(2014) 11 GUJ CK 0063

In the Gujarat High Court

Case No : Tax Appeal No. 589 of 1999

Asstt. CIT — APPELLANT

Vs

Moti Polymers Pvt. Ltd. — RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Income Tax Act, 1961 — Section 260A, 80HH, 80HHA, 80I, 80I

Citation : (2014) 11 GUJ CK 0063

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : Mauna M. Bhatt, Advocate for the Appellant

Judgement

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K.S. Jhaveri, J.—This Tax Appeal u/s. 260A of the Income-tax Act, 1961 has been filed against the judgment and order dated 02.08.1999 passed by the Income Tax Appellate Tribunal, Ahmedabad in ITA No. 2800/AHD/1993.

2. Though the appeal was filed way back in the year 1999, it was not moved for more than ten years. Thereafter, MCA No. 80/2000 was filed for restoration of the appeal, which was dismissed for default and vide order dated 07.03.2011, the appeal was restored on file.

3. The cognate appeal being Tax Appeal No. 588/1999, arising out of the same judgment and order of the Appellate Tribunal, came to be decided by this Court vide judgment and order dated 16.06.2011. For ready reference, the said judgment is reproduced hereunder;

"(1) In this appeal under section 260A of the Income Tax Act, 1961 (the Act) the appellant-revenue has challenged the order dated 02.08.1999 made by the Income Tax Appellate Tribunal, Ahmedabad Bench ''C'', Ahmedabad in I.T.A. No. 2800/Ahd/1993 for Assessment Year 1991-92.

(2) While admitting the appeal on 11.09.2000, this Court had formulated the

following substantial question of law:

"Whether the Appellate Tribunal is right in law and on facts in directing to allow separate relief under sec. 80HH and 80I of the Act?"

(3) Mr. R.K. Patel, learned Advocate, appearing on behalf of the respondent has invited the attention of the Court to the decision of the Supreme Court in the case of Joint Commissioner of Income Tax Vs. Madideep Engg. and Pkg. India (P.) Ltd., , to submit that the controversy involved in the present case stands concluded in favour of the assessee by the said decision. It was pointed out that the Supreme Court in the said decision had taken note of the fact that against the decision of the Madhya Pradesh High Court in the case of J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, wherein it had held that both the sections are independent and, therefore, the deductions could be claimed both under sections 80HH and 80I on the gross total income, a special leave petition had been filed before the Supreme Court which came to be dismissed on the ground of delay. The Supreme Court further observed that decision of the Madhya Pradesh High Court in the case of J.P. Tobacco Products P. Ltd. v. C.I.T. was followed by the same High Court in the case of CIT v. Alpine Solvex P. Ltd. in I.T.A. No. 92 of 1999 decided on May 2, 2000 and that special leave petition against the same was dismissed by the Supreme Court. The Court further observed that the aforesaid view had been followed repeatedly by different High Courts against which no special leave petitions were filed meaning thereby that the Department had accepted the view taken in the said judgments. One of the judgments referred to was Commissioner of Income Tax Vs. Amod Stamping, . Inviting attention to the impugned order of the Tribunal and, more to particularly paragraph 13 thereof, it was pointed out that the Tribunal has placed reliance upon the decision of the Madhya Pradesh High Court in the case of J.P. Tobacco Products P. Ltd. (supra) which stands confirmed by the above referred the decision of the Supreme Court. The attention of the Court was also invited to the above referred decision of the Gujarat High Court in the case of CIT v. Amod Stamping, (supra), to submit that this Court had also decided the controversy in favour of the assessee by holding that while computing the profits for the purpose of availing deduction under section 80-I of the Act, the profits and gains of the assessee''s business are not required to be reduced by the deduction admissible under section 80HH of the Act.

(4) Mr. M.R. Bhatt, learned Senior Advocate for the appellant, is not able to dispute the aforesaid position of law. In the circumstances, it is not necessary to set out the facts and contentions in detail.

(5) A perusal of the impugned order of the Tribunal indicates that the Tribunal has placed reliance on the decision of the Madhya Pradesh High Court in the case of J.P. Tobacco Products P. Ltd. v. C.I.T. which view has not been disturbed by the Supreme Court as noted hereinabove. In the circumstances, the view adopted by the Tribunal being in consonance with the above referred decision of the Madhya Pradesh High Court as well as of this High Court in the case of CIT v. Amod

Stamping (supra), the question is required to be answered in the affirmative, that is, in favour of the assessee and against the revenue. The Appellate Tribunal is right in law in directing to allow separate relief under sections 80HHA and 80I of the Income Tax Act, 1961. The appeal is, accordingly, dismissed with no order as to costs."

4. Since this Tax Appeal arises out of the same judgment and order of the Appellate Tribunal, it will be governed by the aforesaid judgment rendered in T.A. No. 588/1999 decided on 16.06.2011 and hence, no elaborate reasons are assigned in this matter.

5. In view of the above, the appeal is dismissed in terms of the judgment and order rendered in T.A. No. 588/1999 decided on 16.06.2011.