
(2004) 12 AHC CK 0030
In the Allahabad High Court
Case No : Income Tax R. No. 109 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Chhata Sugar Co. Ltd.

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 29, 37, 38, 39

Citation : (2005) 277 ITR 256 : (2005) 149 TAXMAN 556

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

1. The Income Tax Appellate Tribunal, Delhi, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for opinion to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing claim of the assessee in respect of deduction u/s 80HH of the Income Tax Act, 1961 ?"

2. Briefly stated the facts involved in the present case are as under :

3. The present reference relates to the assessment year 1982-83. The respondent company filed a return showing the income as follows :

Rs. "3. Profits and gains of business or profession. As shown against 26,02,017 col. (d) 7. Deduction : Unabsorbed losses/allowances brought forward 3,84,11,053 from earlier years and investment allowance/development rebate/ allowance 8. Gross total income (-) 3,58,09,036

4. While completing the assessment at a net loss of Rs. 2,65,12,669, the claim u/s 80HH amounting to Rs. 5,20,402 was not considered to be legally correct and as such the same was not allowed on the following grounds :

"The assessee has claimed deduction of Rs. 5,20,402 u/s 80HH of the Income Tax Act, 1961. This claim has been examined with reference to the provisions of Section 80HH of the Income Tax Act. This claim was allowable only if after deduction of depreciation, investment allowance and carry forward losses, the resultant figure comes to profit. In this case after deduction of depreciation investment allowance and carried forward unabsorbed depreciation and other losses, the resultant figure is loss. Hence, the assessee is not entitled to the deduction u/s 80HH of the Income Tax Act."

5. The respondent preferred appeal before the Commissioner of Income Tax (Appeals) who confirmed the finding of the Assessing Officer. Feeling aggrieved the respondent preferred second appeal before the Tribunal. The Tribunal has allowed the claim of the respondent u/s 80HH on the basis of the decision of the Madras Tribunal stating that exactly similar controversy was considered by it in I. T. A. Nos. 237 and 238/Madras of 1982 reported in *Yenpeyees Rubber (P.) Ltd. v. First ITO [1984] Taxation 72 (6)* and has held that :

"the deduction is required to be made taking a proportion of profits from new industrial undertaking in backward area. The deduction under Sections 37 to 43 of the Act in computing the business income u/s 29, we are entirely in agreement with the reasoning adopted in this case and therefore, on the basis of the said decision, we accept the claim of the assessee."

6. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue, and nobody has appeared on behalf of the respondent-assessee. Learned standing counsel submitted that in view of the definition of gross total income as given in Section 80B(5) of the Act, for allowing the deduction u/s 80HH of the Act the gross total income computed in accordance with the provisions of this Act is to be taken into consideration and if that is done the set off losses as provided u/s 72 of the Act are also to be taken care of and only if the resultant income is a positive figure and is not a loss, deduction u/s 80HH of the Act is admissible.

7. In support of the aforesaid submission he relied upon a decision of the apex court in the case of *Commissioner of Income Tax, Tamil Nadu-V, Madras Vs. Kotagiri Industrial Co-operative Tea Factory Ltd., Kotagiri*, . The apex court in the aforesaid decision was considering the claim of deduction u/s 80P of the Act and has held that the gross total income must be determined by setting off against the income the business losses of the earlier years as required u/s 72 of the Act, before allowing deduction u/s 80P. As Section 80HH also falls under Chapter VI-A of the Act in view of the specific finding of gross total income given in Section 80B(5) of the Act the set off of losses is to be first done before allowing deduction u/s 80HH of the Act. As in the present case after the set off of losses of earlier years the gross total income resulted in loss, no deduction u/s 80HH was admissible.

8. In view of the foregoing discussion, we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However,

there shall be no order as to costs.