(2015) 04 CAL CK 0079

In the Calcutta High Court

Case No : I.T.A. 675 of 2004

C.I.T.	APPELLANT
Vs	
Duncan Industries Ltd.	RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:
Income Tax Act, 1961 — Section 80HHC, 80HHC(3)(a), 80HHC(3)(b), 80J

Citation : (2015) 04 CAL CK 0079

Hon'ble Judges : G.C. Gupta, J;Arindam Sinha, J

Bench : Division Bench

Advocate : J.P. Khaitan,, Advocates for the Respondent

Judgement

1. The subject matter of challenge in this appeal is a judgement and order dated 23rd June, 2004 passed by the learned Income Tax Appellate Tribunal pertaining to the assessment year 1990-91. Although the judgement related to the assessment year 1991-92 as well but the appeal is restricted to the assessment year 1990-91. The question formulated at the time of admission of the appeal reads as follows:--

"Whether on the facts and in the circumstances of the case, for the assessment year 1990-91, the assessee is entitled to deduction under Section 80HHC(3)(a) of the Income Tax Act, 1961 as claimed by it or under Section 80HHC(3)(b) as held by the Assessing Officer?"

2. No one appeared for the appellant. Mr. Khaitan, learned Senior Advocate has very fairly assisted us in haring out the matter. The question for consideration indicated above naturally depends upon construction of the following two clauses of sub-section (3) of section 80HHC.

" (3) For the purposes of sub-section (1), profits derived from the export of goods or merchandise out of India shall be--

(a) in a case where the business carried on by the assessee consists exclusively of the export out of India of the goods or merchandise to which this section applies, the profits of the business as computed under the head "Profits and gains of business or profession ".

(b) In a case where the business carried on by the assessee does not consist exclusively of the export out of India of the goods or merchandise to which this section applies, the amount which bears to the profits of the business (as computed under the head "Profits and gains of business or profession") the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee."

3. It is not in dispute that the assessee being an Indian company in this case, carried on business which did not consist exclusively of export out of India of the goods or merchandise to which this section applies. Therefore, clause (a) had no manner of application. The benefit under Section 80HHC has to be, in that case, worked out in accordance with clause (b). The learned Tribunal has taken a contrary view on the basis of the views expressed by the Madras Bench of the Tribunal wherein the following opinion was expressed:--

"But in the context of Section 80HHC the intention is to identify the export profit and we must therefore consider the unit which carries on such export activity to be the business in respect of which the profit is to be computed in accordance with the provisions of the Act. In fact, a reference to other sections such as 80J would even support the view that just as an industrial undertaking is independently considered for computation of the profit therefrom for relief under that section, the export business is to be identified as a separate unit for the purpose of section 80HHC also as it is only a method of ascertaining the profits of that particular business to which a relief is to be given. These sections are welfare measures intended to be carried out in full and not to be curtailed by restrictive construction. We are satisfied that the assessee falls within the scope of sub-section 3(a) because the turnover and profit is easily ascertainable and consequently it is not the case where recourse had to be made under sub-section (3)(b) for the purpose of granting relief."

4. The reasoning that the export business is to be identified as a separate unit for the purpose of Section 80HHC is a clear violation of the section quoted above. The section is very clear. An assessee carrying on business exclusively of export of the of the type of goods covered by Section 80HHC shall have his income assessed in the same manner as computed under the head "Profits and Gains of business or profession." But an assessee not exclusively carrying on business of export shall have his income computed for the purposes of Section 80HHC on the proportionate basis as indicated in Clause (b) of Sub-section (3). Any other view was not possible. The view taken by the learned Tribunal is patently wrong.

5. In the result, the question formulated is answered by holding that the assessee is entitled to deduction under Sub-section (3)(b) of Section 80HHC as held by the assessing officer. The order of the Tribunal is set aside and the order

of the assessing officer is restored.

6. The appeal is, thus, disposed of.

