

Commissioner Of Income-Tax vs Silver And Arts Palace on 18 December, 2002

Equivalent citations: (2003)180CTR(SC)309, [2003]259ITR684(SC), (2003)11SCC344

Bench: Ruma Pal, B.N. Srikrishna

ORDER

1. The appeal is directed against the judgment of the Jaipur Bench of the Rajasthan High Court (see [2001] 248 ITR 69) dismissing the appeal under Section 260A of the Income-tax Act, 1961 (for short, "the Act"), carried by the Revenue against the order of the Income-tax Tribunal dismissing its appeal.

2. Section 80HHC of the Act permits certain deductions to be made from the profits earned out of the business of export of goods. There is, however, an Explanation (aa) added thereto, which reads as under :

"'export out of India' shall not include any transaction by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance at any customs station as defined in the Customs Act, 1962 (52 of 1962)."

3. The Explanation explains what is "export out of India". Any transaction by way of sale or otherwise in a shop or emporium which does not involve clearance at a customs station as defined in Customs Act, 1962, is thereby excluded from the expression "export out of India".

4. The assessee has a business of sale of semi-precious and precious stones, handicrafts, jewellery, etc. In the return filed for the assessment year 1996-97, it had declared a total income of Rs. 1,51,000 and claimed deduction of Rs. 80,12,786 under Section 80HHC of the Act. The Assessing Officer found that the sales effected by the assessee included counter sales of Rs. 9,76,40,672 and, therefore, the deduction claimed by the assessee under Section 80HHC was disallowed by the Assessing Officer placing reliance on Explanation (aa) to Section 80HHC(4A) of the Act. The assessee's appeal to the Commissioner of Income-tax (Appeals) failed, but its appeal to the Tribunal succeeded. Before the Tribunal, material was placed on record to show the nature of the transactions made. The Allahabad High Court specifically considered the effect of introduction of Explanation (aa) to Section 80HHC(4A) of the Act and had taken the view in Ram Babu and Sons v. Union of India [1996] 222 ITR 606 that this Explanation means that, for the purpose of this section, there will be no export out of India if two conditions are cumulatively fulfilled, viz., (a) it is a transaction by way of sale or otherwise in a shop, emporium or establishment situate in India, and (b) that it does not involve clearance in any customs station as defined in the Customs Act. This view of the Allahabad High Court had been consistently followed by several other High Courts, including the Rajasthan High Court itself in ITO v. Vaibhav Textiles [2002] 258 ITR 346. Reliance was placed on

a number of orders of the Income-tax Tribunal following the view taken in Ram Babu's case , consistently and the law laid down therein. In fact, even in the case of the respondent-assessee, for the previous assessment years, the Tribunal had taken the same view. Although the Revenue attempted to canvass against the view by seeking references under Sections 256(1) and (2) of the Act, the attempt failed. There was no further challenge to the settled consistent judicial view taken on the issue. It was also pointed out that the judgment of the Allahabad High Court in Ram Babu's case [1996] 222 ITR 606, had been challenged by the Revenue before this court, but the special leave petition, was summarily dismissed. In view of this position, the Tribunal felt that consistency of the judicial decision should be respected and followed.

5. There is no dispute between the parties that the transactions of counter sales effected by the respondent involved customs clearance within the meaning of Explanation (aa) to Section 80HHC(4A) of the Act and further that the sales were in convertible foreign exchange.

6. In these circumstances, we are of the view that the Revenue having accepted and consistently followed the position of law settled by Ram Babu's case , particularly in the case of the assessee itself, there is no merit in this appeal.

7. We, therefore, dismiss the appeal without any order as to costs.