(4903)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2008

CORAM

THE HONOURABLE Mr.Justice K.RAVIRAJA PANDIAN
AND
THE HONOURABLE Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.33 of 2008

The Commissioner of Income-Tax
Tamil Nadu VIII, Madras. ... Appellant

Vs.

M/s. M. Gani & Co.,
No.204, Angappa Naicken Street
Chennai 600 001. ... Respondent

TAX CASE (APPEAL) under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, 'B' Bench dated 30.11.2006 made in I.T.A.No.942/Mds/2005.

For Appellant : Mr. J. Naresh Kumar
Standing Counsel
for Income Tax

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J

This appeal has been filed against the order of the Income Tax Appellate Tribunal in I.T.A.No.942/Mds/2005 dated 30.11.2006. The relevant assessment year is 2001-02.

2. The assessee is a manufacturer of garments and fancy items and exporter. The assessee filed its return of income on 29.10.2001 for the relevant assessment year 2001-2002 claiming deduction under Section 80HHC of the Income Tax Act (hereinafter referred to as the "Act") on export turn over ignoring the results of domestic turn over. The Assessing Officer after going through the facts that the assessee while computing the deduction under Section 80HHC of the Act has taken into consideration only the turn over of the export division for the purpose of total turn over, has made a composite turn

over of both the export turn over as well as domestic turn over and accordingly re-computed the deduction under Section 80HHC of the Act. Aggrieved by that order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) allowed the claim of the assessee relying upon the provisions of Section 80HHC (3)(c) of the Act. The Revenue carried the matter on further appeal before the Income-tax Appellate Tribunal, which confirmed the order of the Commissioner of Appeals and dismissed the appeal preferred by the Department. Aggrieved by that order, the present appeal has been filed by formulating the following substantial questions of law:-

Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in holding that the assessee is entitled for deduction under Section 80HHC fully on export profits, even though section 80HHC(3)(a) will applicable to the facts and in the circumstances of the case ? "

3. We heard the learned standing counsel appearing for the Revenue.

4. This question of law as to whether where the assessee has maintained the separate books of accounts in respect of domestic transaction as well as the export transaction the clubbing of income was permissible was considered by this Court in COMMISSIONER OF INCOME TAX VS. RATHORE BROTHERS reported in 254 ITR 656. In that case, it was held that where the assessee has maintained separate accounts and it had maintained its trading receipts and profit and loss accounts separately for export sales and domestic sales and there was sufficient materials supported by all the necessary documents to show that the deduction claimed was entirely due to export, there was no warrant for disallowing any portion of the export earnings pro rata by invoking clause (b) of sub-section 3 of Section 80 HHC of the Act. The purpose of the clause was to disallow a part of the allowances under the section only when the entire claim could not be regarded as being relatable to export. That decision has been followed subsequently, in COMMISSIONER OF INCOME TAX VS. SURESH B. MEHTA reported in 291 ITR 462 in a similar set of facts, where the assessee had maintained the separate accounts for domestic transaction as well as the export transaction. Having regard to the said fact, this Court has held that the assessee was maintaining separate accounts independent of his other business and that there was no intermingling of expenditure or interlacing of funds of any kind whatsoever the assessee was entitled to the relief. That decision was followed in another case in COMMISSIONER OF INCOME TAX VS. MACMILLAM INDIA LTD., reported in 295 ITR 67, wherein also, the Court held as follows:-

"Where the assessee had maintained separate accounts and maintained its trading receipts and profit and loss accounts separately for export sales and domestic sales and produced sufficient material in support of all the necessary documents to show that the deduction claimed was entirely due to export, there is no warrant for disallowing any portion of the export earnings pro rata by invoking clause (b) of sub-section (3) of section 80HHC of the Income Tax Act, 1961, as the purpose of the clause is to disallow a

part of the allowance under that section only when the entire deduction claimed could not be regarded as being relatable to exports."

5. Incidentally, in the latter two cases, one of us was party (CVJ). In paragraph-6 of the order, the Tribunal has categorically stated without any ambiguity that the assessee maintaining separate set of books of accounts. Hence, the assessee is entitled for deduction under Section 80HHC of the Act fully on export profit. In view of the fact that the assessee maintained the separate books of accounts for export business and domestic business and in the light of the earlier decisions cited, we are of the considered view that the Tribunal has decided the issue correctly and the appeal deserves no merit consideration. Therefore, the appeal is dismissed. No costs.

Index : Yes/No **(K.R.P., J.) (C.V., J.)**
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K.RAVIRAJA PANDIAN, J.
and
CHITRA VENKATARAMAN, J.