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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 5/2019

INDIRA LAUL AND OTHERS LEGAL HEIR OF LATE
SHRI ANIL LAUL Appellant

Through: Mr.K.R.Manjani and Mr.Tarun
Ashwani, Adv.

versus

INCOME TAX OFFICER WARD 38 (1) NEW DELHI
..... Respondent

Through: Ms.Dacchita Shahi, Jr.SC and
Ms.Anuja Pethia, Jr.SC for
Mr.Shailendra Singh, Sr.SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV

% **ORDER**
01.02.2024

1. This appeal has been preferred against the order of the Income Tax Appellate Tribunal ["ITAT"] dated 23 August 2018 for Assessment Year ["AY"] 2000-01. The appellant calls upon us to consider answering the following question of law as framed:-

(a) Whether on the facts and circumstances of the case, certificate from Film Censor Board was necessary for allowing the relief u/s 80HHF of Income Tax Act, 1961 ["Act"]?

2. However, upon hearing learned counsels for parties, we are of the opinion that the issue of certification from the Censor Board is wholly irrelevant for the purposes of examining the applicability of Section 80HHF of the Act.



3. However, and before proceeding further, it would be appropriate to notice the following salient facts. It is contended by the appellant that on meeting two U.S. nationals, he entered into a transaction, pursuant to which he prepared "Discs" and was also paid in foreign exchange. According to the assessee the aforesaid amount as obtained should be viewed as exports which would be covered under Section 80HHF of the Act.

4. In order to appreciate the submissions which stand addressed, we extract Section 80HHF of the Act herein below:-

“80HHF. Deduction in respect of profits and gains from export or transfer of film software, etc.—(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 or transfer by any means out of India, of any film software, television software, music software, television news software, including telecast rights (hereafter in this section referred to as the software or software rights), 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 to the extent of profits, referred to in sub-section (1-A)] derived by the assessee from such business.

[(1-A) For the purposes of sub-section (1), the extent of deduction of profits shall be an amount equal to—

(i) eighty per cent of such profits for an assessment year beginning on the 1st day of April, 2001;

[(ii) seventy per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(iii) fifty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(iv) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2004.]

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.]

(2) The deduction specified in sub-section (1) shall be allowed only if the consideration in respect of the software or software rights referred to in that sub-section is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf.



(3) For the purposes of sub-section (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(5) Where a deduction under this section is claimed and allowed in respect of profits of the business referred to in sub-section (1) for any assessment year, no deduction shall be allowed in relation to such profits under any other provision of this Act for the same or any other assessment year.

(6) Notwithstanding anything contained in this section, no deduction shall be allowed in respect of the software or software rights referred to in sub-section (1), if any law prohibits such business for the time being in force.

Explanation.—For the purposes of this section,—

(a) ‘competent authority’ means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange;

(b) ‘convertible foreign exchange’ shall have the meaning assigned to it in clause (a) of the Explanation to Section 80-HHC;

(c) ‘export turnover’ means the consideration in respect of the software or software rights specified in clauses (d), (e), (g), (h), and (i), received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (2), but does not include freight, telecommunication charges or insurance attributable to the delivery of such software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

(d) ‘film software’ means a copy of a cinematograph film made by any process analogous to cinematography on acetate polyester or celluloid film positive, magnetic tape, digital media or other optical or magnetic devices and certified by the Board of film certification constituted by the Central Government under Section 3 of the Cinematograph Act, 1952;



(e) 'music software' includes series of sounds or music recorded on magnetic tape, cassette, compact discs and digital media which can be played or reproduced on any appropriate apparatus;

(f) 'profits of the business' means the profit of the business as computed under the head 'profits and gains of business or profession' as reduced by—

(A) ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(B) the profits of any branch, office, warehouse or any other establishment of the assessee situated outside India;

(g) 'telecast rights' means a licence or contract to exhibit motion pictures or television programmes over a television network either through terrestrial transmission or through a satellite broadcast in a specified territory;

(h) 'television news software' means a collection of sounds and images, reportage, data and voice of actualities broadcast either through terrestrial transmission, wire or satellite, live or pre-recorded on video cassettes or digital media;

(i) 'television software' means any programme or series of sounds and images recorded on film or tape or digital media or broadcast through terrestrial transmitter, satellite or any other means of diffusion;

(j) 'total turnover' shall not include,—

(A) any sum referred to in clauses (iii-a), (iii-b) and (iii-c) of Section 28;

(B) any freight, telecommunication charges or insurance attributable to the delivery of the film software, music software, telecast rights, television news software, or television software as defined in clause (d), (e), (g), (h) or (i), as the case may be, outside India;

(C) expenses, if any, incurred in foreign exchange in providing the technical services outside India.]"

5. As it is evident from the record, the dispute itself pertains to AY 2000-01 and the assessment of which went through several rounds of litigation. Suffice it to note that the ITAT an order of 05 August 2011 had remanded the matter while partially allowing the appeal of the appellant and calling upon the Assessing Officer ["AO"] to consider



the issue of deductions claimed under Section 80HHF of the Act. Pursuant to that order, a fresh assessment order came to be framed on 21 March 2013 and in which the AO held that the appellant had failed to fulfil the conditions laid down in the provision in question. It was this order which was assailed before the Commissioner of Income Tax (Appeals) which too came to be dismissed on 30 October 2014.

6. As we read the provisions of Section 80HHF of the Act, it is evident that what the provision contemplates is the export of transfer of film software, television software, music software, television news software including telecast rights and other items mentioned therein. We note from the record that the appellant has woefully failed to establish before the authorities below that the "Disks" which were so exported would fall in the genre of any of the software's mentioned and noticed hereinabove.

7. In view of the aforesaid facts, we find no merit in the challenge as raised. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.
FEBRUARY 01, 2024/MJ