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(2012) 06 KAR CK 0100

In the Karnataka High Court

Case No : IT A No''s. 793 to 796 of 2006

CIT and Another — APPELLANT

Vs

Resonace Laboratories — RESPONDENT

Date of Decision : 06-06-2012

Acts Referred:

Citation : (2012) 06 KAR CK 0100

Hon'ble Judges : D.V. Shylendra Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : M. Thirumalesh, for the Appellant; S. Parthasarathy, Malhararao and Dinesh, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—These four appeals by the Revenue relate to the assessment years 1999-2000,1997-98, 2000-01 and 2001-02 respectively and arise out of the assessment orders passed in respect of the same assessee, which had reached the Tribunal and in terms of the orders questioned in each of these appeals, the Tribunal had allowed the appeals of the assessee on the question of manner of computation of the amount characterized as profits earned from export business of the assessee, which amount qualifies for deduction in terms of section 80HHC of the IT Act, 1961 (for short, the Act). All these appeals had been admitted to examine the following questions of law as arising from out of the orders of the Tribunal:

IT Appeal No. 793 of 2006

Whether the appellate authorities were correct in holding that conversion charges cannot be treated as income of the assessee from business and Expln. (baa) to section 80HHC read with section 41(1) of the Act which would exclude the addition of this income for the purpose of computation of eligible profits for the purpose of deduction u/s 80HHC of the Act.

IT Appeal No. 794 of 2006

1. Whether the appellate authorities were correct in holding that conversion charges cannot be treated as income of the assessee from business and Expln. (baa) to section 80HHC read with section 41(1) of the Act which would exclude the addition of this income for the purpose of computation of eligible profits for the purpose of deduction u/s 80HHC of the Act.

2. Whether appellate authorities were right in holding that other income received by the assessee cannot be treated as part and parcel of eligible profit for the purpose of computation of deduction u/s 80HHC of the Act.

IT Appeal No. 795 of 2006

Whether the appellate authorities were correct in holding that conversion charges cannot be treated as income of the assessee from business and Explanation (baa) to section 80HHC read with section 41(1) of the Act which would exclude the addition of this income for the purpose of computation of eligible profits for the purpose of deduction u/s 80HHC of the Act.

IT Appeal No. 796 of 2006

Whether the appellate authorities were correct in holding that conversion charges cannot be treated as income of the assessee from business and Explanation (baa) to section 80HHC read with section 41(1) of the Act which would exclude the addition of this income for the purpose of computation of eligible profits for the purpose of deduction u/s 80HHC of the Act.

2. However, at the time of hearing, it is pointed out by Sri S. Parthasarathy, learned counsel for the assessee that reference to section 41(1) of the Act is totally unnecessary, as neither the Tribunal had examined the issue in the context of section 41(1) of the Act nor is the finding having any bearing in the context of this statutory provision.

3. We find even in terms of section 80HHC of the Act for determination of the profits earned from export business, the provisions of section 41(1) of the Act has no direct bearing or linking and therefore reframe the question as common question in all these appeals, as under:

Whether the appellate authorities were correct in holding that conversion charges cannot be treated as income of the assessee from business and Explanation (baa) to section 80HHC of the Act which would exclude the addition of this income for the purpose of computation of eligible profits for the purpose of deduction u/s 80HHC of the Act.

4. We have heard Sri M. Thirumalesh, learned standing counsel for the Revenue and Sri S. Parthasarathy, learned counsel for the assessee.

5. Sri Thirumalesh submits that the question as raised in these appeals had been examined by a Division Bench of this Court in the case of other assessees and one such examination had been undertaken in the judgment rendered by this Court in the case of Maini Precision Products (P) Ltd. v. Jt. CIT (IT Appeal Nos. 52

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of 2009 and 182-185 of 2009, decided on 18-8-2009).

6. Sri Thirumalesh submits that this Court, following and applying the judgment of the Supreme Court in the case of Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair, had answered a like question in the affirmative and in favour of the Revenue and therefore the present question is also to be answered in the negative, as the appeal is by the Revenue, the Tribunal having taken a view contrary to the one indicated in the judgment of this Court.

7. However, Sri Parthasarathy, learned counsel for the assessee while submits that insofar as the question of computation of profits of the assessee arising from its export business for the purpose of qualifying for deduction under s. 80HHC of the Act is concerned, the question as answered by this Court in the case of Moini Precision Products (P) Ltd. (supra) governs the issue, nevertheless, points out that insofar as it relates to the question of computation of profit of the business of the assessee is concerned and particularly as in this case, the profits of the business of the assessee was inclusive of certain receipts in the nature of conversion charges which had been received by the assessee on the basis of the law declared by the Supreme Court in the case of ACG Associated Capsules (P) Ltd. vs. CIT rendered on 8-2-2012 in Civil Appeal No. 1914 of 2012 applying the principles of Explanation (baa) to section 80HHC of the Act and therefore submits even if appeal of the Revenue is to be allowed, following the judgment of this Court in the case of Moini Precision Products (P) Ltd. (supra) the matter will have to be, nevertheless, remanded to the AO for the purpose of arriving at the figure which qualifies for reduction on applying the Explanation (baa) for the purpose of computing such export profits.

8. However, Sri Thirumalesh object to this, submitting that computation of net profit basis and even as indicated by the Supreme Court in the case of ACG Associated Capsules (P) Ltd. (supra) cannot be applied and no need for remanding the matter to the AO, as job work or Conversion charges is not one which figures within one of the illustrations mentioned in Explanation (baa) to section 80HHC of the Act.

9. We are afraid that we cannot accept this submission for the reason that firstly the very question is as to whether conversion charge is one which is covered within Explanation (baa) to section 80HHC of the Act as a residuary item and when once it is held so, in the manner of computation of that, the principle of law declared by the Supreme Court in the case of ACG Associated Capsules (P) Ltd. (supra) is automatically attracted and has to be applied. It is for this reason, while we allow these appeals, set aside the orders of the Tribunal by answering the question in the negative and in favour of the Revenue, nevertheless, issue direction to the AO to recompute the amount which qualifies for deduction u/s 80HHC of the Act in respect of the assessee for the assessment years in question by applying the ratio of the judgment of the Supreme Court in the case of ACG Associated Capsules (P) Ltd. (supra) insofar as the profits attributable to

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conversion charges are concerned or arriving at the conversion charges received by the assessee for the purpose of computation of the profits.

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