

(2015) 04 SC CK 0063

In the Supreme Court Of India

Case No : Civil Appeal No. 5539 of 2004

Commissioner of Income Tax

APPELLANT

Vs

Harrison Malayalam Ltd.

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 80AB, 80HHC, 80HHC(3)

Citation : (2015) 278 CTR 175 : (2015) 373 ITR 162 : (2015) 7 SCC 703 :
(2015) 233 TAXMAN 507

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : Dhruv Mehta, Senior Advocate, Rekha Pandey, Gargi Khanna and Anil Katiyar for B.V. Balaram Das, for the Appellant; K. Rajeev, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The Respondent-Assessee is a public limited company engaged in growing and manufacturing tea besides trading activities. The Assessee had an export turnover of Rs. 7,24,99,271. The total turnover of the Assessee came to Rs. 40,82,91,806. The Assessee had exported tea and had received sale proceeds in foreign exchange. The Assessee claimed that the profits derived from export should be computed in accordance with Clause (b) of Sub-section (3) of Section 80HHC. For the assessment year 1987-88, Respondent claimed the deduction Under Section 80HHC to the extent of Rs. 16,27,562. The deduction was restricted to the profits derived from export. For this purpose, the profit derived from export had been calculated in accordance with Sub-section (3) of Section 80HHC. However, the provisions of Section 80AB was also applicable.

2. While completing the assessment Under Section 143(3), it was found that there was a loss from Kerala tea and only a small profit from Tamil Nadu tea. The net result of trading in tea was a loss. The business income included in the total income is actually the income from the other activities and income from services

rendered. After setting off the losses from tea the learned Assessing Officer, vide his order dated March 19, 1990, held that the deduction is not permissible, as Section 80AB is to be applied.

3. Aggrieved, the Respondents approached before the office of the Commissioner (Appeals). Learned Commissioner (Appeals), vide his order in appeal dated August 29, 1999, appeal was partly allowed in respect that the Assessing Officer was not justified in estimating the value of unyielding rubber trees as on January 1, 1974, at Rs. 100 and according to the Appellant it cannot be less than Rs. 200. However, he dismissed the appeal on the grounds pertaining to the claim of reduction of Rs. 16,27,562.

4. Aggrieved, the Respondent filed an appeal before the Income-tax Appellate Tribunal. Learned Tribunal, vide its order dated July 2, 1997, allowed the claim of the Respondent-Assessee by holding that Section 80AB has no application to a case covered by Section 80HHC of the Act. Aggrieved, the Appellant filed an appeal before High Court. The High Court, vide its impugned judgment and final order dated March 12, 2003, dismissed this appeal and affirmed the decision of the Tribunal.

5. No body is present on behalf of the Respondent-Assessee. We have heard learned senior Counsel appearing for the Appellant, Mr. Dhruv Mehta. He has drawn our attention to the recent judgment rendered by this very Bench in the case of Jeyar Consultant and Investment Pvt. Ltd. Vs. Commissioner of Income Tax(2015) 5 AD (SC) 100 : (2015) 276 CTR 225 : (2015) 373 ITR 87 : (2015) 3 MLJ 623 : (2015) 4 SCALE 410 : (2015) 7 SCC 705 : (2015) 6 SCJ 490 : (2015) 231 TAXMAN 273 wherein it is categorically held that to avail of the benefit of Section 80HHC of the Income-tax Act there has to be positive income from the export business. The said judgment in our opinion squarely covers the present case. The order of the High Court is accordingly set aside and the order of the Assessing Officer is restored. The appeal is accordingly disposed of.