

(2013) 02 KAR CK 0053
In the Karnataka High Court
Case No : Income Tax Appeal No. 330 of 2007

Commissioner of Income Tax and Another	APPELLANT
Vs	
Infosys Technologies Ltd.	RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Income Tax Act, 1961 — Section 260A, 80HHE

Citation : (2013) 261 CTR 586 : (2013) 352 ITR 74

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

Bench : Division Bench

Advocate : K.V. Aravind, for the Appellant; Suryanarayan, Advocate, for King and Partridge, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—The appeal by the Revenue u/s 260A of the income tax Act, 1961 (for short, "the Act"), directed against the order dated October 5, 2006, passed in I. T. A. No. 3086/Bang/1995, by the income tax Appellate Tribunal, Bangalore Bench "A". The Revenue has raised the following substantial questions of law, is listed for hearing:

(1) Whether the Tribunal was correct in reversing the findings of the Assessing Officer that for the purpose of computing deduction u/s 80HHE of the Assistant Commissioner, out of the income derived in foreign exchange, the expenditure incurred in foreign exchange by providing technical services out side India were to be reduced from the export turnover and the total turnover before granting such deduction?

(2) Whether the Tribunal was correct in reversing the finding of the Assessing Officer, who had excluded the interest income of Rs. 13,01,651 and dividend income of Rs. 1,19,960 from the profits of business for the purpose of computation of deduction u/s 80HHE of the Act?

(3) Whether the Tribunal was correct in reversing the finding of the Assessing Officer, who had not excluded income under the head miscellaneous income for

the purpose of computing deduction u/s 80HHE of the Act?

In so far as the first question is concerned, it is submitted by Sri K.V. Aravind, learned standing counsel for the appellant-Revenue and Sri T. Suryanarayan, learned counsel for respondent-assessee that as per the judgment rendered in I. T. A. No. 2973 of 2005. This case appears to be to Commissioner of Income Tax and Another Vs. Infosys Technologies Ltd., and connected cases on February 13, 2013. We have found that the Tribunal has not examined the factual position satisfactorily and, therefore, while setting aside the order of the Tribunal relating to this question, the matter has been remanded to the Assessing Officer to examine this question afresh in the light of the material to be placed by the assessee before him. In this view of the matter, this question is answered in the like terms and the order relating to this question of the Tribunal is set aside and the matter is remanded to the Assessing Officer.

2. In so far as the second question is concerned, we reframe the question as under:

Whether the Tribunal is correct in excluding 90 per cent. of the dividend receipts and interest receipts for arriving at the business profits attributable to such receipts for the purpose of arriving at the profits of the business of the assessee-company in general and not the gross receipts, as contended by the Revenue?

3. On this question, we have heard the learned counsel for the parties. It is submitted that in view of the subsequent decisions of this court and the Supreme Court and particularly in the case of ACG Associated Capsules Pvt. Ltd. (Formerly Associated Capsules Pvt. Ltd.) Vs. The Commissioner of Income Tax, Central-IV, Mumbai, and the issue is concluded holding that it should be the net of the receipts payable to these two types of receipts and not the gross. Accordingly, we answer this question in the affirmative and in favour of the assessee.

4. On hearing the counsel for both parties, we reframe the third question as under:

Whether the Tribunal is correct in reversing the finding of the Assessing Officer, who had not excluded the income under the head of miscellaneous income from the total turnover for the purpose of computing deduction u/s 80HHE of the Act?

5. While it is no doubt true that 90 per cent. of the amount is excluded in arriving at the profits of the business of the assessee attributable to this receipt, i.e., under the head of miscellaneous income, the gross receipts, nevertheless, form part of the total business turnover of the assessee for the purpose of arriving at the total turnover, as indicated in clause (e) of the Explanation to section 80HHE of the Act, the amount mentioned therein has to be excluded. Even for the purpose of computing the total turnover in terms of clause (e) of the Explanation, one has to necessarily start from the total turnover of the assessee, as otherwise, arriving at, perhaps, such turnover, the exclusion is with reference to items mentioned in this clause to the Explanation.

6. We find that the receipts for the purpose of miscellaneous income under the residuary head necessarily be as part of total turnover and, therefore, the Tribunal was not right in reversing the finding of the Assessing Officer on this aspect.

7. Sri Aravind, learned standing counsel for the Revenue, submits that such is the view taken by the Supreme Court in the case of Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair,

8. Sri Suryanarayan, learned counsel for respondent-assessee does not dispute this position.

9. Accordingly, this question is answered in the negative, in favour of the Revenue and against the assessee. In the result, the appeal is allowed in part. On the first question, the matter is remanded to the Assessing Officer; the second question is answered against the Revenue and to that extent the finding of the Tribunal sustained; and the third question is answered in favour of the Revenue and the finding of the Tribunal is reversed. Ordered accordingly.