
(2007) 11 DEL CK 0076
In the Delhi High Court
Case No : ITA No. 67 of 2005

The Commissioner of Income Tax

APPELLANT

Vs

Exportos Apparel Group Ltd.

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Income Tax Act, 1961 — Section 1, 72, 80A, 80B(5), 80C

Citation : (2008) 214 CTR 233 : (2007) 10 ILR Delhi 50 : (2008) 299 ITR 176 : (2008) 171 TAXMAN 356

Hon'ble Judges : Madan B. Lokur, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant; Bikram Singh, for the Respondent

Judgement

Madan B. Lokur and Dr. S. Muralidhar, JJ.—Admit.

2. The following question of law is framed for consideration:

Whether the Income Tax Appellate Tribunal ("Tribunal") was correct in law in holding that the assessed is entitled to a deduction u/s 80HHC of the Income Tax Act, 1961 before adjusting unabsorbed business and unabsorbed depreciation

3. Learned Counsel for the Revenue has drawn our attention to Section 80A of the Income Tax Act, 1961 (for short "Act"). This Section occurs in Chapter VI- A of the Act and the relevant portion is Sub section 1 which reads as follows:

80A - Deductions to be made in computing total income

(1) In computing the total income of an assessed, 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 or 80U.

4. A plain and simple reading of the above shows that for computing the total income of an assessed, first the gross total income of the assessed is to be computed in accordance with the provisions of Chapter VI-A of the Act.

5. Section 80B(5) defines gross total income in the following words:

80B. Definitions

In this Chapter-

(1) to (4) xxx xxx xxx

(5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter.

A plain reading of Section 80B(5) of the Act shows that first the gross total income has to be computed and thereafter deductions, if any, under Chapter VI-A of the Act, may be made.

It follows, Therefore, that on a combined reading of Section 80A and Section 80B(5) of the Act, the gross total income of an assessed is to be first calculated; thereafter any deductions that the assessed may be entitled to under Chapter VI-A of the Act have to be granted to him. The net income of the assessed will be its total income.

Section 80HHC of the Act, with which we are concerned, occurs in Chapter VI-A of the Act and deals with deductions in respect of profits related with exports business.

6. Section 80HHC(1) of the Act reads as follows:

80HHC. Deduction in respect of profits retained for export business. (1) Where an assessed, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise 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 assessed, a deduction to the extent of profits, referred to in Sub-section (1B), derived by the assessed from the export of such goods or merchandise:

xxx xxx xxx xxx

From a reading of Section 80HHC(1) of the Act, it appears that for computing the total income of the assessed, a deduction to the extent of profits referred to in Sub-section (1B) may be granted to the assessed. The expression "total income" occurring in Section 80HHC(1) obviously has reference to Section 80A of the Act and, as we have explained earlier, that has to be read in conjunction with Section 80B(5) of the Act. Consequently, for obtaining any benefit u/s 80HHC(1) of the Act, the gross total income of the assessed has to be computed and thereafter the assessed will be get an adjustment of a deduction u/s 80HHC(1) of the Act for the purpose of calculating the total income.

7. A similar issue of interpretation had arisen in Commissioner of Income Tax, Tamil Nadu-V, Madras Vs. Kotagiri Industrial Co-operative Tea Factory Ltd., Kotagiri, in the context of Section 80P of the Act which also is a part of Chapter

VI-A of the Act. In that case, the Supreme Court reversed the decision of the High Court and held that in view of Section 80B(5) of the Act it is necessary for the purpose of making a deduction u/s 80P of the Act to determine the gross total income in accordance with other provisions of the Act. In other words, the gross total income must be determined by setting off against the income the business losses of the earlier years as required u/s 72 of the Act, before allowing deduction u/s 80P thereof.

8. In so far as the facts of the present case are concerned, for the Assessment Year 1998-99, the assessed had claimed a deduction u/s 80HHC before allowing unabsorbed business losses and unabsorbed depreciation. According to the assessed, this business loss and depreciation ought to have been allowed to be carried forward. The assessed relied upon the decision of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Gogineni Tobacco Limited,

9. We have gone through the decision of the Andhra Pradesh High Court and have noticed that it does not make a reference to Kotagiri Industrial Co-operative Tea Factory Ltd.

10. We are of the opinion that by relying upon Gogineni Tobacco Limited, the Tribunal came to a wrong conclusion particularly since the view of the Andhra Pradesh High Court is in conflict with the view expressed by the Supreme Court.

11. There is no doubt that all of us are bound by the decision of the Supreme Court and, Therefore, in view thereof, we answer the question in the negative, that is, in favor of the Revenue and against the assessed.

12. The appeal is accordingly allowed.