
(2014) 09 AHC CK 0130
In the Allahabad High Court
Case No : Income Tax Appeal No. 15 of 2005

Neha Sharma

APPELLANT

Vs

Jt. Commissioner Income Tax

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(1)(a), 154, 80A, 80AB, 80B(5)

Citation : (2014) 09 AHC CK 0130

Hon'ble Judges : Tarun Agarwala, J; Satish Chandra, J

Bench : Division Bench

Advocate : Vipin Sinha, Krishna Dev Vyas, Navin Sinha and S.D. Singh, Advocate for the Appellant; A.N. Mahajan, S.C. and Dhananjai Awasthi, Advocate for the Respondent

Judgement

Dr. Satish Chandra, J.—The present appeal is filed by the assessee against the order dated 29.07.2004 passed by the Income Tax Appellate Tribunal, Agra in ITA No. 195/Agra/2000 for the assessment year 1997-98.

2. On 27.01.2005, a Coordinate Bench has admitted the appeal on the following substantial question of law :

1. Whether deduction u/s 80-I(IA) is to be computed on the gross total income derived from business of Industrial undertaking without deducting the amount of deduction u/s 80HHC or?

2. Whether the Assessing Officer while examining the return submitted by the assessee, is liable to or empower to grant correct amount of deduction to the assessee to which she is entitled to in law even if by omission or otherwise it has not been so claimed in the return income, submitted by her?

3. The brief facts of the case are that during the assessment year under consideration, the assessee has derived income from industrial activities being mining and was also engaged in export business. The assessee also derived income from other sources. Separate books were maintained for mining

business, which were duly audited and certificate was furnished in prescribed form relating to income derived from the said activity. Net profit from mining was disclosed at Rs. 2,21,42,903/-. After depreciation the net profit worked out to Rs. 1,67,89,357/-. The assessee has shown the net profit of Rs. 7,57,130/-. In the return, the assessee has claimed the deduction u/s 80HHC and u/s 80IA of the Act and while computing the deduction u/s 80IA, the assessee has first claimed the deduction on account of Section 80HHC and it was on the basis of the balance that the deduction u/s 80IA was claimed. The return was processed u/s 143(1)(a) on 12.3.1998.

4. Later on, the A.O. came to know that the assessee was not entitled to deduction u/s 80HHC on the income earned from hiring charges of pock lane machine and, therefore, he rectified the intimation as per order dated 14th October, 1998 and the deduction u/s 80HHC was reduced accordingly. The deduction u/s 80IA was reduced consequently. Being aggrieved, the assessee has moved an application u/s 154 of the Act, which was rejected by the A.O. by following the ratio laid down in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, However, the CIT(A) has allowed the claim of the assessee, but the Tribunal has refused to grant any relief to the assessee. The Tribunal has restored the order passed by the A.O. Being aggrieved, the assessee has filed the present appeal.

5. With this background, heard Shri S.D. Singh, the learned Senior Counsel assisted by Shri Krishna Dev Vyas, the learned counsel for the assessee, who has justified the order passed by the First Appellate Authority. He read out the then Section 80A of the Act which on reproduction reads as under :-

"80A (1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to [80U].

(2) The aggregate amount of the deductions under this Chapter shall not, in any case exceed the gross total income of the assessee.

(3) Where, in computing the total income of an association of persons or a body of individuals, any deduction is admissible u/s 80G or Section 80GGA or Section 80HH or Section 80HHA or Sections 80HHC or Section 80HHC or Section 80-I or Section 80-IA or Section 80J* or Section 80JJ, no deduction under the same section shall be made in computing the total income of a member of the association of persons or body of individuals in relation to the share of such member in the income of the association of persons or body of individuals...."

6. He further submits that Section 80B(5) of the Act explains that "gross total income" which means the total income computed in accordance with the provisions of this Act, before making any deductions under this Chapter.

7. Section 80HHC(3) provided that deduction in respect of the profit retain for

export business.

8. He also read out the Section 9A to Section 80IA, which on reproduction reads as under :-

(9A) Where any amount of profits and gains of an industrial undertaking or of a hotel in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C.- Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of the undertaking or hotel, as the case may be.

Learned counsel for the assessee has argued that Chapter VIA is independent code in itself. The deductions under this chapter are to be allowed as per different provisions mentioned in the chapter itself. Section 80-IA speaks of allowance of deduction in respect of income derived from industrial undertaking. It does not say that the same shall be allowed after reducing deductions under other provisions of this chapter. For the purpose, he relied on the ratio laid down in the following cases :-

(a) The Commissioner of Income Tax Vs. Lucky Laboratories Ltd.,

In this case it was observed that the deduction u/s 80HH cannot be excluded while calculating special deduction u/s 80-I Income Tax Act, 1961, sub Section 80HH and 80-I.

(b) Commissioner of Income Tax and Another Vs. Hindustan Pipe Udyog Ltd.,

In this case it was held that for the purpose of computing relief u/s 80-I of the Income Tax Act, 1961, relief granted u/s 80HH cannot be deducted from the gross total income.

(c) Joint Commissioner of Income Tax Vs. Madideep Engg. and Pkg. India (P.) Ltd.,

In this case it was observed that Section 80HH and 80-I of the Income Tax Act, 1961, are independent of each other and therefore, a new industrial unit can claim deductions under both the sections on the "gross total income" independently or that deduction u/s 80-I can be taken on the reduced balance after taking into account the benefit taken u/s 80HH.

(d) Great Eastern Exports Vs. The Commissioner of Income Tax,

In this case it was observed that by sub-section (13) of section 80-IB of the income tax Act, 1961, the provisions of sub-section (9) to section 80-IA are made applicable to section 80-IA. By a plain language of sub-section (9) of section 80-IA, applying the test of literal construction, it is clear that:

(a) once an assessee is allowed deduction u/s 80-IA, "to the extent of such profits and gains" he is not to be allowed further deductions under Part C; and

(b) in no case the deduction shall exceed the profits and gains of such eligible business of the undertaking or enterprise, as the case may be.

9. The expression "deduction to the extent of such profits" clearly signifies that if an assessee is claiming the benefit of deduction of particular amount of profits and gains u/s 80-IA to that extent profits and gains are to be reduced while calculating the deduction under heading C of Chapter VI-A of the Act. Further the word "and" is disjunctive which would mean that the other provision is independent of the first one namely, that the total deductions should not exceed the profits and gains in a particular year. It would, therefore, be clear that this provision aims at achieving two independent objectives. It cannot be limited to the second objective alone thereby nullifying the first altogether and making it otiose. For the purpose of computing deduction u/s 80HHC of the Act, deduction already allowed u/s 80-IA has to be reduced. Lastly, he submits that the impugned order passed by the Tribunal may kindly be set aside and the order passed by the First Appellate Authority may be restored.

10. On the other hand, Shri Dhananjay Awasthi, the learned counsel for the Department has justified the impugned order passed by the Tribunal. He submits that it is the assessee who has filed the computation. The A.O. has allowed the deduction u/s 80-IA as per claim of the assessee. As per the return, there was no mistake in the intimation passed u/s 143(1)(a) of the Act. When the assessee itself had claimed the deduction u/s 80-IA in the return of income on the basis of the balance profit remaining after deduction of benefit u/s 80HHC of the Act, then there was a question of any mistake in intimation passed u/s 143(1)(a) of the Act. On merit, even otherwise the issue is covered in the case of J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, wherein it has been held that deduction u/s 80-IA is to be allowed on the basis of balance remaining after deduction u/s 80HHC and the SLP against this decision has since been dismissed by the Hon''ble Supreme Court.

11. Heard both the parties at length and gone through the material available on record from which it appears that the assessee is entitled for the deduction u/s 80HHC as well as 80IA. The dispute is pertaining to computation of both the deductions. It may be mentioned that the Hon''ble Supreme Court in the case of IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, has observed that :

".....undoubtedly section 80HHC has been incorporated in the Income Tax Act, 1961, with a view to providing incentive for earning foreign exchange. Even though a liberal interpretation has to be given to such a provision the interpretation has to be as per the wording of the section. If the wording of the section is clear, then benefits which are not available cannot be conferred by ignoring or misinterpreting the words in the section.

A plain reading of Section 80HHC makes it clear that in arriving at profits earned from export of both self manufactured goods and trading goods, the profits and

losses in both trades have to be taken into consideration. If after such adjustments there is a positive profit the assessee would be entitled to deduction u/s 80HHC(1). If there is a loss the assessee would not be entitled to deduction.

The word "profit" in sub-section (1) and (3)(a) and (b) of section 80HHC means a positive profit. In other words, if there is a loss then no deduction would be available under sub-section (1) or sub section (3)(a) or sub-section (3)(b). In arriving at the figure of positive profit, both the profits and the losses will have to be considered. If the net figure is a positive profit then the assessee will be entitled to deduction; if the net figure is a loss then the assessee will not be entitled to deduction.

A plain reading of sub section (3)(c) shows that "profits from such exports" has 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" clearly indicate that the profits have to be calculated by counting both the exports. Deduction can be permitted u/s 80HHC(1) only if there is a positive profit in the exports of both self-manufactured goods as well as trading goods. If there is a loss in either of the two then the loss has to be taken into account for the purposes of computing the profits.

Disclaimer u/s 80HHC(1A) by the export house in favour of the supporting manufacturer is only for the purpose of enabling the export house to pass on the deduction which it would have got to the supporting manufacturer. If no deduction is available to the extent house because there is a loss, then the export house cannot pass on or give credit of such non-existing deduction to a supporting manufacturer.

Section 80AB has been given an overriding effect over all other sections, in Chapter VI-A. Section 80HHC does not provide that its provisions are to prevail over section 80AB or over any other provision of the Act.

Circular No. 636 dated 31st August, 1992 of the Central Board nowhere provides for negative profits. It also shows that only positive profits can be considered for purposes of deduction u/s 80HHC.

12. Thus, both the deductions u/s 80HHC and 80IA can be granted from the total income. But Section 80AB provides that :

"Where any deduction is required to be made or allowed under any section included in this Chapter under the heading "C-Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross

total income.

13. The said section was amended by the Finance Act, 1997 w.e.f. 1.4.1968 and is applicable in the assessee's case (Assessment Year 1997-98).

14. If, we allow the claim of the assessee, then the income will be nil or negative, which is not desirable as per Section 80AB.

15. Moreover, in the return, the assessee herself has shown the computation, which was allowed by the A.O. In other words, the assessee has claimed deduction u/s 80IA in the return of the income on the basis of the balance profit remaining after deduction of benefit u/s 80HHC of the Act.

16. When it is so, then we find no reason to interfere with the impugned order and the same is hereby sustained alongwith the reasons mentioned therein. So, the computation accepted by the A.O. is hereby sustained.

17. The answer to the substantial questions of law is in favour of the Department and against the assessee..

18. In the result, the appeal filed by the assessee is dismissed.