(2011) 11 KAR CK 0191

In the Karnataka High Court

Case No : Income Tax A. No. 374 of 2010

Commissioner of Income Tax and Another — APPELLANT

Vs

Samsung Electronics Co. Ltd. — RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:
Income Tax Act, 1961 — Section 10 A, 80 HHC

Citation : (2013) 350 ITR 65 : (2012) 204 TAXMAN 166

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

Bench : Division Bench

Advocate : K.V. Aravind, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—The question that arises for consideration in this appeal is whether the Tribunal was correct in holding that when computing the relief u/s 10A of the income tax Act, 1961, the expenditure incurred by the assessee should not form part of the total turnover as such it should be excluded from the total turnover if the same are reduced from the export turnover. The said question was answered by this court in the case of the CIT v. Tata Elxsi Ltd. in I.T.A. No. 70 of 2009--since reported in [2012] 349 JTR 98 (Karn) and other connected matters, disposed of on August 30, 2011, by holding as under (page 110):

From the aforesaid judgments, what emerges is that, there should he uniformity in the ingredients of both the numerator and the denominator of the formula, since otherwise it would produce anomalies or absurd results. Section 10A is a beneficial section. It is intended to provide incentives to promote exports. The incentive is to exempt profits relatable to exports. In the case of combined business of an assessee, having export business and domestic business, the Legislature intended to have a formula to ascertain the profits from export business by apportioning the total profits of the business on the basis of turnovers. Apportionment of profits on the basis of turnover was accepted as a method of arriving at export profits. In the case of section 80HHC, the export profit is to be derived from the total business income of the assessee, whereas in section 10A, the export profit is to be derived from the total business of the undertaking. Even in the case of business of an undertaking, it may include export business and domestic business, in other words, export turnover and domestic turnover. The export turnover would be a component or part of a denominator, the other component being the domestic turnover. In other words, to the extent of export turnover, there would be a commonality between the numerator and the denominator of the formula. In view of the commonality, the understanding should also be the same. In other words, if the export turnover in the numerator is to be arrived at after excluding certain expenses, the same should also be excluded in computing the export turnover as a component of total turnover in the denominator. The reason being the total turnover includes export turnover. The components of the export turnover in the numerator and the denominator cannot be different. Therefore, though there is no definition of the term ''total turnover'' in section 10A, there is nothing in the said section to mandate that, what is excluded from the numerator that is export turnover would nevertheless form part of the denominator. Though when a particular word is not defined by the Legislature and an ordinary meaning is to be attributed to the same, the said ordinary meaning to be attributed to such word is to be in conformity with the context in which it is used. When the statute prescribes a formula and in the said formula, ''export turnover'' is defined, and when the ''total turnover'' includes export turnover, the very same meaning given to the export turnover by the Legislature is to be adopted while understanding the meaning of the total turnover, when the total turnover includes export turnover. If what is excluded in computing the export turnover is included while arriving at the total turnover, when the export turnover is a component of total turnover, such an interpretation would run counter to the legislative intent and impermissible. If that were the intention of the Legislature, they would have expressly stated so. If they have not chosen to expressly define what the total turnover means, then, when the total turnover includes export turnover, the meaning assigned by the Legislature to the export turnover is to be respected and given effect to, while interpreting the total turnover which is inclusive of the export turnover. Therefore, the formula for computation of the deduction u/s 10A, would be as under:

2. In so far as the contention of the Revenue that the Commissioner of income tax as well as the Tribunal were not justified in setting aside the proceedings initiated u/s 148 of the income tax Act, 1961, on the ground that it constituted change of opinion is concerned, in view of our findings on the above question, this question becomes purely academic. Therefore, it is not answered. In view of the aforesaid legal position, we do not see any merit in this appeal. Accordingly, the appeal is dismissed. The substantial question of law framed in this appeal is answered in favour of the assessee and against the Revenue.