
(2012) 02 KAR CK 0076
In the Karnataka High Court
Case No : ITA No. 906 of 2006 (A.Y. 2001-02)

CIT

APPELLANT

Vs

Essae Teraoka Ltd.

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 80 HHC, 80 IA (9), 80 IB, 80 IB (13)

Citation : (2012) 206 TAXMAN 143

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; S. Parthasarathi, P. Dinesh and Mallaha Rao, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is preferred by the revenue challenging the order passed by the Tribunal setting aside the order of the Appellate Commissioner and granting relief to the assessee. The substantial question of law that arises for consideration in this appeal is as under:

6. Whether the Tribunal was correct in allowing deduction both u/s 80-IB and Section 80HHC of the Act on the ground that 100% deduction had not been claimed on the profits when such allowance is not permissible under both the provisions in accordance with section 80-IA(9) of the Act read with section 80-IB(13).

2. This court in the case of CIT v. Millipore India (P.) Ltd. in ITA No. 674/2007 and connected matters decided on 3.2.2011, has held as under:

18. Under the provisions of Chapter VI-A of the Income Tax Act, various deductions from the profits and gains are allowed to the assessee who have to fulfil certain requirements specified in the relevant Sections. The total deductions under Chapter VI-A of the Income Tax Act are restricted to the total profits and gains in respect of such eligible business.

19. In fact, the intention of the parliament could also be gathered from the way they have expressed themselves in sub-Section (7) of Section 80HHD which reads as hereunder:-

(7) Where a deduction under sub-section (1) is claimed and allowed in respect of profits derived from the business of a hotel, such part of profits shall not qualify to that extent for deduction for any assessment year under any other provisions of this Chapter under the heading "C.-. Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such hotel

20. In the aforesaid provision they have categorically stated that such portion of the profit shall not qualify to that extent for deduction for any assessment year under any other provisions in this Chapter under the heading "C deductions in respect of certain incomes." Therefore, the Legislature has consciously used the words making their intentions clear. As in the very same Chapter dealing with different sections, when the Legislature has used different sets of words, meaning has to be given to those words as used by the Legislature and difference in expression in sub-section(7) of Section 80HHD and sub-section (9) of Section 80-IA, has to be given effect to.

21. From the aforesaid statutory provisions and the law declared by the Courts it is clear all the Sections which fall under the heading "C - deductions in respect of certain incomes" are independent of each other. Therefore, [Section 80-HHC and 80-1 are independent of each other. A new industrial unit can claim deduction under both Sections on the gross total income independently. Sub-Section (9) of Section 80-IA makes it clear that such profits and gains which is allowed deductions u/s 80-IA cannot be again allowed deduction under any other provisions of the Chapter under the heading "C - deductions in respect of certain incomes." The stress on the profits and gains of such eligible business in the case of Section 80-HHC, is the profits and gains from export business. Under the provisions of Chapter VI-A of the Act, various deductions from the profits and gains are allowed to the assessee who have to fulfil certain requirements specified under the relevant Section. The total deductions under Chapter-VIA of the Act are restricted to the gross total profits in respect of the assessee as a whole. In Explanatory note in Circular No. 772 it is stated that the object of Section 80-IA is not to curtail the deductions obtainable under various provisions under the heading -C deductions in respect of certain incomes. Therefore Section 80IA(ix) effects the allowability of deductions and not computation and deductions. The deduction to which the assessee is entitled to under this provision is to be computed at the time of allowing deductions and not at the time of computing deductions. Therefore the contention of the revenue that the profits and gains permitted to be deducted u/s 80-IA should be deducted out of the profits of the business and thereafter the profits and gains from export business is to be calculated, as otherwise it would amount to double benefit, is contrary to the scheme of the aforesaid statutory provisions as well as Clause (baa) to Explanation (ii) to Section 80-HHC. When once it is held that Sections

under the heading " C - deductions in respect of certain incomes" are independent of each other and the assessee is entitled to claim deduction under more than one Section, the deduction has to be necessarily in the profits and gains arrived at after making the claims in terms of the aforesaid Section. However, the overall claim under both Sections has to be restricted to the total profits and gains of such eligible business from gross total income.

3. In the light of the aforesaid Judgment, the substantial question of law is answered in favour of the assessee and against the revenue. The appeal is dismissed.

In favour of assessee.