
(1998) 02 KL CK 0032

In the High Court Of Kerala

Case No : Income-tax Reference No.1 of 1996

Commissioner of Income Tax

APPELLANT

Vs

P.V. Narayanan

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Income Tax Act, 1961 — Section 80AB, 80HH

Citation : (1998) 233 ITR 330

Hon'ble Judges : Om Prakash, C.J.;J.B. Koshy, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair and S. Vinod Kumar, for the Respondent

Judgement

OM Prakash, C.J.—At the instance of the Commissioner of Income Tax, the Income Tax Appellate Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case and also in the light of the provision contained in Section 80AB and the decisions in CIT v. P. K. Jhaveri [1990] 181 ITR 79 and CIT v. Kerala Solvent Extractions Ltd. [1987] 165 ITR 174 deduction u/s 80HH should be allowed without/before deducting investment allowance from the total income ?"

2. The only question for consideration is whether for allowing deduction u/s 80HH, investment allowance has to be deducted from the total income.

3. It is not disputed that the assessing authority worked out deduction u/s 80HH of the Income Tax Act, 1961, at Rs. 2,50,224 after deducting investment allowance. The case of the assessee is that deduction u/s 80HH should have been worked out before deducting the investment allowance.

4. In appeal, the Commissioner of Income Tax (Appeals) held that the deduction u/s 80HH should be computed without deducting the investment allowance from the total income.

5. Aggrieved by the same, the Revenue carried out the dispute in appeal before the Income Tax Appellate Tribunal, which upheld the view taken by the Commissioner of Income Tax (Appeals).

6. Learned senior standing counsel relying upon the case of Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, urged before us that the income eligible for deduction will be the net income as computed in accordance with the provisions of the Act and not the gross income. In Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, the Rajasthan High Court held that for the determination of the relief u/s 80HH, the total income of the assessee has to be worked out after deducting unabsorbed losses and unabsorbed depreciation. In short, it was held that deductions should be allowed from the net income. This conclusion was reached by the Rajasthan High Court on the basis of the provisions of Section 80AB of the Act. The Appellate Tribunal has not at all considered the provisions of Section 80AB. Senior standing counsel urged before us that the conclusion of the Appellate Tribunal would have been different if it had considered the provisions of Section 80AB. Learned counsel for the assessee also urged before us that even upon consideration of Section 80AB, the Appellate Tribunal would not have reached a different conclusion.

7. Be that as it may, the fact remains that Section 80AB which was relied on by the Rajasthan High Court to reach the conclusion that, for determination of the relief u/s 80HH, the income eligible for deduction will be the net income and not the gross income, was not taken into consideration by the Appellate Tribunal. The case, therefore, requires reconsideration.

8. In view of the above observations, the case in so far as it relates to the determination of deduction u/s 80HH, is remitted to the Appellate Tribunal. While deciding the question whether for determination of the relief u/s 80HH, net income or gross income is to be taken into consideration, the Tribunal amongst other materials will consider Section 80AB of the Act and the above decision of the Rajasthan High Court. The question will then be decided afresh in accordance with law.