(2014) 10 KAR CK 0150

In the Karnataka High Court

Case No : ITA No. 723 of 2008

Cheslind Textiles Ltd. APPELLANT

Vs

The Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:
Income Tax Act, 1961 — Section 10A, 10A(6)(iii), 10B, 115JB, 154

Citation : (2014) 10 KAR CK 0150

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : S. Parthasarathi, Advocate for the Appellant; K.V. Aravind, Advocate for the Respondent

Judgement

N. Kumar, J.—The assessee has preferred this appeal against the order passed by the Tribunal.

2. The appeal was admitted to consider the four substantial questions law on 13.8.2008.

1. Whether on the facts and circumstances of the case, the assessee can claim exemption under Section 80HHC of the I.T. Act on 10% of the income after excluding 90% of its income under Section 10B of the I.T. Act?

2. Whether the appellant is entitled exemption under Section 80HHC of the I.T. Act while computing the book profit for the purpose of Section 115JB of the I.T. Act?

3. Whether the Tribunal was justified in not answering the question raised by the appellant in regard to interest on the margin money?

4. Whether the Tribunal was justified in dismissing the claim of the appellant to delete the interest levied under Sections 234B and 234C of the I.T. Act while computing the tax under the provisions of Section 115JB of the I.T. Act, without any reason?

3. Insofar as the first substantial question of law is concerned the Madras High Court had an occasion to consider the same in the case of Commissioner of Income Tax Vs. Ambatture Clothing Ltd., , Where it has been held as under :-

4 When we examine the issue raised in this appeal, at the very outset, it will have to be pointed out that even under s. 10A(6)(iii) of the Act, there is a specific provision, which reads as under:

"No deduction shall be allowed under s. 80HH or s. 80HHA or s. 80I or s. 80IA or s. 80IB in relation to the profits and gains of the undertaking; and"

5. The very statutory provision prescribing a prohibition in respect of the deductions in relation to the profits and gains itself, has not specifically included s. 80HHC. Apparently, it therefore would only mean that there was no prohibition for claiming any deduction under s. 80HHC while applying the benefits provided under s. 10A of the Act. If that is the statutory prescription by which the assessee was entitled to claim a benefit under s. 80HHC in relation to the profits and gains while invoking s. 10A, it will have to be concluded that the assessment order in having allowed such a deduction of the remaining 10 percent of the profits earned by the assessee was not erroneous. In any event, having regard to such a statutory prescription available for the assessee to claim the benefit under s. 80HHC in respect of the profits earned from s. 10A of the Act, there is absolutely no scope for the assessing authority to have invoked s. 154 of the Act, in order to state that, that can be considered as an error apparent, in as much as, there was no error at all, much less, apparent error to be rectified by the assessing authority.

4. In the instant case the assessee claimed deduction under Section 10B being 90% of the eligible profits at the figure of Rs. 4,86,80,500/-. In the computation, the assessee also claimed deduction under Section 80HHC on the balance eligible profits of Rs. 54,08,945/- at 50% i.e. Rs. 27,04,472/-. The Assessing Officer held the assessee cannot claim deduction both under Sections 10B and 80HHC on the same amount. The First Appellate Authority confirmed the said order of the Assessing Authority. The Tribunal has also affirmed the said finding. As held by the Madras High Court there is no prohibition for the assessee to claim benefit under section 80HHC. Under Section 10B, 10% of the profits and gains derived by an undertaking from the export of articles and things or computer software for a period of 10 consecutive years is excluded from the total income of the assessee. Insofar as 10% of such income is concerned, the provisions of Section 80HHC is attracted. Therefore, the benefit conferred on the assessee under Section 80HHC is to be granted in computing the total income of the assessee. Therefore, the orders passed by the authorities is unsustainable. Accordingly, they are set aside. The said substantial question of law is answered in favour of the assessee and against the revenue.

Insofar as the other three substantial questions of law framed in this appeal is concerned, though argued before the Tribunal they have not been considered.

Therefore, it is appropriate that the matter has to be remitted back to the Tribunal to consider the remaining three substantial questions of law on merits, after hearing the parties.

Accordingly, we pass the following :-

ORDER

1. The appeal is partly allowed;

2. The first substantial question of law is answered in favour of the assessee and against the revenue.

3. In respect of other substantial questions of law framed in this appeal, the matter is remitted back to the Tribunal for fresh consideration and in accordance with law.

Ordered accordingly.

