
(2007) 10 MAD CK 0067
In the Madras High Court
Case No : Tax Case No. 343 of 2004

Commissioner of Income Tax-I

APPELLANT

Vs

Sivananda Steels Ltd.

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Income Tax Act, 1961 — Section 80HHC, 80HHC(1), 80HHC(3)

Citation : (2007) 10 MAD CK 0067

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; Venkatanarayanan, for SubbarayaAiyar, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The appeal is filed against the order of the Income Tax Appellate Tribunal made in ITA. No. 32(Mds)/12997,

dated 13.11.2003. The relevant assessment year under consideration is 1993-1994. While completing the assessment of the assessee company

for the assessment year 1993-1994, the Assessing Officer adjusted the loss in business of Rs.1,04,92,557/- against the export incentives of

Rs.1,34,50,556/- and computed the eligible profit for deduction u/s 80HHC at Rs.29,57,999/-. Aggrieved by the order of the Assessing Officer,

the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and contended that there were no profits of business; the negative

figure of profit from business should have been ignored by the Assessing Officer and deduction u/s 80HHC should have been allowed on 90% of

the export incentives. However, the Commissioner of Income Tax (Appeals) dismissed the appeal. As against that order of Commissioner of

Income Tax (Appeals), the Assessing Officer filed an appeal before the Income Tax Appellate Tribunal which by reason of the impugned order

held that the negative amount of profit should be disregarded and the profit from business should be taken as "Nil" and thereafter 90% of the

export incentives be allowed in the ratio of export turn over to total turnover as deduction u/s 80HHC and directed the Assessing Officer to

recompute the deduction accordingly. The correctness of the order passed by the Tribunal is canvassed by the Revenue by filing this appeal and

formulating the following the substantial question of law to the effect that "Whether on the facts and in the circumstances of the case, Income Tax

Appellate Tribunal was right in ignoring the negative figure of profit of the export business and in directing to allow the deduction u/s 80HHC with

reference to 90% of the export incentives?", for consideration.

2. The learned Counsel appearing for the Revenue submitted that similar issue came to be considered by the Supreme Court in IPCA Laboratory

Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, and held against the Revenue. The said judgment covers the issue involved in this case.

3. We heard the counsel and perused the records. The Apex Court judgment in IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax,

Mumbai, reads as follows:

4. In IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, , the Apex Court after referring to the provision of Section

80HHC of the Act held that undoubtedly Section 80HHC had been incorporated in the Income Tax Act, 1961, with a view to providing incentive

for earning foreign exchange. Even though a liberal interpretation had to be given to such a provision the interpretation had to be as per the wording

of the section. If the wording of the section was clear, then benefits, which were not available could not be conferred by ignoring or misinterpreting

words in the section.

5. The Supreme Court further observed that a plain reading of Section 80HHC made it clear that in arriving at profits earned from export of both

self manufactured and trading goods the profits and losses in both trade have to be taken into consideration. If after such adjustments, there was a

profit the assessee would be entitled to deduction u/s 80HHC(1). If there was a loss, the assessee would not be entitled to deduction. It further

held that the word "profit" in sub-Section (1) and (3)(a) and (b) of Section 80HHC means a positive profit. In other words if there was loss then no deduction would be available under sub-section (1) of sub-section (3)(a) or sub-section (3)(b). In arriving at the figure of positive profit, both the profits and the losses would have to be considered. If the net figure was a positive profit then the assessee would be entitled to deduction if the net figure was a loss then the assessee would not be entitled to deduction. The Court further held that the plain reading of sub-section (3)(c) showed that "profits from such export business" had to be profits of exports of self-manufactured goods plus profits of exports of trading goods. The opening words "profit derived from such exports" together with the word "and" indicate that the profits had to be calculated by counting both the exports. Deduction could be permitted u/s 80HHC(1) only if there was a positive profit in the exports of both self-manufactured goods as well as trading goods. If there was a loss in either of the two then the loss had to be taken into account for the purposes of computing the profits.

4. Having regard to the above submission made by the counsel for the Revenue and the issue is squarely covered by the judgment of the Supreme Court in *IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai*, which has been followed by this Court in T.C. No. 202/2004 on 1.10.2007, the tax case appeal is dismissed. No costs.