

(2004) 05 P&H CK 0085
In the Punjab And Haryana At Chandigarh
Case No : Income Tax A. No. 39 of 2004

Commissioner of Income Tax

APPELLANT

Vs

Max India Ltd.

RESPONDENT

Date of Decision : 18-05-2004

Acts Referred:

Income Tax Act, 1961 — Section 263, 80HHC

Citation : (2004) 191 CTR 397 : (2004) 268 ITR 128

Hon'ble Judges : S.S. Grewal, J;N.K. Sud, J

Bench : Division Bench

Advocate : R.P. Sawhney and Kishan Singh, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud , J.—This appeal is directed against the order of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for; short, "the Tribunal"), dated August 1, 2003, allowing the appeal of the assessee against the order passed by the Commissioner u/s 263 of the Income Tax Act, 1961 (for short, "the Act").

2. The assessee company is engaged in the business of manufacturing of drug intermediaries, electronic chemicals and formulations. It filed its return of income for the assessment year 1992-93 on December 29, 1992. Since the turnover of the assessee for the assessment year 1992-93 included exports, it had claimed deduction u/s 80HHC of the Act at Rs. 1,33,09,439. The assessment was completed by the Assessing Officer on March 15, 1995, and deduction u/s 80HHC of the Act was allowed as claimed by the assessee. However, on a perusal of the record, the Commissioner of Income Tax observed that while working out the deduction u/s 80HHC there was a negative figure of profit at one stage which had been ignored by the Assessing Officer and thereby excess deduction u/s 80HHC had been allowed. Accordingly, vide order dated March 5, 1997, he held that the order passed by the Assessing Officer was erroneous: inasmuch as it was prejudicial to the interests of the Revenue and consequently he set aside the assessment framed by the Assessing Officer u/s 143(3) dated March 15, 1995,

and directed him to recompute the deduction u/s 80HHC of the Act.

3. Aggrieved by the said order, the assessee preferred an appeal before the Tribunal which has been allowed. The Tribunal has recorded a finding that the computation made by the Assessing Officer was in accordance with the view expressed by various Benches of the Income Tax Appellate Tribunal, which have been discussed in detail in the order itself. Thus, it has been observed that since the view taken by the Assessing Officer was a possible view, the Commissioner had no jurisdiction to exercise power u/s 263 of the Act and treat the order to be erroneous in any manner.

4. Mr. R. P. Sawhney, learned senior standing counsel for the Revenue, contended that when the assessment was framed by the Assessing Officer, there was no order of the Tribunal available to him. Thus, accordingly on the basis of the subsequent decisions of the Tribunal, it could not be said that the view taken by the Assessing Officer was a possible view.

5. We find no merit in this contention. For expressing a View, it is not necessary that it should be based on a judicial pronouncement. A view has to be expressed on the basis of the provisions of law as applicable to the facts of a case. It is not in dispute that the view expressed by the Assessing Officer is in conformity with the view subsequently expressed by the various Benches of the Tribunal. We are, therefore, satisfied that the Tribunal was justified in holding that the view expressed by the Assessing Officer was a possible view and since the Assessing Officer has taken a possible view, the Commissioner had no jurisdiction to interfere by exercising his powers u/s 263 of the Act. In this behalf, we may refer to the decision of the Supreme Court in MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, , wherein at page 88 it has been held as under (page 88) :

"The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income Tax Officer is unsustainable in law. . . ."

In view of the above, we are satisfied that no substantial question of law arises out of the order of the Tribunal. The appeal is dismissed in limine.