
(2001) 12 GAU CK 0016

In the Gauhati High Court

Case No : Income-tax Appeal No. 15 of 2001

Commissioner of Income Tax

APPELLANT

Vs

Technotive Eastern (Pvt.) Ltd.

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

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

Citation : (2002) 176 CTR 422 : (2002) 255 ITR 253

Hon'ble Judges : J.N. Sharma, J;D. Biswas, J

Bench : Division Bench

Advocate : U. Bhuyan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This appeal has been filed against the order dated July 31, 2000, passed by the Income Tax Appellate Tribunal, Gauhati Bench, Guwahati, in I. T. A. Nos. 501/Gauhati of 1997 and 276/Gauhati of 1998 for the assessment years 1992-93 and 1993-94.

2. The question which arose before the Tribunal was that whether the assessee is entitled to claim allowance under Sections 80HH and 80-I of the Income Tax Act, 1961, on income earned through computer documentation service rendered to the customers. Sri U. Bhuyan, the learned advocate for the appellant, in support of his submission on computer documentation relies on a Division Bench judgment of this court reported in Commissioner of Income Tax Vs. Down Town Hospital Ltd., wherein this court discussed in detail what is manufacture and at page 689 relying on the Supreme Court decision a passage was quoted from the Permanent Edition of Words and Phrases, volume 26, page 795, that passage is again quoted below :

" "Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and

different article must emerge having a distinctive name, character or use."

3. On the other hand, Mr. Bhuyan, the learned advocate for the appellant, with his usual fairness and magnanimity produced before us a Division Bench decision of the Calcutta High Court reported in Commissioner of Income Tax Vs. Shaw Wallace and Co. Ltd., wherein it was held as follows with regard to the computer (page 24) :

"In our view, having regard to the nature and function of the computer and the data processing system, it cannot be said that they are office appliances. An industrial company is a company engaged in the manufacture or processing of goods. "Data processing" means the converting of raw data to machine-readable form and its subsequent processing (as storing, updating, combining, rearranging or printing out) by a computer. "Computer" means "one that computes ; specifically a programmable electronic device that can store, retrieve, and process data". There cannot be any doubt that raw data cannot be equated with the result derived. It is different in form and substance.

We are, therefore, of the view that the computer division is an industrial undertaking which satisfies the conditions mentioned in Section 32A(2)(b)(iii) of the Income Tax Act, 1961."

4. We respectfully agree with the judgment of the Division Bench and we hold that computer if it is used for the purposes as mentioned in the judgment certainly it will be an industrial undertaking and in such a situation it will be entitled to claim deduction. The following are the substantial questions of law which were framed :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that no separate accounts are required to be maintained for claiming deductions under Sections 80HH and 80-I of the Income Tax Act, 1961 ?

(ii) Whether, on the facts and in the circumstances of the case, is not the decision of the Tribunal perverse in holding that deductions under Sections 80HH and 80-I of the Income Tax Act, 1961, are allowable on income earned through computer documentation service rendered to the customers when the assessee did not fulfil the condition laid down to qualify such deduction ?" Regarding the first question we find that the law does not require that a separate accounts are required to be maintained for claiming deduction under Sections 80HH and 80-I of the Income Tax Act, 1961. Of course, there is a provision of Sub-section (5) which is quoted below :

"(5) Where the assessee is a person other than a company or a cooperative society, the deduction under Sub-section (1) shall not be admissible unless the accounts of the industrial undertaking or the business of the hotel for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below Sub-

section (2) of Section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant."

5. That will not help the Revenue in this case as in this case the assessee is a company.

6. Regarding the second question already as indicated above, we have decided it against the Revenue.

7. In that view of the matter, this appeal shall stand dismissed.

8. Heard Mr. U. Bhuyan, the learned advocate for the appellant, and none appears for the respondent.