(2011) 11 KAR CK 0379

In the Karnataka High Court

Case No : ITA No. 1047 of 2006

B. Ahmed Hajee Mohiudeen APPELLANT

Vs

Asstt. CIT RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:
Income Tax Act, 1961 — Section 147, 148, 80 HHC

Citation : (2012) 208 TAXMAN 282

Hon'ble Judges : V.G. Sabhahit, J;S.N. Satyanarayana, J

Bench : Division Bench

Advocate : S. Parthasarathi, for the Appellant; Indrakumar and E. Sanmathi Indrakumar, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is by the assessee being aggrieved by the order passed by the Income tax Appellate Tribunal. Bangalore Bench A (hereinafter referred to as the ITAT) dated 5-10-2005 in ITA No. 817/Bang/2003 for the assessment year 1995-96. The material facts leading up this appeal are as follows:

The appellant herein filed a return of income for the year 1995-96 on 16-11-1995 declaring the total income of Rs. 8,28,260/- and claiming deduction of Rs. 27,34,139/- u/s 80HHC of the Income Tax Act, 1961 (hereinafter referred to as the Act), The return was processed by the assessing officer u/s 143(1)(a) of the Act on 31-3-1997. The deduction claimed by the assessee u/s 80HHC of the Act was found to be excessive and proceedings u/s 147 of the. Act were initiated and notice u/s 148 of the Act was issued on 6-3-2000. In response to the said notice, the assessee filed the revised return on 9-3-2000 since it was found that in respect of the boat which was purchased and exported which was trading, in view of the provisions of Section 80HHC(3)(b) of the Act, indirect costs have not been included. The assessing officer, by order dated 6-3-2002 rejected the cost shown by the assessee holding that the assessee bad Wilfully not added the indirect cost incurred in the purchase of the boat which was exported as a trading transaction and therefore, added the indirect cost by passing the fresh order of assessment. Being aggrieved by the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Mangalore in ITA No. 120/MNG/CIT(A)MNG/2C01-02. The first appellate authority by order dated 19-3-2003 after considering the contentions of learned counsel appearing for the parties, held that in the absence of any specific material produced by the assessee indicating indirect cost incurred in the purchase of boat and export the same, indirect expenses incurred purchase of boat and constructed boat should be proportionally apportioned with reference to the total turnover, export turnover and profits of the business computed at Rs. 1,90,41,290/-, Rs. 93,90,000/- and Rs. 32,88,437/- respectively and following items are to be considered from the P & L Account towards indirect cost:

Accordingly, the assessing officer was directed to re-compute the deduction u/s 80HHC of the Act. Being aggrieved by the order of the first appellate authority, the revenue preferred an appeal before the ITAT and the ITAT by the impugned order dated 5-10-2005 held that the first appellate authority was not justified in excluding certain indirect expenses while calculating the indirect cost in respect of trading done by the assessee and accordingly directed the assessing officer to evaluate the indirect tax incurred in respect of boat purchased and exported which is in the nature of trading and pass orders in accordance with law and set aside the order passed by the first appellate authority and allowed the appeal. Being aggrieved by the same, this appeal is filed by the assessee.

2. This appeal has been admitted on 5-12-2006 for consideration of the substantial questions of law raised in the memorandum of appeal which reads as follows:

(1) Whether the Tribunal was right in holding that while computing the export profit on trading of goods u/s 80HHC(3)(b) of the Act the indirect costs allocable should be in accordance with Explanation (e) even when the indirect costs attributable to such export was identifiable and allocable?

(2) Whether the Tribunal was justified in holding that allocation of indirect costs while computing the export profit u/s 80HHC(3)(b) should be irrespective of whether the cost incurred was in relation to the export of such goods as contemplated u/s 80HHC(3)(b) of the Act?

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent on the above said substantial questions of law.

4. The learned counsel appearing for the appellant submitted that the first appellate authority had quantified indirect cost which was not attributable to the export by way of trading in respect of boat purchased and exported, the ITAT was not at all justified in setting aside the order and further submitted that the order passed by the first appellate authority would clearly show that only the

indirect cost of Rs. 10,40,640.90 is to be proportionately apportioned and not Rs. 18,24,510/-.

5. The learned counsel appearing for the respondent-revenue submitted that the first appellate authority was not justified in excluding certain indirect cost incurred while evaluating indirect costs incurred attributable in respect of trading transaction i.e., purchase and export of boat and therefore the ITAT has rightly given appropriate direction and remitted the matter to the assessing officer and to pass its orders strictly in accordance with law u/s 80HHC(3) of the Act.

6. We have given careful consideration to the contentions of learned counsel appearing for the parties and scrutinized the material on record. The material on record would clearly show that in the return filed by the assessee for the assessment year 1995-96, though deduction was claimed in respect of profit made by sale of two boats i.e., one manufactured and exported and one boat purchased and sold i.e., in the nature of trading. Further, while claiming the deduction, indirect cost was not included in respect of the boat purchased and exported and therefore, the assessing officer issued notice calling upon the assessee to show cause and the assessee filed a revised return submitting that proposed action may be dropped as no Indirect cost was incurred in purchase of boat and exporting of the same. However, the assessing officer, after considering the cause shown by the assessee, held that an amount of Rs. 18,24,510/- is to be included towards indirect cost and amount of proportionate indirect cost of Rs. 18,24,510 should be included in respect of boat purchased and sold i.e., by way of trading and accordingly passed the order of assessment. Being aggrieved by the said order, the assessee preferred an appeal before the first appellate authority. The order passed by the first appellate authority would clearly show that the appellate authority having found that the assessee had not included indirect cost, not deducted indirect cost in calculating profit for the trading transaction, excluding certain items incurred by the assessee towards indirect cost and held that the items of expenditure to be considered totalling to Rs. 10,40,640.90 should be considered for proportionate calculation of the indirect cost in respect of trading transaction.

7. The provisions of Section 80HHC(3)(b) of the Act reads as follows:

80HHC(3) : For the purposes of Sub-section (1)-

(a) **''''''

(b) Where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;

Direct and indirect costs have been defined in the Explanation to the said sub-section which read as under:

(d) "direct costs" means costs directly attributable to the trading goods exported out of India including the purchase price of such goods;

(e) "indirect costs" means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover;

8. It is not in dispute that the assessee has not included any indirect cost while arriving at the profits derived from trading goods at the time of filing return on the ground that no indirect cost was incurred. On the verification of the records, indirect costs have been incurred by the assessee which cannot at all be disputed. When once the assessee has not pointed out the indirect cost attributable to the export and contends that there was no indirect cost attributable to export, the same cannot be accepted and therefore, indirect costs have to be calculated in accordance with law. While so calculating, all the expenses involving indirect cost have to be included and no items can be excluded as done by the first appellate authority and therefore, the order passed by the ITAT directing the assessing officer to pass fresh orders after computing indirect cost in proportion to all the indirect costs incurred by the assessee attributable to export in the proportion inferred to in the order, is justified. Accordingly, we answer the substantial questions of law against the assessee and in favour of the revenue and pass the following order:

ORDER

The appeal is devoid of merit. Accordingly, it is dismissed.

