
(2005) 01 MP CK 0054
In the Madhya Pradesh High Court
Case No : IT Appeal No. 11 of 2001

Commissioner of Income Tax

APPELLANT

Vs

Jyoti Overseas Ltd.

RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Income Tax Act, 1961 — Section 260A, 80HHC, 80HHC(3)

Citation : (2005) 194 CTR 406 : (2005) 277 ITR 474

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and V. Mandlik, for the Appellant; G.M. Chafekar and Sarda, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is an appeal filed by Revenue (CIT) u/s 260A of the IT Act against an order dt. 19th Sept., 2000, passed by Income Tax Appellate Tribunal (for brevity hereinafter referred to as Tribunal) in ITA No. 203/Ind/2000 This appeal was admitted for final hearing on following substantial question of law :

"Whether, on the facts and on the circumstances of the case and in law, the Tribunal was required to direct the AO to work out the direct cost of the finished goods of exported items vide paras 9 and 11 of their order when in fact what is required to work out the deduction u/s 80HHC, was the direct cost of the trading goods exported vide Clause (d) of Explanation below Section 80HHC(3) of the IT Act and when no inference could be drawn in respect of the direct cost of the trading goods exported in view of the assessee's export sources their inbeing their purchase of goods from the market and/or manufactured in their own premises ?"

2. Heard Shri R.L. Jain, learned senior counsel, with Ku. V. Mandlik, learned counsel for the Revenue, and Shri G.M. Chafekar, learned senior counsel, with Shri Sarda, learned counsel for the assessee.

3. In short, the question involved in this appeal is whether Tribunal was justified in holding that assessee is entitled to claim deduction of Rs. 3,08,75,970 u/s 80HHC. While examining this question, the main question that arises for consideration is whether while computing the deduction u/s 80HHC the assessee is entitled to take into consideration (i) the interest said to have been paid by them on export packing credit limit, (ii) interest said to have been paid on term loan obtained for setting up of project, and lastly, depreciation calculated on computer installed or, in other words, the question arises is whether the amount spent by the assessee in aforementioned three heads can be said to be the direct cost or indirect cost as defined in Explanation to Section 80HHC of the Act, dealing with the manufactured items exported by the assessee so as to entitle them to claim deduction u/s 80HHC *ibid*.

4. In the opinion of Tribunal, the amount spent/used under the aforementioned three heads can be included in the cost of manufactured goods for the purpose of claiming deduction u/s 80HHC *ibid*. In other words, according to Tribunal, the amount said to be spent/used under aforementioned three heads can be regarded as direct cost and hence, can be included for the purpose of calculating deduction available to the assessee u/s 80HHC *ibid*. It is against this view of the Tribunal, the Revenue has felt aggrieved and filed this appeal.

5. Having heard learned counsel for the parties and having perused record of the case, we are of the view that the appeal deserves to be allowed and the case has to be remanded to the Tribunal for fresh hearing in the light of observations made by us *infra*.

6. It is not in dispute that the issue involved in this appeal relates to deduction u/s 80HHC *ibid*. The question which the taxing authorities has to decide is whether an amount said to have been spent under particular head by the assessee can be regarded as cost incurred by an assessee for manufacturing the goods exported as defined u/s 80HHC and, if so, what type of cost can be included ?

7. Mere perusal of Section 80HHC *ibid* would show that there is an Explanation appended to main section [sic-Sub-section (3)]. This Explanation has defined five words, i.e., (a) to (f) used in Section 80HHC. This includes "(d) direct costs" and "(e) indirect costs". So, while examining the question whether a particular amount can be regarded as cost, the legislature has permitted two types of costs to be included in the costing. As stated *supra*, they are "direct costs" and "indirect costs".

8. Whether a particular amount satisfies the definition of direct costs or indirect costs is a question which needs to be decided on facts and material brought on record by assessee, before it is finally held that deduction u/s 80HHC is available to the assessee.

9. When we read the impugned order of Tribunal, we notice that the Tribunal has not even referred to the Explanation, much less Clauses (d) and (e) of the Explanation appended to Section 80HHC. In other words, the only thing which

the Tribunal was required to examine with reference to three heads was whether they all or any of them fall and/or satisfy the requirement of Expln. (d) or (e) so as to entitle the assessee to take its benefit while determining the deduction. Unfortunately, the Tribunal has not examined the issue keeping in view the requirement of Explns. (d) and (e) and has returned a finding in their favour.

10. This Court cannot for the first time and without there being a factual finding recorded by the Tribunal in the light of two Explanations examine the case in its appellate jurisdiction. It is for the Tribunal to first examine the facts of the case and give a finding whether a particular amount can be said to be a direct costs or indirect costs or neither of them. This inquiry, in our opinion, is sine qua non at the first instance. It is only then the High Court can examine the question, if occasion so arises at the instance of either parties.

11. We, therefore, consider it proper to remand the case to Tribunal for deciding the appeal afresh in the light of what this Court has observed supra, This Court has ample jurisdiction to remand the case if case to that effect is made out. In this case it is made out. Let the appeal be decided afresh by the Tribunal in three months from the date of this order as observed.

12. In view of aforesaid discussion, the appeal succeeds and is allowed. Impugned order is set aside. Case is remanded to Tribunal for deciding the appeal afresh on merits in the light of observations made supra. No costs.