(1996) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 350 of 1991

Badshah Construction Co. (P) Ltd. — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 80HH, 80I

Citation : (1996) 87 TAXMAN 339

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Judgement

A.R. Tiwari, J.—At the instance of the assessee, the Tribunal has stated the case and referred the under" noted question of law arising out of the order passed by the Tribunal in IT Appeal Nos. 716 (Ind.) of 1987 and 257 (Ind.) of 1989 for assessment years 1984-85 and 1985-86 on applications registered as R.A. Nos. 7 & 8 (Ind.) of 1991, for our opinion, u/s 256(1) of the income tax Act, 1961 (''the Act'') :- Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee-company was not entitled to deductions under sections 80HH and 80-I since the business of construction of roads and buildings did not bring it within category of an ''Industrial Undertaking''?

Briefly stated, the facts of the case are that the assessment years are 1984-85 and 1985-86, previous year ending on 31-12-1983 and 31-12-1984 respectively. The assessee is a Private Limited Company engaged in the business of construction of roads and buildings, particularly the industrial sheds. The ITO allowed deduction of Rs. 19,5 72 u/s 80HH of the Act but declined deduction u/s 80-I of the Act in the year 1984-85. However, in view of the order passed by the Commissioner (Appeals) for the assessment year 1984-85, the ITO did not allow the deductions under sections 80HH and 80-I (Annexures-''A/1 and ''A/2''). The assessee then filed appeals before Commissioner (Appeals). He by order dated 2-7-1987 for assessment year 1984-85 held that the assessee- company was not

Industrial Undertaking and, therefore, was not entitled to any deduction either u/ s 80HH or 80-I. He, therefore, not only dismissed the contention of the assessee as to the disallowance of deduction u/s 80-I but also withdrew the deduction of Rs. 19,572 which was made u/s 80HH of the Act. The income of the assessee was thus enhanced by Rs. 19,572. The appeals were dismissed (Annexures ''B/1 and ''B/2''). The assessee then filed second appeals before the Tribunal against both the orders of the Commissioner (Appeals). The Tribunal held that allowability of the claim of deduction u/s 80HH and 80-I was permissible only if the assessee was found to be industrial undertaking. The Tribunal reached the conclusion that the assessee-company was not entitled to be treated as industrial undertaking. The appeals were dismissed (Annexure-''C). The assessee then filed applications u/s 256(1). On these applications, the Tribunal stated the case and referred the aforesaid question for our consideration and opinion.

2. We have heard Shri S.M. Dagaonkar, the learned counsel for the applicant/ assessee and Shri D.D Vyas, the learned counsel for the non- applicant/ department.

3. Section 80HH permits certain deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas. Section 80-I permits deduction in respect of profits and gains from industrial undertakings after a certain date, etc.

4. It is thus clear that in order to claim deduction, the assessee was required to show that it was industrial undertaking, i.e., industrial company. ''Industrial company'' is defined in the Finance Act of 1981 as under:

''Industrial company'' means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

5. In Kanga and Palkhivala''s Law and Practice of income tax, 8th Edition, it is stated as under:-

Industrial activity is the genus; manufacture (used here to include Production) or processing of goods is the species. All manufacturing activities are industrial; but all industrial activities do not necessarily involve manufacture. Usually, an industrial activity involves the manufacture or processing of goods. However, in some cases it does not; and such cases would not be covered by the statute if manufacture or processing of goods is a requirement of the section....

6. The law is luculent and presents no case to tear up any type of tenebrosity. All the aspects have been vividly discussed and considered in Commissioner of Income Tax Vs. Oricon Pvt. Ltd., and ITO v. Hydle Constructions (P.) Ltd. [1983] 6 ITD 575 (Delhi) (FB).

7. Applying the test to the case on hand, we are satisfied that the assessee has failed to prove itself to be an industrial undertaking so as to obtain any benefit under sections 80HH and 80-I. It is engaged only in the business of construction

of roads and buildings and is thus not capable of being categorised as industrial undertaking.

8. The counsel for the applicant was unable to show us any activity of the assessee which may earn the insignia of Industrial Undertaking.

9. On appreciation of the facts as presented, the Tribunal concluded that the assessee was not the industrial undertaking and was thus disentitled to obtain the deductions under the aforesaid provisions. This conclusion is not shown to be perverse or inconsistent with law.

10. That being so we are satisfied with the correctness of the order passed by the Tribunal.

11. Ex consequentia, we hold that the Tribunal was right in its conclusion that the assessee-company was not entitled to deductions under sections 80HH and 80-I as the business of the assessee-company did not bring it within the category of industrial undertaking.

12. We, therefore, answer the question in the affirmative, i.e., in favour of the Department and against the assessee. This Misc. Civil Case thus stands disposed of in terms indicated above, but without any order as to costs.