



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 231/2005**

THE COMMISSIONER OF INCOME TAX Appellant
Through **Mr. R. D. Jolly with**
Mr. Rajeev Awasthy, Advs.

versus

M/S GENERAL SALES LTD. Respondent
Through **Mr. V. P. Gupta with**
Mr. Basant Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
07.09.2006

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The Revenue is aggrieved by an order dated 12th June, 2003 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA No. 519/Del/97 relevant for the assessment year 1992-93. Along with this appeal, the Tribunal also heard ITA No. 2640/Del/1997 and disposed both of them by a common order but we are concerned, for the present, with ITA No. 519/Del/97.

The only question that has arisen in this case is with regard to short deduction of the Assessee's claim under Section 80HHC of the Income Tax Act.

According to the Assessee, it was carrying on the business of export of goods as a trading activity. In addition to this it also



claims that it had some other incomes, such as, from receipt of dividend, foreign profits, miscellaneous receipts, receipt from local sales and hotel division.

It appears that the turnover of the Assessee was about Rs.39 Crore from exports and from local sales in its trading activity. The local sales from trading activity were to the extent of Rs. 5,000/- only and the export turnover out of the total turnover was 99.98%. Of course, this does not include the income that the Assessee claimed from its other activities.

The Assessee also claims that it maintained separate books of accounts in respect of the export activities and also maintained separate books of account in respect of direct cost and indirect cost relating to the export activities as well as to the other activities.

It appears that the Assessing Officer did not take the other activities of the Assessee into consideration and found that the direct cost and indirect cost claimed by the Assessee in respect of its local sales were disproportionately high. According to him the Assessee was loading the indirect costs pertaining to the Export business on the business for local sales with a view to claim higher deduction under Section 80HHC of the Act. He, therefore, disallowed the deduction as claimed by the Assessee under Section 80HHC of the Act.

In appeal, the Commissioner of Income Tax (Appeals)

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rejected the contentions of the Assessee which led the Assessee to file an appeal before the Tribunal.

The Tribunal considered the entire facts of the case and recorded the statement made at the Bar by learned counsel for the Assessee that the Assessee was maintaining separate books of accounts in respect of its export trade. The Tribunal then held that the expenses attributable to the export business would be identifiable and only such expenses could be taken into consideration for determining the direct cost and the indirect cost incurred by the Assessee towards its export activities for calculating the deduction under Section 80 HHC of the Act. The Tribunal also considered the alternative situation that in the event the Assessee is not maintaining separate books of accounts, then the expenses would have to be taken in the same ratio in which the export turnover was made by the assessee. Since the facts did not appear to be clear, the Tribunal set aside the order of the CIT(A) and remanded the matter back to the Assessing Officer to determine the factual position regarding the maintenance of separate books of accounts in respect of the export activities and thereafter, depending on the finding, proceed to apply the law as laid down under Section 80HHC of the Act to determine as to what extent the Assessee's claim of deduction is made out.

We are of the view that this direction given by the Tribunal

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unexceptionable. The Assessing Officer has to first determine whether the Assessee is maintaining separate books of accounts or not, and depending upon his conclusion, the Assessing Officer would then have to apply the law as laid down under Section 80HHC of the Act. Obviously, the Assessing Officer will evaluate the books of Accounts and determine how much of the expenditure, direct and indirect, is attributable to the export activities of the Assessee.

We are of the view that the conclusion of the Tribunal does not raise any substantial question of law which merits our consideration. Accordingly the appeal is dismissed.

MADAN B. LOKUR, J**VIPIN SANGHI, J****SEPTEMBER 07, 2006**

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