IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2276 OF 2013

Commissioner of Income Tax-7 .. Appellant

v/s.

M/s. Tropical Clothing Co. Pvt. Ltd. .. Respondent

Mrs. S.V. Bharucha for the appellant
Mr. J.D. Mistri, Senior Counsel a/w Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 26th APRIL, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 5th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order dated 5th June, 2013 has disposed of appeals for Assessment Years 2000-01 and 2002-03. This appeal relates to Assessment Year 2000-01.

2. The Revenue has urged following two questions of law for our consideration :-

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that sundry creditors written back should not be reduced from the profits of

business under the provisions of sub-clause (1) of clause (baa) of explanation to Section 80HHC of the Act without appreciating the fact that the said receipts cannot be termed as profit derived from eligible export business and are in the nature of profit attributable to eligible business and therefore these receipts are covered within the scope of term "any other receipts of similar nature" as provided in sub-clause (1) of clause (baa) of explanation to section 80HHC?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the 90% of the job work charges should not be excluded from the profit of the business in terms of Explanation (baa) to Sec. 80HHC relying on decision of Bombay High Court in the case of CIT Vs. Banglore Clothing Co. (2003) 260 ITR 371 (Bom) without appreciating the judgment of Supreme Court in the case of CIT Vs. Ravindranathan Nair (295 ITR 228) which is squarely applicable to the facts of the case?

3. So far as question (a) is concerned, Mrs. Bharucha, learned Counsel for the Revenue very fairly states that the same does not arise from the impugned order of the Tribunal in the subject assessment year. Therefore, no occasion to consider the question as formulated arises. Accordingly, question (a) is not entertained.

4. Appeal is admitted on substantial question of law at (b).

5. As the issue seems to be within narrow compass, with the consent of the learned Counsel for the parties, the appeal itself is taken up for final disposal on the admitted substantial question of law at (b) above.

6. The respondent assessee is in the business of manufacture and export of garments. Besides, being engaged in job work activity and local sales.

7. In its Return of Income for the subject assessment year, the Respondent Assessee had claimed deduction under Section 80HHC of the Act. By assessment order dated 28th March, 2003 under Section 143(3) of the Act, the Assessing Officer *inter alia* recomputed the deduction claimed under Section 80HHC of the Act. This by inter alia excluding 90% of the job work charges from the profits of the business of the respondent assessee on application of the Explanation (baa) of Section 80HHC of the Act on recording a finding of fact that job work charges do not have any nexus with the export activity of the respondent assessee. The Assessing Officer also on facts did not accept the alternative claim of restricting the disallowance of 90% only to net receipts. This on the ground that the respondent was not able to

establish the net income attributable to job charges is different from gross receipts.

8. Being aggrieved, the respondent assessee carried the issue in appeal before the Commissioner of Income Tax (Appeals) [CIT(Appeals)]. By an order dated 7th February, 2007, the CIT(Appeals) upheld the exclusion of 90% of the job work charges from the profits of the business in terms of Explanation (baa) to Section 80HHC of the Act. It held that the job work charges received are not export related receipts. Further, the order of the CIT(Appeals) also rejects the respondent's claim that only 90% of the net receipts on account of charges of job work should be excluded under the said Explanation as on facts the net receipts claimed could not be established.

9. Being aggrieved, the respondent Revenue carried the issue of job work charges vis-a-vis the deduction under Section 80HHC of the Act to the Tribunal. The impugned order dated 5th June, 2013 of the Tribunal placed reliance upon the decision of this Court in ***Commissioner of Income Tax Vs. Banglore Clothing Co. 260 ITR 371*** and held that the job work charges received from the respondent assessee forms part of

its operational income. Therefore, the same should be included in the profits of the business and no exclusion in terms of Explanation (baa) to Section 80HHC of the Act is warranted. Accordingly, the additions made by the Assessing Officer on account of reduction in claim for deduction under Section 80HHC of the Act was deleted on account of job-work charges.

10. Mrs. Bharucha, learned Counsel appearing for the Revenue submits that the issue now stands concluded against the respondent assessee and in favour of the Revenue by the decision of the Apex Court in ***Commissioner of Income Tax Vs. K. Ravindranathan Nair, 295 ITR 228*** and following that the decision of this Court in ***Sesa Goa Ltd. Vs. Commissioner of Income Tax*** (Tax Appeal No.53 of 2006) rendered on 7th May, 2015. Thus, the issue is no longer *res-integra.*

11. As against the above, Mr. Mistri, learned Senior Counsel for the respondent assessee does not dispute that the law as laid down in *K.Ravindranathan Nair (supra)* and *Sesa Goa Ltd. (supra)* would have to be applied to the facts of the present case. However, he submits that this issue be restored to the Assessing Officer for the purposes of examining the exact nature of job work charges received by the

respondent assessee to examine whether or not the job work charges have nexus to its export activity. This restoration to the Assessing Officer for application of the law as laid down in *K. Ravindranathan Nair (supra)* to determine nexus with exports. In the alternative, he submits that in any view, the dis-allowance in respect of the job work charges should be only 90% of the net receipts in terms of under the Explanation to Section 80HHC of the Act.

12. We have considered the submissions. We find that the decision of the Apex Court in *K.Ravindranathan Nair (supra)* is dated 13th November, 2007 covers the issue. This decision was available when the impugned order of the Tribunal was passed. However, the impugned order makes no reference to the same. In fact, the Apex Court in *K. Ravindranathan Nair (supra)* had while considering Explanation (baa) to Section 80HHC of the Act held that independent income, which has no nexus with the export activity, then 90% of such independent income is required to be deducted from business profits. Thus, in the facts before it, it held that independent income like rent, commission etc. including processing charges were be reduced by 90% so as to arrive at the profit of the business in terms of Section 80HHC of the Act. In the present facts, we find that the respondent assessee is

engaged not only in the business of manufacture and export of garments but also engaged in doing job work. There is nothing on record to indicate that the activity carried out on job work has nexus with the export earnings of the respondent assessee. In fact, the Assessing Officer has categorically given a finding of fact that job work charges received has no nexus to export. Therefore, the request for restoring of the issue to the Assessing Officer for fresh consideration as submitted by the respondent, is not warranted. In view of the above, as the issue stands concluded by the decision of the Apex Court in *K. Ravindranathan Nair (supra)* the substantial question of law raised for our consideration is answered in the negative i.e. in favour of the Revenue and against the respondent assessee.

13. So far as the alternative submission of Mr. Mistri, the learned Senior Counsel that while giving effect to this order, the Assessing Officer should exclude 90% of the net receipts on account of the job work charges while applying Explanation (baa) to Section 80HHC of the Act. We were not inclined to accept it as we find that both the Assessing Officer as well as the CIT(Appeals) have on facts found that the respondent assessee has not been able to establish that any expenses were incurred from the gross receipts so as to arrive at the net

receipts. As it is a factual finding. In response to our above observation, it was pointed out that on the aforesaid finding of fact, the respondent assessee had filed an appeal to the Tribunal. However, the same being an alternative submission was not considered as the impugned order of the Tribunal decided the basic issue in its favour. In these circumstances, the petitioner's grievance on the above finding of fact was never considered by the Tribunal. Therefore, in the interest of justice, let the respondent assessee be given an opportunity to prove its case that net expenses are different from gross. We see merit in the above submission and direct the Assessing Officer to consider the respondent assessee's claim on facts. In case on facts, the Assessing Officer accepts the view of the respondent assessee, then it shall consider the claim in law as may be urged by the respondent assessee in support of its view that the net receipts of the job-work charges should alone be excluded in applying Explanation (baa) to Section 80HHC of the Act.

14. Accordingly, the appeal is disposed of in the above terms. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**