Where the export ... is of goods ... manufactured ... by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

...

*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 (iiia), (iiib) and (iiic) of section 28.'

12. Section 80HHC(3) of the Act provides the formula for calculation of deductions. There is no dispute that this formula is,

$$\frac{\text{Profit of the business} \times \text{Export turnover}}{\text{Total turnover of the business}}$$

13. There is also no dispute that the word 'business' has the same meaning as in the word 'profits of the business' as well as the 'total turnover of the business'. In case,

- 'Profit of the business' means the profits of the business of that unit only, which is fully or partly doing export business namely the SE-Unit, then the 'total turnover of the business' will also mean the total turnover of the SE-Unit only; and
- 'Profits of the business' means total profits namely profits from the SE-Unit and F-Unit, then the 'Total turnover of the business' will include turnover of both of them.

14. Nevertheless, the question is what is the meaning of the word 'business' used in section 80HHC(3) of the Act. Is it confined only to export oriented unit namely the SE-Unit or to all the businesses carried out by the Assessee namely the SE-Unit as well as the F-Unit.

15. There is difference of opinion among the High Courts:

- The Madras High Court in three decisions namely Commissioner of Income-Tax v. Madras Motors Ltd {(2002) 257 ITR 60 (Mad)} (the Madras-Motors case); Commissioner of Income-Tax v. M. Gani & Co. {(2008) 301 ITR 381 (Mad)}; and Commissioner of Income-Tax v. Suresh B. Mehta {(2007) 291 ITR 462 (Mad)} and The Delhi High Court in The Commissioner of Income Tax (Central) v. Padmini Technologies Ltd. (ITA-1265 of 2007, decided on 14.09.2011) (the Padmini-Technologies case) have taken a view favourable to the Assessee;
- Whereas, the Karnataka High Court in G.J. Fernandez v. Assistant Commissioner of Income Tax {(2011) 241 CTR (Kar) 100} (the Fernandez case) has taken decision in favour of the Department.

16. Out of the three decisions of the Madras High Court, the Madras-Motors case is a detailed one and the Padmi-Technologies case of the Delhi High Court is based on the same.

17. The Madras-Motors case was in respect of the AYs 1989-90 and 1990-91. The law at that time was different than the law which is applicable to the case in hand. The Padmini-Technologies case of the Delhi High Court is of the AY 1997-1998 and related to the same provision, however, it has adopted the reasoning given by the Madras High Court in the Madras-Motors case.

18. The Karnataka High Court judgement in the Fernandez case is also of the AY 2003-04 where the law was slightly different, nonetheless, the main provisions were similar.

19. The counsel for the Assessee submits that in section 80HHC(3) of the Act restricted meaning be given to the word 'business' confining it to unit that is fully or partly doing exporting business as intention was to provide relief for export business. In this regard, they drew our attention to the following provisions:

- Title of the section 80HHC, which is 'deduction in respect of profits retained for export business';
- Sub-section (2) of section 80HHC of the Act {80HHC(2)} provides that benefit of deduction is to be given where the foreign exchange is brought into the country.

20. Section 80HHC of the Act does not confine the word 'business' to the unit that is fully or partly doing export business. On the contrary, at one place, it uses the word 'export turnover', but wherever the word 'business' is used, it is not qualified by any other limiting words. On the contrary, it talks about the ratio between 'export turnover' and the 'total turnover of the business.'

21. Use of the word 'total' in section 80HHC(3) of the Act signifies that it is not limited to a particular unit but refers to all the businesses carried on by the Assessee.

22. The word 'export turnover' is also defined in explanation (ba). It excludes certain amounts mentioned therein. However, it does not exclude the turnover of the business other than the one doing export business.

23. In our opinion, the word 'business' means the all businesses carried on by the Assessee and it is not limited to the export oriented unit namely the SE-Unit.

24. We agree with the reasoning given by the Karnataka High Court in the Fernandez case and disagree with the reasoning given by the Madras High Court in the Madras-Motors and the two other cases of the Madras High Court as well as the Delhi High Court in Padmini-Technologies case.

25. In view of the above, both the questions are answered in negative in favour of the Department and against the Assessee.

**CHIEF JUSTICE**

**JUDGE**

## Appendix-1

Deduction in respect of profits retained for export business.

80HHC. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the profits derived by the assessee from the export of such goods or merchandise:

...

(2)(a) This section applies to all goods or merchandise, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are received in, or brought into, India by the assessee (other than the supporting manufacturer) in convertible foreign exchange, within a period of six months from the end of the previous year or, where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf.

...

(b) This section does not apply to the following goods or merchandise, namely:-

(i) mineral oil; and

(ii) minerals and ores (other than processed minerals and ores specified in the Twelfth Schedule).

...

3 For the purposes of sub-section (1)—

(a) Where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

...

*Explanation.*—For the purposes of this section,—

...

(b) “export turnover” means the sale proceeds, received in, or brought into India by the assessee in convertible foreign exchange in accordance with clause (a) of sub-section (2) of any goods or merchandise to which this section applies and which are exported out of India, but does 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);

(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 (iiia), (iiib) and (iiic) of section 28;

(baa) “profits of the business” means the profits of the business as computed under head “profits and gains of business or profession” as reduced by—

(1) ninety per cent of any sum referred to in clauses (iiia), (iiib) and (iiic) 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;

**HEADLINES**

Under section 80HHC of the Income Tax Act business includes all businesses and not export oriented business only.