
(2006) 09 P&H CK 0269
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 73 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Avery Cycle Industries Ltd.

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Income Tax Act, 1961 — Section 28, 80HHC

Citation : (2006) 206 CTR 347 : (2008) 296 ITR 393

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : S.K. Garg Narwana, for the Appellant; Akshay Bhan, for the Respondent

Judgement

Rajesh Bindal, J.—This appeal by the Revenue is directed against order dt. 21st Sept., 2004, passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B" (for short, the Tribunal") in ITA No. 967/Chd/1996, for the asst. yr. 1993-94, raising the following substantial questions of law:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding expenses of Rs. 1,55,795 spent on silver vessels, carpets, silver ornaments and other gift items for distribution to the dealers as business expenditure ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the disallowance of interest of Rs. 2,43,000 on the ground that there is no direct nexus between the borrowings and interest-free advances made to certain parties ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing to consider interest income as forming part of business profits for computing deduction u/s 80HHC ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing to exclude sales-tax/central sales-tax, discount receipts,

amounts written off and claim receipts from the total turnover for computing deduction u/s 80HHC of the IT Act ?

Question No. (i)

2. Regarding question No. (i), the AO, while framing the assessment, disallowed the claim of the assessee of a sum of Rs. 1,55,795 on account of expenses claimed under the head "Sale promotion expenses" on account of silver vessels, carpets, silver ornaments and other gift items distributed to the dealers, who visited the factory of the assessee from time to time. The claim of the assessee was that distribution of such gifts is customary in nature. The claim was rejected on two counts--first, no evidence was produced to the effect that gift items were actually distributed amongst dealers and secondly, reliance was placed on a judgment of Kerala High Court in Commissioner of Income Tax Vs. Alleppey Co. Ltd., wherein it was held that expenditure incurred on account of presentation of curios to foreigner-buyers visiting the factory amounts to entertainment expenses.

3. In appeal, the assessee failed before the Commissioner of Income Tax (Appeals) [for short, "the CIT(A)"].

4. The Tribunal, while referring to the judgments of this Court in H.M.M. Limited Vs. Commissioner of Income Tax, and Avon Cycles (P) Ltd. Vs. Commissioner of Income Tax, relied upon an order passed by it in the case of the assessee for the asst. yr. 1992-93 and held that expenditure incurred on distribution of gift articles to various dealers was for business consideration as it does promote goodwill among the dealers for the assessee.

5. After hearing the counsel for the parties and also going through the orders passed by the authorities, we are of the view that distribution of gift articles to dealers would certainly fall within the ambit of expenditure for business consideration. The dealers selling the product of a manufacturer are certainly its lifeline and if some reasonable amount is spent on distribution of some gifts to them that certainly promotes goodwill and enhances business interests, hence, the same cannot, in any way, be termed as entertainment expenditure. In IT Appeal No. 328 of 2004--CIT v. Varinder Agro Chemicals Ltd., decided on 17th Aug., 2006 reported at 2006 205 CTR P&H 334--Ed., while dealing with an issue regarding distribution of gifts on festivals, this Court held that the same was not a kind of entertainment expenditure. Keeping in view the nature, quantum of business and the profits generated out of it, a sum of Rs. 1,55,795 spent by the assessee on presentation of gift items to dealers cannot be held to be a non-allowable expenditure. Accordingly, we reject the plea of the Revenue and answer the question against it and in favour of the assessee.

Question No. (ii)

6. As far as question No. (ii) is concerned, the AO, during the course of assessment, found that during the year in question, the assessee advanced a

sum of Rs. 13,50,000 to its managing director without any business purpose. The advance was not carrying any interest. On scrutiny of the P&L a/c, it was found that large number of loans of different types were outstanding against the company on which it incurred liability of Rs. 2,52,50,890 on account of interest. Accordingly, the AO disallowed the amount of interest on interest-free advance to the managing director for non-business purposes. In addition to this, it was found that certain other amounts were also advanced to various other directors without any interest for non-business purposes. Interest thereon was also disallowed.

7. In appeal before the CIT(A), the assessee failed. The Tribunal accepted the appeal of the assessee by relying upon its earlier order of the asst. yr. 1992-93.

8. We have already dealt with an identical issue in the case of CIT v. Abhishek Industries Ltd. IT Appeal No. 110 of 2005, decided on 4th Aug., 2006 reported at (2006) 205 CTR (P&H) 304., wherein it is held that where the assessee is found to have advanced certain sums to sister-concerns for non-business purposes and on the other hand is incurring interest liability on various loans raised by it. interest on the loans raised to that extent cannot be held to be for business purposes. Following the reasons recorded therein, we answer the question in favour of the Revenue and against the assessee. Appeal of the Revenue is accepted while upholding the disallowance made by the AO on that account.

Question No. (iii)

9. Regarding question No. (iii), while framing the assessment, the AO found that the assessee had received interest of Rs. 4,98,344 from the IT Department; Rs. 4,90,000 from the Punjab State Electricity Board on security deposits and Rs. 6,935 on security amount deposited for car. The claim of the assessee that this forms part of the business receipts as the same was integral part of the business activity of the company was considered and rejected by the AO for the purpose of calculation of deduction u/s 80HHC of the IT Act, 1961 (for short, "the Act").

10. The CIT(A), referring to the judgments of Rajasthan and Delhi High Courts in Commissioner of Income Tax Vs. Rajasthan Land Development Corporation, and Commissioner of Income Tax Vs. Cement Distributors Ltd., respectively, rejected the appeal of the assessee on this issue.

11. The Tribunal, referring to an order passed by Mumbai Bench of the Tribunal, accepted the plea of the assessee on this ground.

12. The term "profits of the business" has been defined in Expln. (baa) to Section 80HHC of the Act, which reads as under:

(baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by--

(1) ninety per cent of any sum referred to in Clauses (iiia), (iiib) and (iiic) of Section 28 or of any receipts by way of brokerage, commission, interest, rent,

charges or any other receipt of a similar nature included in such profits; and

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

13. As far as question of addition of the amount of interest of the kind received by the assessee for the purpose of computation of business is concerned, in our view, the answer thereto is clearly available in the definition of "profits of the business", contained in Clause (baa) of Section 80HHC of the Act, as reproduced above, from where it is evident that "profits of the business" means the profits and gains of business or profession, as computed under the head "Profits and gains of business or profession" as reduced by the items, provided for in the definition. A perusal of the assessment order shows that while dealing with the deduction u/s 80HHC of the Act, receipt of interest by the assessee from IT Department, on securities from Punjab State Electricity Board and on security deposit for car was held to be not connected with the business activity and the AO treated the same as income from other sources. However, while computing the income from business or profession, the amount of interest so earned by the assessee, as mentioned above, was taken as part of the business income only and the same was not reduced therefrom for dealing under the head "Income from other sources". While considering the appeal filed by the assessee on this issue, the CIT(A) rejected the same. Before the Tribunal, the assessee succeeded.

14. Once at the time of passing of the assessment order in computing the income from business or profession, the amount of receipt of interest, as mentioned above, has been shown and assessed as income from business or profession, there is no reason for reducing the same out of the income from business or profession for the purpose of calculation of deduction u/s 80HHC of the Act, as after including the same in the income from business or profession, the reduction, as envisaged under that provision, would be carried out. This is clear even from what the Tribunal has directed. Accordingly, we do not find any merit in this contention of the Revenue and hold that once the income is assessed as income from business or profession, the same has to be taken as such for the purpose of calculation of profits of the business in terms of Clause (baa) of Section 80HHC of the Act after reducing therefrom 90 per cent of the amount, so referred in the clause.

Question No. (iv)

15. Regarding question No. (iv), the AO found that during the year in question, the assessee had received claim of Rs. 2,57,011; written off balance of Rs. 40,098; receipt discount of Rs. 33,677 and other miscellaneous receipts were of Rs. 7,24,931. Besides this, the assessee had collected central sales-tax/sales-tax to the tune of Rs. 20,82,041. The claim of the assessee that these items be not treated as part of the total turnover was rejected by the AO and it was ordered that the same be treated as part of the total turnover for the purpose of calculation of benefit u/s 80HHC of the Act.

16. As is evident from the order of the CIT(A), the inclusion of Rs. 7,24,931 on account of miscellaneous receipts was not contested by the assessee. The CIT(A), while confirming the disallowance on account of claims and discounts received, reversed the disallowance on account of balance written off. As far as receipt of sales-tax/central sales-tax is concerned, on that account also, the order of the AO was upheld.

17. The Tribunal, without there being much discussion, reversed the order passed by the authorities below merely by referring to an earlier order passed by it. As far as consideration of sales-tax and excise duty, being part of the total turnover for the purpose of calculations u/s 80HHC of the Act is concerned, this Court in IT Appeal No. 293 of 2005--CIT v. Vaidhman Polytex Ltd. decided on 22nd May, 2006 reported at (2006) 203 CTR (P&H) 397, has already decided the issue in favour of the Revenue (sic-assessee) and against the (sic-Revenue) assessee. Following the same, we uphold the order passed by the Tribunal and reject the ground of appeal on that account.

18. As far as question of claims received and discount receipts is concerned, the claim of the assessee is that a sum of Rs. 2,57,011 was received from the insurance company on account of claim for damage to the car and Rs. 33,677 were on account of discount received in respect of purchase of chemical from M/s Canning Mitra Phoenix. In our view, the amount of insurance claim and discount receipt received by the assessee during the year in question on account of damage to the car does not form part of the turnover of the assessee for the purpose of calculation of deduction u/s 80HHC of the Act. Car is not the commodity in which the assessee is dealing in and the discounts received in respect of purchases made will reduce the cost of purchases and will not add in the receipt side.

19. Accordingly, the question is answered in favour of the assessee and against the Revenue.

The appeal is disposed of in the manner indicated above.