(2008) 03 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Nahar Export Ltd. RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:
Income Tax Act, 1961 — Section 260A, 80AB

Citation : (2008) 03 P&H CK 0026

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—The revenue has filed the present Appeal u/s 260A of the Income Tax Act, 1961 (for short ''the Act'') against the order of the Income Tax Appellate Tribunal, Chandigarh Bench ''B'', Chandigarh dated 31-7-2006 passed in ITA No. 293/Chandi./2003 for the assessment year 2000-01 raising the following proposed substantial question of law:

1. Whether on the facts and circumstances of the case, the Hon''ble ITAT was right in law in holding that unabsorbed depreciation of earlier years is not to be reduced from the profits of the business computed for deduction u/s 80HHC ?

2. Whether on the facts and the circumstances of the case, the Hon''ble ITAT was right in law in holding that Sales Tax, and Central Sales Tax be excluded from the total turnover of the assessee while computing deduction u/s 80HHC?

3. Whether on the facts and the circumstances of the case, the Hon''ble ITAT was right in law in holding that Service Charges of dyeing and knitting be excluded from the total turnover of the assessee while computing deduction u/s 80HHC?

2. At the outset, Shri Vivek Sethi, Advocate, learned Counsel for the revenue has very fairly stated that question No. 1 as raised by the department has already been decided against the revenue by the judgment of Hon''ble Supreme Court of India in the case of Commissioner of Income Tax, Pune Vs. Shirke Construction

Equipment Ltd., , wherein it has been held as under:

Section 80AB of the Income Tax Act, 1961, specifying that profits are those as determined for the purpose of the Act, will apply for determining profits from export business for the purposes of the deduction u/s 80HHC.

In determining business profits for the deduction u/s 80HHC the unabsorbed business losses of earlier years u/s 72 should be set off.(P-381)

He has also conceded that the said judgment of the Hon''ble Supreme Court has been further followed by the Hon''ble Madras High Court in the case of CIT-II v. Salzer Electronics Ltd. decided on 3-7-2007. Mr. Sethi has further conceded that question No. 2 has also been answered against the revenue and in favour of the assessee by a judgment of this Court cited as CIT v. Vardhman Polytex Ltd. (2006) 154 Taxman 254. He has also admitted that question No. 3 as raised by the revenue also stands decided by this court in Nahar Spinning Mills Ltd. v. CIT IT Appeal No. 503 of 2007, decided on 25-2-2008 against the revenue and in favour of the assessee.

In view of the above stand taken by the learned Counsel for the revenue, no substantial question of law survives for determination of this Court. Hence this appeal is dismissed.

