(2002) 12 MAD CK 0011

In the Madras High Court

Case No : Tax Case (Appeal) No. 489 of 1999

Anbu Textiles APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:
Income Tax Act, 1961 — Section 158BB, 80HHC

Citation : (2004) 187 CTR 646 : (2003) 262 ITR 684 : (2004) 138 TAXMAN 227

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Anitha Sumanth, for the Appellant; Pushya Sitharaman, for the Respondent

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—This appeal is directed against the order of the Income Tax Appellate Tribunal in I.T. (SS) A. No. 88/Mds of

1997 dated September 1, 1999.

2. The appeal was admitted and the following substantial questions of law were framed at the time of admission:

1. Whether, on the facts and in the circumstances, the Tribunal is right in holding that the appellant is not eligible for relief u/s 80HHC in respect of

the income of Rs. 14,35,756 claimed by the appellant as eligible for deduction u/s 80HHC ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that in an assessment under Chapter XIV-B, relief u/s

80HHC cannot be allowed ?

The appellant herein claimed relief u/s 80HHC in the block assessment made under Chapter XIV-B of the Act. The Tribunal, when it decided the matter on September 1, 1999, relied upon Section 158BB of the Act as it stood then, and held that the assessee was not eligible to claim

deduction u/s 80HHC on the ground that Section 80HHC is found only in Chapter VI-A and u/s 158BB of the Act as it stood then, the

assessment has to be made only ""in accordance with Chapter IV"" on the basis of the result of a search and the provisions of Chapter VI-A are

excluded for consideration.

Mrs. Anitha Sumanth, learned counsel appearing for the appellant, brought to the attention of this court that Section 158BB of the Act was

amended with retrospective effect from July 1, 1995, right from the date when Chapter XIV-B was inserted, and in view of the retrospective effect

given to Section 158BB of the Act, the income has to be computed ""in accordance with the provisions of the Act"" instead of the old provision--""in

accordance with the provisions of Chapter IV"". Hence, she submitted that the assessee would be eligible to claim deduction u/s 80HHC of the

Act.

Learned counsel for the Revenue in her fairness has not made any objection to the same.

We find force in the submission of Mrs. Anitha Sumanth, learned counsel for the appellant. It is clear that Section 158BB of the Act was amended

with full retrospective effect, from July 1, 1995, and under the amended provision, the undisclosed income of the block period shall be computed

in accordance with the provisions of the Act, and, therefore, the provisions contained in Chapter VI-A of the Act should also be taken into

consideration in determining the undisclosed income of the block period. It is true that the Appellate Tribunal decided the matter on the basis of

law then existing. The amendment came into force only by the Finance Act, 2002, with retrospective effect from July 1, 1995. Since the

amendment has been given retrospective effect, we are of the view, the provision, as amended, would be the proper provision for determining the

undisclosed income of the block period. We are therefore of the view that the Appellate Tribunal should go into the question whether the assessee

is actually eligible to claim deduction u/s 80HHC of the Act as the Appellate Tribunal had no opportunity to decide the said question. Accordingly,

the appeal is allowed and the order of the Appellate Tribunal is set aside and the matter is remitted back to the Appellate Tribunal to decide the

question whether the assessee is eligible to claim deduction u/s 80HHC of the Act on the merits of the case. It is made clear that it is open to the

Appellate Tribunal to remit the matter to the Assessing Officer to consider the question. It is also open to the parties to produce evidence in

support of their respective claims. However, in the circumstances of the case, there will be no order as to costs.

