

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and

The Honourable Ms.Justice SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.1192 of 2015

Commissioner of Income Tax,
Pondicherry.

...Appellant

Vs

M/s.Tweezerman (India) Pvt. Ltd.,
No.C24, Industrial Estate,
Thattanchavady,
Pondicherry – 605 003.

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 24.04.2015 made in ITA.No.2400/Mds/2014 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the assessment year 2007-2008.

For Appellant : Mr.J.Narayansasamy

For Respondent : Mr.Srinath Sridevan
Assisted by M/s.Jyotsna Sivakumar

JUDGMENT

(Delivered by T.S.Sivagnanam,J)

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 [‘the Act’ for brevity] is directed against the order dated 24.04.2015 passed by the Income Tax Appellate Tribunal [hereinafter referred to as “the Tribunal”], ‘B’ Bench in I.T.A.No.2400/Mds/2014 for the assessment year 2007-2008.

2.The appeal was admitted on 04.01.2016 on the following substantial question of law:

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the scrap sales had to be excluded from the total turnover as well as the export turnover while computing the exemption under Section 10B?”

3.We have heard Mr.J.Narayanasamy, learned senior standing counsel appearing for the appellant/revenue and Mr.Srinath Sridevan, learned

counsel assisted by M/s.Jyotsna Sivakumar, learned counsel appearing for the respondent/assessee.

4.The short question involved in the instant case is as how to compute the total turnover while considering the claim for exemption under Section 10B of the Act.

5.The case of the revenue is that the sale of scrap should also be included. Admittedly the assessee is engaged in the manufacture of certain articles which are being exported and during the manufacturing process, scrap is generated which is sold and the sale proceeds would go to reduce the amount spent on the purchase of raw materials. The Tribunal took note of the decisions in the case of ***CIT vs. Madras Motors Ltd. [257 ITR 60]*** and ***CIT vs. NSC Shoes [258 ITR 749]*** and held that scrap sales cannot form part of total turnover. Accordingly, the appeal filed by the revenue before the Tribunal was dismissed holding that the Assessing Officer has taken the scrap sales as part of the total turnover, however was not taken as an export turnover and therefore, the total turnover and the export turnover

shall of the same figure and since scrap sales did not form part of the total turnover, the same cannot form part of the export turnover. By the impugned order, the Tribunal accepted the finding recorded by the Commissioner of Income Tax [Appeals]-VI [CIT(A)], Chennai while reversing the assessment order.

6.The learned senior standing counsel for the revenue seeks to draw a distinction with regard to the deduction claim under Section 80HHC and would point out that the case on hand is a claim made under Section 10B of the Act. However, the legal principle which is required to be considered is as to what is the meaning of the word 'turnover'. The Hon'ble Supreme Court in the case of ***Commissioner of Income Tax-VII, New Delhi vs. Punjab Stainless Steel Industries [(2014) 46 Taxman 68 (SC)]*** considered this issue and held as follows:

“17.To ascertain whether the turnover would also include sale proceeds from scrap, one has to know the meaning of the term ‘turnover’. The term ‘turnover’ has neither been defined in the Act nor has been explained by any of the CBDT circulars.

18.In the aforestated circumstances, one has to look at the meaning of the term 'turnover' in ordinary accounting or commercial parlance.

19.Normally, the term 'turnover' would show the sale effected by a business unit. It may happen that in the course of the business, in addition to the normal sales, the business unit may also sell some other things. For example, an assessee who is manufacturing and selling stainless steel utensils, in addition to steel utensils, the assessee might also sell some other things like an old air conditioner or old furniture or something which has outlived its utility. When such things are disposed of, the question would be whether the sale proceeds of such things would be included in the 'turnover'. Similarly in the process of manufacturing utensils, there would be some scrap of stainless steel material, which cannot be used for manufacturing utensils. Such small pieces of stainless steel would be sold as scrap. Here also, the question is whether sale proceeds of such scrap can be included in the term 'sales' when it is to be reflected in the Profit and Loss Account.

20.In ordinary accounting parlance, as approved by all accountants and auditors, the term 'sales', when reflected in the Profit and Loss Account, would indicate sale proceeds from sale of the articles or things in which the

business unit is dealing. When some other things like old furniture or a capital asset, in which the business unit is not dealing are sold, the sale proceeds therefrom would not be included in 'sales' but it would be shown separately.

21.In simple words, the word "turnover" would mean only the amount of sale proceeds received in respect of the goods in which an assessee is dealing in. For example- If a manufacturer and seller of air-conditioners is asked to declare his 'turnover', the answer given by him would show the sale proceeds of air-conditioners during a particular accounting year. He would not include the amount received, if any, from the sale of scrap of metal pieces or sale proceeds of old or useless things sold during that accounting year. This clearly denotes that ordinarily a businessman by word "turnover" would mean the sale proceeds of the goods (the things in which he is dealing) sold by him.

22.So far as the scrap is concerned, the sale proceeds from the scrap may either be shown separately in the Profit and Loss Account or may be deducted from the amount spent by the manufacturing unit on the raw material, which is steel in the case of the respondent-assessee, as the respondent assessee is using stainless steel as raw material, from which utensils are manufactured. The raw material,

which is not capable of being used for manufacturing utensils will have to be either sold as scrap or might have to be re-cycled in the form of sheets of stainless steel, if the manufacturing unit is also having its re-rolling plant. If it is not having such a plant, the manufacturer would dispose of the scrap of steel to someone who would re-cycle the said scrap into steel so that the said steel can be re-used.

23. When such scrap is sold, in our opinion, the sale proceeds of the scrap cannot be included in the term 'turnover' for the reason that the respondent-unit is engaged primarily in the manufacturing and selling of steel utensils and not scrap of steel. Therefore, the proceeds of such scrap would not be included in 'sales' in the Profit and Loss Account of the respondent-assessee.

24. The situation would be different in the case of the buyer, who purchases scrap from the respondent-assessee and sells it to someone else. The sale proceeds for such a buyer would be treated as "turnover" for a simple reason that the buyer of the scrap is a person who is primarily dealing in scrap. In the case on hand, as the respondent-assessee is not primarily dealing in scrap but is a manufacturer of stainless steel utensils, only sale proceeds from sale of utensils would be treated as his "turnover".

25. So as to be more accurate about the word

“turnover”, one can either refer to dictionaries or to materials which are published by bodies of Accountants. The Institute of Chartered Accountants of India

(hereinafter referred to as the ‘ICAI’) has published some material under the head “Guidance Note on Tax Audit Under Section 44AB of the Income Tax Act”. The said material has been published so as to guide the members of the ICAI. In our opinion, when a recognized body of Accountants, after due deliberation and consideration publishes certain material for its members, one can rely upon the same. Para 5 of the said Note deals with “Sales”, “turnover” and “gross receipts”. Paras 5.2 and 5.3 of the said Note are reproduced hereinbelow, which pertain to the term “turnover”.

“5.2 In the “Guidance Note on Terms Used in Financial Statements” published by the ICAI, the expression “Sales Turnover” (Item 15.01) has been defined as under:-

“The aggregate amount for which sales are effected or services rendered by an enterprise. The term ‘gross turnover’ and ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts”.

5.3 The Guide to Company Audit issued by the ICAI in the year 1980, while discussing “sales”, stated as follows:

“Total turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods dealt with by the company and indicating the quantities of such sales for each class separately. Note (i) The term ‘turnover’ would mean the total sales after deducting therefrom goods returned, price adjustments, trade discount and cancellation of bills for the period of audit, if any. Adjustments which do not relate to turnover should not be made e.g. writing off bad debts, royalty etc. Where excise duty is included in turnover, the corresponding amount should be distinctly shown as a debit item in the profit and loss account.” (emphasis supplied)

The aforestated meaning given by the ICAI clearly denotes that in normal accounting parlance the word “turnover” would mean “total sales” as explained hereinabove. The said sales would definitely not include the scrap material which is either to be deducted from the cost of raw material or is to be shown separately under a different head. We do not see any reason for not accepting

the meaning of the term “turnover” given by a body of Accountants, which is having a statutory recognition.

26.If all accountants, auditors, businessmen, manufacturers etc. are normally interpreting the term ‘turnover’ as sale proceeds of the commodity in which the business unit is dealing, we see no reason to take a different view than the view normally taken by the persons who are concerned with the said term.”

7.Thus, by taking note of the above legal position as well as the findings recorded by the Tribunal we find that there is no error in the conclusion arrived at by the Tribunal.

8.For the reasons stated above, the tax case appeal is dismissed and the substantial question of law is answered against the revenue. No costs.

(T.S.S.,J.) (S.S.K,J.)

10.08.2021

Index: Yes/No
Internet: Yes/No
Speaking Judgment/Non speaking Judgment
cse

T.S.SIVAGNANAM,J.
AND
SATHI KUMAR SUKUMARA KURUP,J.

cse

To

The Income Tax Appellate Tribunal,
'B' Bench, Chennai.



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