(2014) 12 GUJ CK 0060

In the Gujarat High Court

Case No : Tax Appeal No. 1346 of 2006

Commissioner of Income Tax	APPELLANT
Vs	
Mysore Fine Agarbati	RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 260A, 28, 80HHC, 80HHC(1)

Citation : (2014) 12 GUJ CK 0060

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : Pranav G. Desai, Advocate for the Appellant; R.K. Patel, Advocate for the Respondent

Judgement

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K.S. Jhaveri, J.—This appeal u/s. 260A of the Income Tax Act, 1961 is filed against the judgment and order dated 24.03.2006 passed by the Income Tax Appellate Tribunal, Rajkot Bench in ITA No. 661/RJT/05 for the A.Y. 1999-2000 whereby, the appeal filed by the Revenue was dismissed.

2. The facts in brief are that the assessee is a manufacturer and export of incense sticks operating from the erstwhile Kandla Free Trade Zone. The assessee had filed the return of income on 22.10.1999 declaring total taxable income at Rs. 73,220/-. Since the turnover exceeded the prescribed limit, the tax audit report was duly filled-in along with the return of income. The assessee, being an exporter, had claimed deduction u/s. 80HHC. Assessment scrutiny was undertaken and ultimately, the Assessing Officer passed the order of assessment u/s. 143(3) of the Act on 27.03.2002.

3. Being aggrieved by the order of Assessing Officer, appeal was preferred before the CIT(A). The CIT(A) partly allowed the appeal vide order dated 07.02.2005. Against the order of the CIT(A), the Revenue preferred appeal before the Appellate Tribunal. Vide impugned judgment and order dated 24.03.2006, the

Appellate Tribunal dismissed the appeal filed by the Revenue. It is against this order that the present appeal has been filed.

4. Mr. Pranav Desai learned Standing Counsel appearing for the Revenue submitted that the Appellate Tribunal overlooked that deduction u/s. 80HHC of the Act relates to profits of the business as computed under the profits and gains of the business or profession and the said interest is not attributable to business activity of export. It was submitted that since the said amount was deposited in the bank, the interest was earned and therefore, the explanation (baa) of the Act was rightly invoked.

5. Mr. RK Patel learned counsel appearing for the assessee submitted that the question raised in this appeal is already concluded by the decision of this Court rendered in the case of Commissioner of Income Tax Vs. Priyanka Gems, wherein, it was held that where the source of income of the assessee was export and on the basis of accrual, income was already reflected in the assessee''s account on the date of the export at the prevailing rate of exchange and the income was earned on account of foreign exchange fluctuation, then such income was directly related to the assessee''s export business and could not be said to have been removed beyond the first degree and accordingly, the assessee was held to be entitled to deduction u/s. 80HHC. It was, therefore, submitted that the Appellate Tribunal was justified in dismissing the appeal of the Revenue.

6. This appeal was admitted on 29.06.2007 on the following substantial question of law;

"Whether on facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that interest received from Exchange Earners Foreign Currency account was not to be restricted by explanation (baa) of Section 80HHC of the Act while calculating export profits?"

7. We have heard learned counsel for both the sides. Before we advert to the facts of the case, it would be beneficial to refer to the provision of Section 80HHC(baa) of the Act, which reads as under;

"80HHC : Deduction in respect of profits retained for export business;

(baa) "profits of the business" means the profits of the business as computed under the head "profits and gains of business or profession" as reduced by -

(1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situated outside India;"

7.1 In the present case, the CIT(A) observed in Paras - 14 & 15 as under;

"14. Now, coming to the appeal filed by the assessee, which raised the sole issue in respect of 90% of the interest earned on EEFC credit balance for calculation deduction u/s. 80HHC. We find that the learned CIT(A) having held that the said interest fall within the purview of the business income and at the same time directing exclusion of 90% thereto for calculation deduction u/s. 80HHC is not at all sustainable as the EEFC account maintained by the assessee is in accordance with the rules laid down by the RBI and it is maintained from out of the proceeds realized by the assessee from exports of goods. In Circular No. 6 dated 14th august, 2000 issued by the RBI in sub-para (III) of Para 2, it is held that the balances in the existing term deposit less forward sales, will have to be converted into Current/Saving deposits on the date of maturity. The Bombay High Court in the case of Commissioner of Income Tax Vs. Punit Commercial Ltd., held that when the assessee is 100% exporter, sec. 80HHC(3)(a) is applicable, therefore, the entire business income is deemed profit derived from export of goods. Therefore, the interest income could only fall under "Business Income". ITAT Lucknow Bench has held in the case of Leatherage v. ITO reported in 86 ITD 482 that the assessee being a 100% export oriented unit, having no inland turnover or income, could not be assessed to any income tax in view of the provision of section 80HHC(1) r.w.s. 80HHC(3)(a) of the IT Act. The Hon''ble Madras HC in the case of Commissioner of Income Tax Vs. N.S.C. Shoes, held that once the interest which the assessee derived from the bank deposits had been included in the computation and had been assessed under the head "Profits and Gains of Business or Profession", the amount will have to be regarded as having been derived from the export effected by the assessee. The Hon''ble Bombay HC in the case of Commissioner of Income Tax Vs. Paramount Premises (P.) Ltd., held that when the interest sprang from the business activity of the assessee and did not arise out of any independent activity, the interest income to be considered as business income of the assessee. The ITAT Special Bench, Mumbai in the case of Surendra Engineering Corporation v. ACIT has held as follows;

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15. From the analysis for the admitted facts in the case of the assessee in the light of the above decisions, we find that the contention of the assessee that the interest income under consideration is to be treated as income derived from business and it is, accordingly, not to be excluded for calculation of deduction u/s. 80HHC as claimed by the assessee. Therefore, the finding of the CIT(A) otherwise is required to be set aside allowing the appeal of the assessee. In the result, the assessee''s appeal is hereby allowed."

8. While appreciating the facts of the case, the Appellate Tribunal took note of the decision of the ITAT, Mumbai Bench in the case of M/s. Fountainhead Exports v. ITO and ultimately, came to the conclusion that the interest income under consideration was to be treated as income derived from business and accordingly, was not to be excluded for calculation of deduction u/s. 80HHC, as claimed by the assessee. Considering the facts of the case and the provision of

Section 80HHC, we are of the view that the CIT(A) as well as the Appellate Tribunal were completely justified in directing the Assessing Officer to compute the deduction u/s. 80HHCwithout reducing from the business profit, 90% interest on EEFC.

9. We are in complete agreement with the reasonings given by the Appellate Tribunal while dismissing the appeal of the Revenue and hence, find no reasons to entertain this appeal. Consequently, we answer the question in favour of the assessee and against the Revenue. The appeal is, accordingly, rejected.