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

INCOME TAX APPEAL NO. 381 OF 2003

M/s. J.R. Enterprises, a partnership firm
registered under the Partnership Act, 1932
and having its office at 59, Bajaj Bhavan,
5th floor, Nariman Point, Mumbai – 400 021. ... Appellant

V/s.

1. The Deputy Commissioner of Income Tax
Circle 12(3) having his office at Aaykar
Bhavan, 6th floor, Room No.676, M.K.
Road, Mumbai – 400 020
2. The Commissioner of Income Tax XII
Mumbai having his office at Aaykar
Bhavan, 6th floor, Room No. 676, M.K.
Road, Mumbai – 400 020 ... Respondent

Mr. Nitesh Joshi i/b. Atul Jasani for the Appellant

Mr. Ashok Kotangale a/w. P.A. Narayanan and Ajay V. Anand for the
Respondent

***CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.***

DATE : 16 JUNE 2022

Oral Judgment (Per Nitin Jamdar, J.) :-

By this Appeal, the Appellant - Assessee has challenged the Judgment and Order dated 14 February 2003 passed by the Income Tax Appellate Tribunal in ITXA Nos. 9640 of 1995 and 663 of 1996 for the Assessment Year 1989-90. Appeal No. 9640 of 1995 was filed by the Revenue challenging the order passed by the Commissioner of Income Tax (Appeals) and Appeal No. 663 of 1996 was filed by the Assessee challenging the order passed by the Commissioner of Income Tax (Appeals).

2. The Appellant was in the business of export of leather and molasses and also in the storage and handling of liquid cargo.

3. The Appeal was admitted on the following substantial question of law :-

“ Whether the Tribunal has erred in restoring the order of the 1st Respondent on the issue relating to section 80HHC of the Act and thereby denying any deduction under the said section as against a sum of Rs.84,69,180/- claimed by the Appellant ?”

4. There are two components of the question of law framed. First one is based on the observation and finding of the Tribunal that explanation in Clause (b), (baa) and (ba). Section 80HHC would have retrospective operation and therefore, the Appellant cannot avail of the benefit under Section 80HHC of the

Act. This is the foundation of the decision of the Tribunal. It is the common ground at the bar that this foundation no longer survives in view of the decision rendered by the Supreme Court in the case of *P.R. Prabhakar v/s. Commissioner of Income Tax*¹ wherein the Supreme Court has observed that the amendment to Section 80HHC brought in by the Finance (No.2) Act, 1991 is prospective. The view taken by the Tribunal therefore clearly stands overruled.

5. The second component is in respect of the charges from storage and handling, throughout charges, management charges, miscellaneous incomes and rental receipts which were included in the total turnover of the Appellant by the impugned order whereby the benefit available to the Appellant under Section 80HHC was correspondingly reduced. The learned Counsel for the Appellant placing reliance on the decision of the Supreme Court in the case of *Commissioner of Income Tax v/s. Punjab Stainless Steel Industries*² contends that this view taken by the Tribunal is no longer good law. In the case of *Punjab Stainless Steel Industries*, the Supreme Court was considering the challenge to the decision of the Tribunal confirmed by the High Court which had come to the conclusion that the sale of scrap generated by the assessee therein during the manufacture of goods which were entirely exported was not incidental to the export activity and could not be treated as business income and therefore, the income was rightly not included in the

¹ (2006) 284 ITR 548 (SC)

² (2014) 364 ITR 144 (SC)

computation for the purpose of deduction under Section 80HHC. On this aspect the Supreme Court made the following observations :-

“ According to the Revenue, the sale proceeds from the scrap should have been included in the “total turnover” as the respondent – assessee was also selling scrap and that was also part of the sale proceeds.

The assessee had objected to the aforesaid suggestion of the Revenue because inclusion of the sale proceeds of scrap into the total turnover would reduce the amount deductible under the provisions of section 80HHC of the Act.

One can very well see that if the total turnover increases, the advantage which the assessee would get under Section 80HHC would decrease because the amount deductible substantially depends upon the ratio between the export turnover and the total turnover. If the export turnover is higher, comparatively the amount deductible under Section 80HHC would be more; or, in other words, if compared to the total turnover, export turnover is less, the amount deductible from the income under Section 80HHC would be reduced. By virtue of the impugned judgment delivered by the High Court, the accounting method followed by the respondent - assessee has been approved and, therefore, this appeal is filed by the Revenue.”

After explaining the interplay between the export turnover and total turnover, the Supreme Court considered the aspect of sales and observed thus :-

“ 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.

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 the word “turnover” would mean the sale proceeds of the goods (the things in which he is dealing) sold by him.

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. It is 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.

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.”

As regards the proposition as laid down by the Supreme Court in this case that the receipts which have no nexus to the export turnover cannot form total turnover, there is no dispute at the bar. The learned Counsel for the Respondent sought to contend that however, the Appellant must show that there is no such nexus. Though we do not find any elaborate reasoning of the Tribunal on this aspect, from the reading of the orders of the Assessing Officer, Commissioner of Income Tax (Appeals) and the Tribunal, what emerges is that the income from storage and handling which form major component was independent of the export of leather and molasses which the Appellant undertook as an export business. Further, in the appeal the Appellant has made a statement on oath, which is not controverted that it is engaged in the business of export of leather and molasses and storage and handling of liquid cargo at major ports. Not only that nothing contrary as regard this assertion is shown, in

fact, the authorities have proceeded on the basis that the storage and handling of liquid cargo at major ports was a different business of leather and molasses. That being the position, in the light of law laid down in the case of *Punjab Stainless Steel*, the Appellant is entitled to succeed on both components and accordingly, the question of law framed will have to be answered in favour of the Appellant.

6. The Appeal is accordingly allowed. The impugned order is set aside. No costs.

N.R. BORKAR, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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