(2008) 04 BOM CK 0033

In the Bombay High Court

Case No : Income Tax A. No. 124 of 2005

Commissioner of Income Tax — APPELLANT

Vs

Bhansali Engineering Polymars Ltd. — RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:
Income Tax Act, 1961 — Section 80HH

Citation : (2008) 306 ITR 194

Hon'ble Judges : S. Radhakrishnan, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : P.S. Sahadevan, for the Appellant; K. Shivram, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the appellant and learned Counsel for the respondent. By this appeal, the appellant-Revenue is seeking to raise the following substantial questions of law:

(1) Whether the Income Tax Appellate Tribunal was justified in setting aside the findings of the Commissioner of Income Tax (Appeals) in its order dated November 13, 2002, disallowing a deduction u/s 80HH of the Income Tax Act, 1961, amounting to Rs. 19,85,969 out of total deduction amounting to Rs. 26,23,020 claimed by the assessee in the present facts and circumstances of the case in question?

(2) Whether the Income Tax Appellate Tribunal was justified in holding the interest income of Rs. 95,97,864 recovered from delayed payments from the sundry debtors to whom the industrial unit of the assessee had sold the goods could be treated as interest income derived from the industrial undertaking of the assessee in the light of the provisions of Section 80HH of the Income Tax Act, 1961, and the findings of the Commissioner of Income Tax (Appeals) in its order dated November 13, 2002, in this regard even though the assessee has realised income from other sources?

2. The relevant assessment year is 1999-2000.

3. We have perused the order of the Income Tax Appellate Tribunal dated July 12, 2004, wherein in paragraph 6 he has come to the conclusion as under:

We have heard the rival submissions and considered the facts and materials on record including the decisions cited before us. As rightly contended by learned Counsel for the assessee the facts of the case law relied upon in the assessment order are different from the facts of the case on hand. In the case of Commissioner of Income Tax Vs. Pandian Chemicals Ltd., , the court was concerned with the interest received from the deposit of the electricity board which is also different from the facts of the case on hand. In the present case, the assessee has received interest for belated settlement of the bills by the debtors, which has a direct nexus with the industrial undertaking and have a direct nexus with the sales which in turn linked to industrial undertaking. The hon''ble Madras High Court in the case of (2002) 257 ITR 60 had dealt with an identical issue and held that if the purchasers did not make the payments and then agree to pay interest on the delayed payments, the said interest could directly be relatable to the business of the assessee and thus the interest would have to be included as the profits and gains derived from the business of the assessee and would be entitled to be covered by Section 80HH. Also the Third Member case reported in the case of (2003) 87 ITD 264 , it has been held that the interest received from customers for delayed payment was directly relatable to the business of the assessee and, therefore, the issue was to be decided in favour of the assessee. In our considered view, in the above two decisions, the facts are identical to that of the facts obtaining in the present case and the facts of the case relied upon by the Revenue authorities are different from those prevailing in this case. Hence, we have to follow the decisions of the Madras High Court reported in (2002) 257 ITR 60 and the Third Member decision reported in (2003) 87 ITD 264 and decide the issue in favour of the assessee. Hence, following the above decisions, we direct the Assessing Officer to consider the interest received for delayed payment of the dues by the debtors as income derived from industrial undertaking and to recompute the deduction u/s 80HH. Order accordingly.

4. It is clear that it is merely a finding of fact and no substantial question of law arises.

5. The appeal, therefore, devoid of any merit is dismissed with no order costs.

