(2009) 12 AHC CK 0024

In the Allahabad High Court

Case No : IT Appeal No''s. 214 and 227 of 1999

Venus Auto (P.) Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:
Income Tax Act, 1961 — Section 80HH, 80HH(2), 80I, 80I(2), 80RRA

Citation : (2010) 321 ITR 504

Hon'ble Judges : S.C. Nigam, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Krishna Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

1. These two appeals were heard together and are being disposed of by a common judgment as was suggested by the learned counsel for the parties. They arise out of common order passed by the income tax Appellate Tribunal, Allahabad Bench "B", Allahabad, in I.T.A. No. 822 (Alld) /92 and I.T.A. No. 1597(Alld) /92 and relates to the assessment years 1987-88 and 1988-89. The appellant, a company registered under the Companies Act is engaged in the manufacturing activity of complete scooter seat. It claimed that it is an ancillary unit of LML Ltd., Kanpur, a manufacturer of scooters.

2. In the assessment proceedings, the assessee claimed deduction under sections 80HH and 80-I of the income tax Act, 1961, but the said claim has been denied by the three authorities below on the ground that the condition of clause (iv) of section 80-I(2) is not fulfilled inasmuch as the workers employed through contractor are not to be treated as the workers employed in the industrial undertaking. Challenging the order of the Tribunal, the present appeals have been filed raising the following questions of law:

(i) Whether the Tribunal is legally justified in denying the benefit of deduction under sections 80HH and 80-I on the ground that the condition of clause (iv) is not fulfilled inasmuch as, workers employed through contractor has not been treated as the workers employed in the industrial undertaking?.

(ii) Whether the view of the Tribunal denying the deduction under sections 80HH and 80-I is legally correct and based on relevant considerations ?

3. Both the questions are essentially identical and the controversy centers round the interpretation of clause (iv) of section 80-I(2) of the income tax Act.

4. Heard Shri Krishna Agrawal, learned counsel for the appellant and the learned standing counsel for the Department.

5. The facts which are not in dispute may be noticed brief:

6. It has been found that the assessee has employed less than 10 workers. Consequently the benefit claimed under the aforestated sections was denied as the authorities were of the opinion that to qualify an industrial undertaking it should "employ" 10 or more workers in the manufacturing process carried on with the aid of power. The case of the assessee was that it had, on an average basis directly employed five workers and fifteen workers, on an average per day, were employed through contractor.

7. In other words, the assessee submits that the workers employed through contractors from time to time may be added for the purposes of the aforestated sections to qualify and as such the assessee is an industrial undertaking.

8. Clause (iv) of section 80HH(2), as it then stood, reads as follows:

(iv) it employs 10 or more workers in the manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

9. On a plain reading of the aforesaid provision, it would show that the "employment" means the employment by the assessee. There should be a relationship of employer and employee between the workers and the assessee to qualify for the aforesaid conditions. On the own showing of the assessee, it has employed with it only five workers. The other workers were employed by the contractor. The workforce employed by the contractor will not be counted for the purposes of the aforestated clause in view of the words "it employs". The said phrase shows that there should be a relationship of employer and employee between the assessee and the worker. It would not include the workers employed by the contractor.

10. Reliance was placed on the following cases:

11. In the case of Commissioner of Income Tax Vs. K.G. Yediyurappa and Co., , it has been held that in the absence of any definition of the word "worker", the court has to take its ordinary meaning which may mean casual, permanent or temporary. The court was not called upon to interpret the words "it employs". Therefore, the said decision is of no help to the appellant.

12. Aditya V. Birla Vs. Central Board of Direct Taxes, New Delhi and others, is a case besides the point. It was a case u/s 80RRA of the income tax Act.

13. The above case was approved by the apex court in Central Board of Direct Taxes and Others Vs. Aditya V. Birla, wherein it has been held that the word "employ" is used in section 80RRA means the use of services of any person : it comprehends whole time servant or part time engaged .It is not the case here.

14. In Commissioner of Income Tax Vs. V.B. Narania and Co., , it has been held that a contract of employment may be in respect of either piece-work or time-work. The real test for deciding whether the contract is one of employment is to find out whether the agreement is for the personal labour of the person engaged, and if that is so, the contract is one of employment whether the work is time-work or piece-work, or whether the employee did the whole of the work himself, or whether he obtained the assistance of other persons also for the work. The question whether or not a person is an employee is a question of fact. No such case has been pleaded or proved by the assessee in the case on hand therefore, the ratio laid down above, has no application to the facts of the present case.

15. Viewed as above, we find that the order of the Tribunal is perfectly justified and the Tribunal has not committed any error either of law or fact in holding that the assessee-appellant is not an "industrial undertaking" as it does not employ ten or more workers. We find no merit in the appeal. It is concluded by findings of fact. Both the appeals are therefore, dismissed. No order as to costs.