(2002) 03 GAU CK 0045

In the Gauhati High Court

Case No : ITA No. 14 of 1999

Assistant Commissioner of Income Tax — APPELLANT

Vs

Technotive Eastern Pvt. Ltd. — RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:
Income Tax Act, 1961 — Section 80HH, 80I

Citation : (2002) 03 GAU CK 0045

Hon'ble Judges : S.K. Kar, J;D. Biswas, J

Bench : Division Bench

Advocate : G.K. Joshi and U. Bhuyan, for the Appellant; Ashok Saraf, K.K. Gupta and S.K. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—Heard Mr. U. Bhuyaa, learned counsel for the appellant and also Dr. A.K. Saraf, learned senior counsel for the respondent.

2. This appeal has been preferred for decision on the following questions of law :-

1. Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that no separate accounts are required to be maintained for claiming deduction u/s 80HH and 80-I of the Income Tax Act, 1961 ?

2. Whether on the facts and in the circumstances of the case, the findings of the learned Tribunal was not perverse in holding that deduction u/s 80HH And 80-I of the Income Tax Act, 1961 are allowable from profit relating to computer documentation service with such profit itself is estimated one and when separate books of account were not maintained nor any evidence in support of the claim was produced ?

3. During the course of argument it transpired that the aforesaid two questions came up for consideration of this Court in ITA 15/2001 and this court by judgment and order dated 13.12.2001 disposed of the matter with the following

observations :-

"3. On the other hand, Mr. Bhuyan, Learned Advocate for the appellant with his usual fairness and magnanimity produced before us a Division Bench decision of the Calcutta High Court reported in 207 ITR 17 (Commissioner of Income Tax v. Shaw Wallace and Co. Ltd.) wherein it was held as follows with regard to computer :

"In our view, having regard to the nature and function of the computer and the data processing system, it cannot be said that they are office appliances. An industrial company is a company engaged in the manufacture or processing of goods. "Data-processing" means the converting of raw data to machine-readable form and its subsequent processing (as storing, updating, combining, rearranging or printing out) by a computer, "Computer" means "one that computes; specifically a programmable electronic device that can store, retrieve, and process data". There cannot be any doubt that raw data cannot be equated with the result derived. It is different in form and substance.

We are, therefore, of the view that the computer division is an industrial undertaking which satisfies the conditions mentioned in Section 32A(2)(b)(iii) of the Income Tax Act, 1961."

4. We respectfully agree with the judgment of the Division Bench and we hold that computer if it is used for the purposes as mentioned in the judgment, certainly it will be an industrial undertaking and in such a situation it will be entitled to claim deduction. The following are the substantial questions of law which were framed :

(i) Whether on the facts'' and in the circumstances of the case, the Tribunal was correct in law in holding that no separate accounts are required to be maintained for claiming deductions under Sections 80HH and 80-I of the Income Tax, Act, 1961?

(ii) Whether on the facts and in the circumstances of the case, is not the decision of the Tribunal perverse in holding that deductions under Sections 80HH and 80-I of the Income Tax Act, 1961 are allowable on income earned through computer documentation service rendered to the customers when the assessee did not fulfil the condition laid down to qualify such deduction ?

5. Regarding first question we find that the law does not require that a separate accounts, are required to be maintained for claiming deduction u/s 80HH and 80-I of the Income Tax Act, 1961. Of course, there is a provision of Sub-section 5 which is quoted below :

"(5) Where the assessee is a person other than a company or a co-operative society, the deduction under Sub-section (1) shall not be admissible unless the accounts of the industrial undertaking or the business of the hotel for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below Sub-section (2) of Section 288 and the assessee furnishes, along with his, return of income, the report of such audit in the prescribed form duly signed and verified by such accountant."

6. That will not help the revenue in this case as in this case the assessee is a company.

7. Regarding the second question already as indicated above, we have decided it against the revenue.".

4. We find no reason to form a different opinion with what has been decided by the Division Bench of this Court.

5. Hence, we dismiss the appeal subject to the decision rendered in ITA 15/2001.