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(2001) 06 GUJ CK 0058

In the Gujarat High Court

Case No : Special Civil Application No. 4075 of 2001 & Special Civil Application No. 4075 of 2001 29 June 2001 A.Y. 1996-97 and 1997-98

Ramdev Exports APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 29-06-2001

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(3), 264, 80HHC

Citation : (2001) 251 ITR 873 : (2002) 120 TAXMAN 315

Hon'ble Judges : D.A. Mehta, J;Anil R. Dave, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; Akil Qureshi, for Manish R. Bhatt, for the Respondent

Judgement

A.R. Dave, J.—Rule. Service of rule is waived by the learned advocate, Shri M. B. Bhatt, for the respondent.

2. The petitioner-assessee, for the assessment years 1996-97 and 1997-98, was eligible for certain deductions under the provisions of Section 80HHC of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). For the assessment year 1996-97, the petitioner had filed its return on April 50, 1996, whereas for the assessment year 1997-98 the return was filed on October 28, 1997. The return filed for the assessment year 1996-97 was assessed under the provisions of Section 143(3) of the Act by an order dated March 15, 1999, by the Assessing Officer whereas for the assessment year 1997:98 the assessment order was passed u/s 143(1) on September 17, 1999. In the course of the assessment, the Assessing Officer had accepted the income of the assessee as returned by the assessee.

3. After the assessment was over, the assessee had filed a revision application before the respondent on December 16, 1999, submitting that the assessee was entitled to deduction under the provisions of Section 80HHC for the aforesaid two assessment years, but as deductions were not claimed, by virtue of the revision

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application, the respondent was requested to give effect to the request for the deductions claimed in the said revision application.

4. By an order dated March 23, 2001, the respondent had rejected the revision application filed by the assessee and, therefore, the assessee has been constrained to approach this court with a grievance that the revision application was wrongly rejected by the respondent.

5. The learned advocate, Shri Kaji, appearing for the assessee, has submitted that as the assessee had not claimed certain deductions under the provisions of Section 80HHC at the time when the returns were filed, and as the facts with regard to the eligibility of the assessee for the deductions under the said section had come to the notice of the assessee at a subsequent stage, the respondent ought to have entertained the revision application and should not have rejected the revision application on the ground that the Assessing Officer had accepted the income of the assessee as returned.

6. It has been submitted by the learned advocate appearing for the assessee that it was open to the revisional authority to look into the claim made by the assessee in the assessment years in question, but instead of looking into the claim, the revisional authority rejected the revision application merely on the ground that the income as returned had been rightly accepted by the Assessing Officer. It has been submitted by the learned advocate that the revisional authority had committed an error by not exercising the jurisdiction vested in it under the provisions of Section 264 of the Act.

7. On the other hand, the learned advocate, Shri Akil Qureshi, appearing for the learned advocate, Shri M. R. Bhatt, for the respondent has tried to support the order passed.by the respondent by submitting that the assessee ought to have stated all the facts with regard to the deduction claimed at the time when the returns were filed by the assessee and he has further submitted that the order rejecting the revision application was just and proper.

8. We have heard the learned advocates at length. Upon perusal of the impugned order passed by the revisional authority, it is very clear that the revisional authority was more impressed by the fact that the assessment orders were passed by the Assessing Officer under the provisions of Section 143(1)(a) and Section 143(3) of the Act it was found by the revisional authority that the income returned by the assessee had been accepted by the Assessing Officer and, therefore, according to the revisional authority, no fault could have been found with the orders of assessment. In the circumstances, without going into the merits of the deductions claimed under the provisions of Section 80HHC, the revisional authority had rejected the revisional application.

9. It also appears, upon perusal of the order, that the respondent, without referring to any of the judgments, which must have been in the mind of the revisional authority, observed that there are a number of judicial pronouncements to the effect that deductions u/s 80HHC cannot be straightaway

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applied fof by filing a revision application.

10. Upon perusal of the impugned order, we are of the opinion that the revisional authority did not exercise the jurisdiction vested in it. This court has decided in the case of C. Parikh and Co. Vs. Commissioner of Income Tax, Baroda, and in the case of Digvijay Cement Company Limited Vs. Commissioner of Income Tax and Another, that it is open to the revisional authority to look into the deductions, which might be claimed by the assessee even for the first time. In other words, even if the return as submitted by the assessee is accepted by the Assessing Officer and if thereafter the assessee comes to know about some mistake committed, where either he was eligible for more deduction or had paid more tax, he can definitely approach the revisional authority, and in such an event, it is open to the revisional authority to exercise its jurisdiction u/s 264 of the Act.

11. In the instant case, it is very clear that, without going into the merits of the claim made by the assessee in the returns for the assessment years referred to hereinabove, the revisional authority became technical and rejected the revision application merely on the ground that the deductions, which had been claimed before the revisional authority, were not claimed before the Assessing Officer.

12. In the course of the arguments, we have noted the fact that interest was earned by the assessee on the advances which the assessee had given to another commercial concern from whom the assessee was purchasing raw material. On the amounts so advanced, the assessee received interest and, therefore, the amount of interest which the assessee had earned, according to the assessee, was eligible for deduction u/s 80HHC. Moreover, some interest was earned on fixed deposits which the assessee had to make so as to enable the assessee to get a bank guarantee, which it had to furnish to certain Government authorities in the course of the business. Moreover, the learned advocate, Shri Kaji, has submitted that overall effect of the interest account is on the debit side, that is, even if one looks at the entire amount of interest paid by the assessee and the amount of interest received, the net effect is to the effect that for the said assessment years the assessee had paid more interest.

13. We need not go into all the details with regard to the interest earned or paid by the assessee as we do not desire to go into the merits of the case. It would be for the revisional authority to look into all the claims which the assessee is to make before the revisional authority.

14. As stated hereinabove, in our opinion, as the respondent revisional authority did not look into the merits of the case and rejected the revision application, we quash and set aside the order passed by the revisional authority and direct the revisional authority to reconsider the revision application on the merits after hearing the assessee or its representative.

15. In view of the above discussion, the impugned order No. HQ.I/181(263)/AR.7/99-2000, dated March 23, 2001, is quashed and set aside.

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16. The petition is disposed of accordingly. Rule is made absolute to the above extent with no order as to costs.

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