(2010) 06 KAR CK 0013

In the Karnataka High Court

Case No : Income-Tax Appeal No. 3049 of 2005

Commissioner of Income Tax — APPELLANT

Vs

Ascalon Exports — RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:
Income Tax Act, 1961 — Section 80 HHC (1), 80 HHC (3)

Citation : (2011) 196 TAXMAN 421

Hon'ble Judges : N.K. Patil, J;B.V. Nagarathna, J

Bench : Division Bench

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

Judgement

N.K. Patil, J.—This appeal by the revenue arises out of the impugned order dated 3-5-2005 passed in ITA No. 2176/BNG./2004 by the Income Tax Appellate Tribunal, Bangalore Bench A, for consideration of the following substantial questions of law:

1. Whether, the Tribunal was correct in holding that even though there is loss sustained by the Assessee from exports the Assessee would be entitled to claim deduction u/s 80HHC(3) of the Act if, the computation works out to be a profit?

2. Whether the Tribunal was correct in not appreciating the fact that once the Assessee sustained loss in export as per Section 80HHC(1) they are not entitled for deduction claimed and therefore entering into computation of deduction as per Section 80HHC(3) of the Act would not arise since it is only consequential and the relief granted by the Tribunal is contrary to the judgment of the Apex Court in IPC Laboratories in IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, ?

2. The brief facts of the case are that, the Assessee filed his return of income for the assessment year 2001-02. After receipt of the returns filed by the Assessee, the assessing authority, after due scrutiny, issued notice u/s 143(2) of the Act.

Thereafter, the said authority, after considering the other relevant material available on file and after affording opportunity of hearing to the Assessee, passed an order dated 30-12-2003 vide Annexure-C. Assailing the correctness of the said order, the Assessee filed an appeal bearing ITA-94/Commissioner (Appeals)-II/2003-04 before the Commissioner (Appeals)-II, Bangalore, the first appellate authority. The said matter had come up for consideration before the first appellate authority on 18-6-2004 and the said authority, partly allowed the appeal filed by the Assessee, after due consideration of the relevant material available on file and after perusal of the order passed by the assessing officer. Being aggrieved by the order passed by the first appellate authority, the Assessee filed an appeal before the Income Tax Appellate Tribunal, Bangalore Bench A in ITA No. 2176/Bang/2004. The Appellate Tribunal, in turn, after hearing both sides and after going through the order passed by both the authorities below, passed the impugned order, allowing the appeal in part. Being aggrieved by the said order passed by Appellate Tribunal, revenue has presented this appeal for considering the aforesaid substantial questions of law raised in this appeal.

3. We have heard learned Counsel appearing for revenue as well as the learned Counsel appearing for the Assessee, for quite sometime.

4. During the course of submission, learned Counsel appearing for both the parties submitted that, the subject-matter involved in this case is directly covered by the judgment of the Division Bench of this Court in CIT v. Supreme Overseas Exports India (P) Ltd. (IT Appeal No. 2620 of 2005, dated 1-6-2010). Therefore, they submitted that, following the said judgment, the instant appeal may also be disposed of, with a direction to the assessing officer to decide the matter in strict consonance with the amendment to Section 80HHC of the Act and its proviso.

5. The submission made by learned Counsel for both the parties, as stated supra, is placed on record.

6. In the light of the submission made by learned Counsel for both parties and following the judgment of the Division Bench of this Court in Supreme Overseas Exports India (P) Ltds case (supra) and for the reasons stated therein, the appeal filed by the Appellants is allowed in part. The order passed by the assessing officer dated 30-12-2003 vide Annexure-C, order dated 18-6-2004 passed by the Commissioner (Appeals)-H, Bangalore in ITA-94/Commissioner (Appeals)-II/2003-04 vide Annexure-B and the order passed by the Income Tax Appellate Tribunal, Bangalore Bench A, dated 3-5-2005 bearing ITA No. 2176/Bang./2004 vide Annexure-A, are all hereby set aside;

Matter stands remitted back to the assessing authority to reconsider the matter afresh and to pass appropriate order, in strict consonance with the proviso to Section 80HHC of the Act and dispose of the same, as expeditiously as possible, after affording opportunity to the parties.

Since the matter is remanded back to the assessing authority, it is not necessary to answer the aforesaid substantial questions of law raised in this appeal.