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

Date of decision: 05.09.2018

\+ **ITA 717/2005**

COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Deepak Anand, Jr. Standing Counsel for the Revenue.

versus

M/S TECHNO EXPORTS ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)
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1. The following question of law was framed in relation to this appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter 'the Act').

> *"Whether ITAT was correct in deduction under section 80HHE for the exports made by the assessee for the previous year relevant to assessment year 1992-93?"*

2. Brief facts necessary to decide the case are that in this case the Assessing Officer ('AO') disallowed the assessee's claim for deduction under Section 80HHE of the Act in the course of scrutiny of assessment

for Assessment Year (A.Y.) 1996-97. It was argued that the amounts should have been claimed – if at all, when they became due having regard to the export made in the previous years which were realised within a time-frame and for which the limited extension of six months could be granted. It was also urged that the assessee had not claimed this deduction at relevant time when it filed the returns.

3. It appears that the assessee had claimed deduction under Section 80HHE of the Act during the course of assessment proceedings and submitted a certificate of the Chartered Accountant in Form-10CCAF – as required by Section 80HHE(4) of the Act. This however was not allowed. The AO did not accept the assessee's contentions with respect to the deduction claimed; the assessee had stated that the receipt of foreign exchange was held up on account of clearances, which ultimately were given by the RBI; only in 1995-96. The foreign exchange received was towards the export made to the trading concerns/corporations in the erstwhile Soviet Union which disintegrated sometime in 1990-91.

4. Upon appeal, the CIT granted relief to the assessee, who held as follows:-

> *"2.4 I have carefully considered the facts of the case as per Circulars No.421 dated 12.6.1985 (1985) 156 ITR (ST) 148, Circular No. 563 dated 23.5.1990 and Circular No. 575 dated 31.8.1990 convertible foreign exchange includes amount received in same convertible rupees from bilateral account countries (e.g. Russian Rubles) and receipt of Indian Rupees under Government of India credit. The appellant received the money from the account in the previous year 1995-96 relevant to the A.Y. 1996-97 and the Assessing Officer held that since the appellant is*

maintaining accounts on receipt/cash basis and the consideration for export was received in the previous year 1995-96 it was taxable in A.Y. 1996-97. The learned Member of the ITAT also took a similar view in the case of the appellant for A.Y. 1994-95 and I have also agreed with this view. Thus it is an admitted fact that the consideration of export was received in the previous year 1995-96 relevant to A.Y. 1996-97 and the same is being taxed in that year. Since it is sale proceed of export the appellant is also entitled to deduction u/s 80 HHE as the appellant exported computer software. The contention of the appellant that since it has already disclosed the income in A.Y. 1997-9 and the same has also been assessed by the Assessing Officer u/s 143(1)(a) the same should not be taxed in 1994-95 and 1996-97 has not been accepted by the learned Member of the Assessing Officer as well as by me.

2.5 As per the provision of Section 80 HHE the deduction can be allowed only when the consideration is received within six months of the end of the previous year or within the period extended by the Commissioner of Income-tax or Chief Commissioner of Income-tax. This means that the consideration should be received either during the previous year for which the income is disclosed of with six months of the previous year for which income is being disclosed or within the period extended by the Commissioner or Chief Commissioner of Income-tax as the case may be. In the case of the appellant it is and admitted fact that the appellant is maintaining accounts on receipt/cash basis. This amount has been taxed in the previous year in which it has been received. The Assessing Officer has also taxed the amount accordingly and his action has been confirmed by me. Since the amount has been received within the previous year for which income is being taxed and deduction is being claimed it cannot be said that the amount has not been received during the previous year during which the income is disclosed and deduction is claimed and because it requires an extention by the Commissioner of Income-tax since the amount was received during the previous year

1995-96 relevant to the A.Y. 1996-97 and it has also been taxed in that year, in my view, no extension is required as contemplated u/s 80 HHE (2).”

5. The Revenue’s appeal, which is confined to the question of permissibility of deduction under Section 80HHE of the Act was rejected by the Tribunal which discussed the appellate order of the Commissioner. It held that since the amount was taxed in the year it was received, i.e. 1996-97, the assessee’s claim that it could be deducted during that year, was justified. It was also noticed that similar dispute had arisen in the assessee’s case for A.Y. 1994-95 and that the Tribunal had decided in its favour in ITA 586/Del/98.

6. Learned counsel for the Revenue urged that the CIT(A) and the ITAT fell into error in granting the deduction for a period subsequent to the year in which the export proceeds were to be received. It was also highlighted that besides, the assessee never claimed these deductions in the first instance and rather during the course of assessment, and quite justifiably, the AO declined it.

7. This Court is unpersuaded with the Revenue’s contentions; firstly, for the previous year as well the assessee’s claim under Section 80HHE of the Act for similar receipt of export proceeds for earlier periods, was allowed. Apart from that the fact remains that the amounts were supposed to be received, but were not received, on account of extraneous political circumstance, i.e. disintegration of Soviet Union. In these circumstances, as and when the amounts were received, the assessee did claim deduction – *albeit* in the course of assessment proceedings. This occurred at a point

of time when there was no bar in such claims – the restriction was imposed by an amendment in the Finance Act, 2009 with retrospective effect from 01.04.2003. Consequently, the assessee was not barred from claiming the deduction, when the amounts were in fact received by it.

8. In view of the above discussion, the Revenue's appeal has to fail; the question of law framed is answered against it. The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

A. K. CHAWLA
(JUDGE)

SEPTEMBER 05, 2018
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