
(2013) 12 KAR CK 0022
In the Karnataka High Court
Case No : I.T. Appeal No. 521 of 2007

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

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) 265 CTR 540

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Judgement

N. Kumar, J.—This appeal is by the Revenue challenging the order passed by the Tribunal which has held that the CIT was in error while directing the AO to include the turnover of the entire business including that of undertaking eligible for deduction under s. 10A in the figure of total turnover for computing deductions eligible under s. 80HHE of the Act and in restoring the order of the assessing authority. The assessee is engaged in the business of software development and export. It has two software units which are eligible for exemption under s. 10A of the IT Act, 1961 (for short hereinafter referred to as the "Act"). In respect of another unit which is also in the business of export of software, deduction under s. 80HHE of the Act on the profit of such unit was claimed. The AO while computing the deduction under s. 80HHE allowed the same as claimed by the assessee. While allowing deduction under s. 10A of the Act, the AO restricted the claim by excluding certain profit of such units. The CIT in his revisional jurisdiction under s. 263 of the Act held that while computing deduction under s. 80HHE(3), the turnover which should be adopted by the assessee is the whole turnover and not merely the turnover of units eligible for deduction under s. 80HHE(3) of the Act. Accordingly, he directed the AO to modify the assessment by recomputing the deduction allowable under s. 80HHE(3) by taking the turnover of the business as a whole including those units which are eligible for exemption under s. 10A of the Act. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal held that as regards the units eligible for deduction under s. 10A of the Act, the profits

derived from such eligible units are computed separately and deduction is allowed under s. 10A of the Act. However, where the assessee is also eligible for deduction under s. 80HHE of the Act, the profits eligible for deduction under s. 80HHE are also to be separately computed. Once, the profit of the business carried on by the undertaking eligible for deduction under s. 10A is separately computed and deduction is allowed separately as per sub-s. (4) of s. 10A, such profit will never form part of the "profit of the business" as denned in cl. (d) of Explanation to s. 80HHE of the Act. Thus, when the profit eligible for deduction under s. 10A is not forming part of "profits of the business", the turnover in respect of such unit can also not form part of the total turnover of the business carried on by the assessee. The rationale behind allowing such deduction under s. 80HHE is that when the profit of eligible and ineligible business is clubbed together while computing total gross income and since it is not practicable to compute separately the profits of business from the export of software, the formula of apportioning the profit in proportion to turnover is being applied. Therefore, the Tribunal interfered with the order passed by the CIT setting aside the same and restored the order passed by the assessing authority. Aggrieved by the said order, the Revenue is in appeal.

2. The learned counsel for the Revenue assailing the impugned order contended that s. 80HHE is similar to s. 80HHC. Sub-s. (4) of s. 80HHE gives a formula for calculation of profit earned by the assessee under s. 80HHE. Therefore, the total turnover of the business referred to under sub-s. (3) of s. 80HHE cannot be restricted to total turnover of the assessee in export business only. It should be the total turnover of all the export business carried on by the assessee apart from the business referred to under s. 80HHE. Therefore, he submits that the order passed by the CIT was just and proper and the Tribunal committed a serious error in interfering with the said order.

3. Per contra, the learned senior counsel appearing for the assessee submitted that once the assessee who is carrying on the business in exports is entitled to the benefit of s. 10A and if such an assessee is carrying on business as provided under s. 80HHE, in computing the profits from the export of computer software under s. 80HHE, neither the profits of s. 10A units nor the turnover of 10A units could be added to find out the profit from export of computer software under s. 80HHE. Therefore, he submits that the Tribunal was justified in setting aside the order passed by the CIT and restoring the order passed by the assessing authority.

4. In the light of the facts and rival contentions, the substantial question of law that arises for consideration in this appeal is:

In the facts and circumstances of this case, whether the Tribunal was correct in holding that the profit eligible for deduction under s. 10A of the Act does not form part of the profit of the business and therefore the turnover in respect of such unit also cannot form part of total turnover of the business carried on by the assessee?

5. Sec. 80HHE reads as under:

80HHE. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of--

(i) export out of India of computer software or its transmission from India to a place outside India by any means;

(ii) providing technical services outside India in connection with the development or production of computer software,

there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction to the extent of the profits, referred to in sub-s. (1B) derived by the assessee from such business:

A reading of the aforesaid provision makes it clear that the section deals with deduction in respect of profits from the export of computer software etc. In order to attract the benefit of the said provision, the following conditions must be satisfied:

(a) The assessee is engaged in the business of export out of India of computer software or its transmission from India to a place outside India by any means; or providing technical services outside India in connection with the development or production of computer software; and

(b) the said computer software has to be exported out of India.

6. Therefore, to be eligible for deduction under s. 80HHE not only the assessee should be engaged in the business of computer software, he must be exporting it out of India. If the assessee is a 100 per cent export oriented unit there is no difficulty in computing the profit from export of computer software business. Whatever profit that the assessee earns is the profit from export of computer software, which would be eligible for deduction. The difficulty arises only when the company being engaged in the business of computer software, a portion of his business includes export out of India and the remaining portion is for domestic consumption. It is in those circumstances, to be eligible for the benefit of deduction in respect of profits from export of computer software that profit has to be determined. In order to determine the said profit sub-s. (3) of s. 80HHE prescribes a formula, which reads as under:

(3). For the purposes of sub-s. (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

7. The opening words of sub-s. (3) make it clear that the said formula is only for the purpose of sub-s. (1). Further, it also makes it clear that the profit derived from the business referred to in that sub-section means the business of computer software. Then in order to determine the profits derived from the

export of computer software the amount shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee. Therefore, the total turnover of the business referred to under sub-s. (3) cannot be construed as the total turnover of the business carried on by the assessee. The total turnover refers only to the business carried on under s. 80HHE namely, the business of software. Therefore, if the assessee is carrying on business of computer software and is exporting such computer software and is also supplying it to the domestic market then the total turnover of the business includes the total turnover of export and the total turnover in the domestic market. But, merely because the assessee is owing two more units which fall under s. 10A, which is also engaged in computer business and is in the export business neither the profit earned by s. 10A units nor the total turnover of the said s. 10A units is liable to be included in the total turnover. Therefore, neither the profits of s. 10A units nor the turnover of s. 10A units could be added to find out the profit from export of computer software under s. 80HHE. In fact this is also clear from s. 80A which forms part of Chapter VI-A in which s. 80HHE also finds a place. The relevant provision is sub-s. (4) of s. 80A, which reads as under:

(4) Notwithstanding anything to the contrary contained in s. 10A or s. 10AA or s. 10B or s. 10BA or in any provisions of this chapter under the heading "C-Deductions in respect of certain incomes", where, in the case of an assessee, any amount of profits and gains of an undertaking or unit or enterprise or eligible business is claimed and allowed as a deduction under any of those provisions for any assessment year, deduction in respect of, and to the extent of, such profits and gains shall not be allowed under any other provisions of this Act for such assessment year and shall in no case exceed the profits and gains of such undertaking or unit or enterprise or eligible business, as the case may be.

8. This provision is inserted by Finance (No. 2) Act, 2009, which came into retrospective effect from 1st April, 2003 applicable to the asst. yr. 2003-04. In the case on hand, it relates to asst. yr. 2001-02. Nonetheless, this provision is explanatory in nature. The principle underlining the said provision makes it clear that when the profits and gains of an undertaking are allowed as deduction, the said benefit cannot be over again allowed under any other provisions. Consequently, the said profits and gains cannot be added under any provision also. If profits and gains cannot be added, the total turnover out of which the profits and gains are arising also cannot be added in computing the total turnover of yet another unit. Therefore, it is clear that once the assessee has been given the benefit of total exemption from payment of tax under s. 10A in respect of these two units to which s. 10A is attracted, neither the profits and gains of that business nor the turnover of that business could be added to the business of which s. 10A is not applicable. In the instant case, the third unit is eligible for deduction in respect of export turnover of computer software under s. 80HHE. Therefore, in computing the profits of the said unit, the turnover of other s. 10A units cannot be added to arrive at the total turnover of the business as

stipulated under sub-s. (3) of s. 80HHE. In that view of the matter, we do not see any justification to interfere with the well considered order passed by the Tribunal which rightly set aside the order of the CIT and restored the order of the assessing authority. Thus, the substantial question of law is answered in favour of the assessee and against the Revenue. The appeal is dismissed. The parties to bear their costs.