
(1991) 07 OHC CK 0040
In the Orissa High Court
Case No : S.J.C. No. 4 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Tarun Udyog

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Income Tax Act, 1961 — Section 32A, 80HH

Citation : (1991) 99 CTR 181 : (1991) 191 ITR 688

Hon'ble Judges : B.L. Hansaria, C.J.;D.M. Patnaik, J

Bench : Division Bench

Advocate : A.K. Ray, for the Appellant; None, for the Respondent

Judgement

B.L. Hansaria, C.J.—The assessee is a partnership firm and it derived its income from manufacture and sale of charcoal. It was entitled to certain deduction u/s 80HH of the Income Tax Act, 1961 (hereinafter "the Act"). Though the deduction was allowed, the same was calculated on the profit earned by the assessee less the investment allowance allowed u/s 32A of the Act. The Income Tax Officer rejected the contention of the assessee that, for granting deduction as contemplated by Section 80HH, the profit as reduced by allowing investment allowance was not the legal way to compute the same. On an appeal being preferred, the Appellate Assistant Commissioner rejected the case of the assessee. The Tribunal, however, accepted the contention. At this, the Department felt aggrieved and, at its behest, the following question has been referred to this court for answer :

"Whether the Income Tax Appellate Tribunal was correct in directing allowance of relief u/s 80HH on profits of the industrial undertaking before deducting the investment allowance allowed u/s 32A of the Income Tax Act ? "

2. To answer the aforesaid question, we may note Section 80HH(1) of, the Act:

"80HH. Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas. --(1) Where the

gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent, thereof."

3. Let us first see as to how the deduction was allowed by the Income Tax Officer. This is reflected in the assessment order as below ;

Rs.

"Net profit as per profit and loss account 27,891

Add : Salary paid to partner : Sri K. C. Mohakul 6,000

(ii) Investment allowance reserve : 11,750

(iii) Wages of Rs. 1,90,740 includes Rs. 10,000 being construction cost of kilns. This is disallowed as being capital expenditure

10,000

55,641

Rs.

Less : Investment allowance on new plant installed during the year, i.e., 25% of the cost of the new kiln of Rs. 60,000, 75% of the allowance, i.e., Rs. 11,750, has been debited to the profit and loss account and credited to the reserve account :

15,000

40,641

Other sources : Interest from bank and others 352

40,993

Less : Deduction u/s 80HH : 20% of the business profit of Rs. 40,641

8,128"

4. The learned Tribunal has, however, held that investment allowance was not required to be deducted from the profit as determined by the Income Tax Officer to give the relief contemplated by Section 80HH. From a perusal of the order of the Tribunal, it appears that it had applied its mind to the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, , in taking the view which had appealed to it. In that case, the question for decision was whether profit u/s 41(2) of the Act had to be included for granting relief as contemplated by Section 80E of the Act. The apex court answered the question in the affirmative. This had been done because Section 80E, as it stood at the relevant time, had stated that "where the total income (as

computed in accordance with the other provisions of this Act) includes any profits and gains attributable to the business of generation or distribution of electricity, there shall be allowed a deduction from such profits and gains of an amount equal to eight per cent, thereof, in computing the total income of the company". As the section had stated that the total income shall be that which is computed in accordance with the other provisions of the Act, it was opined that the provisions of Section 41(2) which, by a legal fiction, treated the balancing charge arising from sale of old machinery or building as deemed income, could not be ignored in computing the total income. As Section 80HH does not contain the words "as computed in accordance with the other provisions of this Act" while speaking about gross total income, the Tribunal has come to the conclusion that the ratio of the aforesaid decision has no application. We, however, state that, in coming to the aforesaid conclusion, the Tribunal missed the definition of "gross total income" as given in Section 80B(5) wherein this expression has been defined to mean "the total income computed in accordance with the provisions of this Act. . .". Reference to Section 29 of the Act shows that the income referred to in Section 28 (this section being concerned with profits and gains of business or profession), has to be computed in accordance with the provisions contained in sections 30 to 43A. This clearly indicates that, in coming to the figure of gross total income, investment allowance dealt with by Section 32A has to be taken note of. The ratio of *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, cannot, therefore, be ignored.

5. But then, Section 80HH requires granting of deduction from the profits and gains derived from the industrial undertakings. In this connection, it is worthwhile to point out that, according to the provisions of the Act, income is different from profit, though the former includes the latter. The various provisions of the Act would bear out the statement that, though an industrial undertaking may earn profit, its gross total income may be substantially less than the figure of profit, and the taxable income may, in some cases, become nil. As Section 80HH deduction has to be allowed on the profits and gains, we are of the view that the gross total income, as computed in accordance with the provisions contained in sections 30 to 43A, would not be relevant for the purpose. In the present case, as the profit was determined at Rs. 55,641 by the Income Tax Officer, the figure of Rs. 40,641 has to be regarded as the gross total income. As Section 80HH deduction has to be allowed on the profits and gains derived from the industrial undertaking and the figure of the same was determined at Rs. 55,641 by the Income Tax Officer, we are of the opinion that Section 80HH deduction was required to be allowed on Rs. 55,641, and not on Rs. 40,641. We would, therefore, answer the question in the affirmative and against the Department.

D.M. Patnaik, J.

6. I agree.