
(2012) 01 DEL CK 0271
In the Delhi High Court
Case No : ITA 683 of 2011

CIT

APPELLANT

Vs

Raj Kumar Mahajan

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Income Tax Act, 1961 — Section 80IA, 80IB

Citation : (2012) 340 ITR 570 : (2012) 205 TAXMAN 186

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Sanjeev Rajpal, for the Appellant; Ajay vohra, Ms. Kavita Jha and Mr. Somnath Shukla, for the Respondent

Judgement

Sanjiv Khanna, J.—The present appeal filed by the Revenue u/s 260A of the Income Tax Act, 1961 (Act) impugns order dated 21st June, 2010 passed by the Income Tax Appellate Tribunal (Tribunal) which relates to the assessment year 2001-02.

2. For the said assessment year, scrutiny notice u/s 143(2) was issued and during the course of the regular assessment proceedings a questionnaire dated 6th August, 2002 was written to the assessee. Question Nos.4 and 5 of the said questionnaire read as under:-

4. The deduction claimed u/s 80HHC is excessive as FDR interest of Rs.10,47,538/- has been taken as business income and not as income from other sources. In effect, 10 per cent of this interest income amounting to Rs.1,04,754/-, has escaped taxation. Please show cause why this excess deduction u/s 80 HHC should not be added back to your income.

5. Rs.61,70,349/- has been claimed as deduction u/s 80IA. Please furnish documentary proof in support of this claim.

3. The aforesaid questionnaire was replied to by two letters both dated 4th December, 2002. With regard to claim of eligibility u/s 80IA/IB it was stated by

the respondent/assessee as under:

2. Regarding the eligibility u/s 80 IA/IB it is submitted that the assessee is satisfying all the following conditions.

a. It should be a new undertaking:-It is a new undertaking and it is not formed by splitting up or the reconstruction of an existing unit.

b. It should not be formed by transfer of machinery or plant previously used for any purpose:- All the machinery used in this undertaking has been purchased from Machinery suppliers and not from any existing industrial undertaking.

c. It should not manufacture or produce articles specified in the eleventh schedule:- The assessee is manufacturing candles for export, which is not mentioned in eleventh schedule.

d. It begins to manufacture before March 31, 2002.

e. It should employ more than 10/20 workers:- The assessee was employing 85 persons as per the copy of ESI return for the half year ended 31-3-02. Copy of the returns enclosed.

4. With regard to the deduction u/s 80HHC it was stated as under:-

2. Regarding the deduction u/s 80HHC it is submitted that during the AY 00-01 80% of the export profit was exempted from profit. As per explanation (bra) of this section profit of the business means the profit of the business as computed under the head "Profits and gains of business or profession" as reduced by

(a) Ninety percent of any sum referred to in clause (iii), (iiib) and (iiic) of section 28 or of any receipts by way of a brokerage, commission, interest, rent, charges or any other receipt of similar nature included in such profit, and

(b) The profits of any branch, office, warehouse or any other establishment of the assessee situate outside India.

It is very clear from the plain reading of this section that even 10% of the interest, rent and other receipts would be eligible for deduction u/s 80HHC.

5. After considering the reply furnished by the assessee, assessment order dated 31st March, 2003 was passed accepting the returned income as declared. The said assessment order records that a chartered accountant/authorized representative attended from time to time and had filed detailed information as called for. The case was discussed. It may be noted here that the respondent-assessee's accounts are audited and along with the return of income, the respondent-assessee had filed computation of deduction u/s 80IA and 80HHC duly certified by the chartered accountant.

6. Subsequently, the Assessing Officer issued notice u/s 148 of the Act after recording reasons for reopening on 28th March, 2008. These reasons have been reproduced in the impugned order passed by the Tribunal. The relevant portion of

the reasons read as under :-

On going through the assessment records of the assessee, for asstt. year 2001-02, it is seen that the assessee has wrongly claimed deduction u/s 80HHC at Rs. 2,35,68,838/- by restricting the deduction u/s 80IA at Rs. 61,70,349/-. This restriction of deduction by the assessee has been done by reducing from the eligible profits for deduction u/s 80IA the deduction claimed u/s 80HHC. However, as per law the assessee has to claim deduction u/s 80IA on profits without any reduction by taking away deduction u/s 80HHC on the said profits.

Further, the assessee has while working out deduction u/s 80HHC has not reduced the amount of deduction u/s 80IA from the profits of business. This is against the provisions of section 80IA(9). Secondly the assessee has not reduced interest income earned from profits while calculating deduction u/s 80HHC. Thirdly, assessee has wrongly included FDR interest as part of his business income.

Due to all the reasons cited above, the assessee has wrongly claimed a higher deduction u/s 80HHC than what he is allowed as per law. The deduction u/s 80HHC actually works out to Rs. 1,76,48,818/- as against wrong claim of deduction by the assessee at Rs. 2,35,68,838/-. Thus excess deduction claimed by the assessee u/s 80HHC comes to Rs. 59,20,020/-. However, since the assessee has claimed a lesser deduction u/s 80IA of Rs. 61,70,349/- instead of Rs. 74,34,797/-, the excess deduction claimed by the assessee u/s 80HHC at Rs. 59,20,020/- will be reduced by the amount of short deduction u/s 80IA of Rs. 12,64,448/-. Thus excess deduction u/s 80HHC claimed by the assessee would be Rs. 46,55,572/- (59,20,020/- - 12,64,448).

Thus, the assessee has claimed excess deduction u/s 80HHC and there has been a failure on the part of the assessee for not disclosing fully and truly, all material facts necessary for his assessment for the asstt. year 2001-2002. I have therefore reasons to believe that income of the assessee by way of excess deduction of Rs. 46,55,572/- u/s 80HHC allowed to the assessee has escaped assessment for the asstt. year 2001-2002. It is, therefore, necessary to take action u/s 147/148 in this case for the said assessment year.

7. The Tribunal has struck down the said reassessment proceedings on the ground that the jurisdictional pre-conditions stipulated in Section 147 of the Act were not satisfied, as it is a case of reopening on change of opinion. The deductions and quantification thereof u/s 80HHC/80IA were specifically examined at the time of original assessment proceedings.

8. Learned counsel for the Revenue submits that the present case is not of re-examination or reopening on change of opinion as the Assessing Officer during the course of the original proceedings had not applied his mind to the legal provisions/law. He submits that in the assessment order dated 31st March, 2003, the Assessing Officer has not discussed any aspect and had recorded that the return was accepted.

9. It is not possible to accept the contention of the learned counsel for the Revenue. We have quoted above the questionnaire and the reply furnished by the assessee. The question of deductions u/s 80IA and 80HHC were specifically examined at the time of original assessment proceedings. The respondent-assessee had justified the claim and furnished documentary evidence or proof. The quantification of the claim was justified. This is a case of change of opinion and this is not permissible as held in Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited, and Commissioner of Income Tax Vs. Kalvinator of India Ltd., . The opinion of the Assessing Officer may have been legally erroneous but this cannot be a ground for initiation of re-assessment proceedings. An erroneous decision which is prejudicial to the Revenue can be revised but the said option was not exercised.

10. The appeal is accordingly dismissed.