

Williamson Financial Services Ltd. Vs. Cit and anr.

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Court : Guwahati

Decided On : Nov-13-2006

Judge : P.G. Agarwal and Mutum B.K. Singh, JJ.

Appellant : Williamson Financial Services Ltd.

Respondent : Cit and anr.

Advocate for Pet/Ap. : Dr. A. K. Saraf

Prior history : P.G. Agarwal, J. 1. Heard Dr. A. K. Saraf, learned Counsel for the appellant and Mr. U. Bhuyan, learned standing counsel for the revenue. 2. This appeal under Section 260A of the Income Tax Act, 1961, has been preferred by the appellant M/s. Williamson Financial Services Limited (hereinafter referred to as 'the appellant'). 3. Facts : The appellant filed its return of income for the assessment year 1991-92 showing an income of Rs. 41,82,030 ; thereafter the return was duly processed by the res

Judgement :

P.G. Agarwal, J.

1. Heard Dr. A. K. Saraf, learned Counsel for the appellant and Mr. U. Bhuyan, learned standing counsel for the revenue.

2. This appeal under Section 260A of the Income Tax Act, 1961, has been preferred by the appellant M/s. Williamson Financial Services Limited (hereinafter referred to as 'the appellant').

3. Facts : The appellant filed its return of income for the assessment year 1991-92 showing an income of Rs. 41,82,030 ; thereafter the return was duly processed by the respondents and notices were issued under Sections 143(2) and 142(1) of the Act and after hearing the assessee, the assessment order was passed determining the total income of the appellant-company at Rs. 1,16,55,470 holding, inter alia, that the deduction under Section 80HHC to be computed after apportionment under Rule 8(1) and not from the composite income; that the assessee is not entitled to deduction on the total dividend income, but made from the net dividend income under Section 80M. The assessing authority added that an amount of Rs. 11,50,000 and Rs. 7,50,000 on account of interest and commitment charges and further calculated income as 100 per cent, taxable without considering the expenses incurred in manufacturing the black tea from green leaves.

4. Feeling aggrieved, the appellant-company preferred an appeal before the Commissioner (Appeals) and vide order dated 27-11-1995, the appellate authority allowed the appeal in favour of the company. The revenue , thereafter, approached the Income Tax Appellate Tribunal, Guwahati Bench and vide order dated 2-1-2003, the Appellate Tribunal set aside the order of the appellate authority and restored the order of the assessing officer and hence the present appeal.

5. The following six substantial questions of law were formulated by this Court at the time of admitting the appeal:

1. Whether, on the facts and in the circumstances of the case, deduction under Section 80HHC is not to be allowed from the composite income of the assessee before application of the Rule 8(1) of the Income-tax Rules, 1962 ?

2. Whether, on the facts and in the circumstances of the case, the decision of the learned Tribunal is not erroneous for holding that the stage of grant of deduction

under Section 80HHC is at the time after the apportionment is made between agricultural and non-agricultural component of the composite income ?

3. Whether, on the facts and in the circumstances of the case, the deduction under Section 80M is not to be allowed from the gross dividend ?

4. Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in confirming the disallowances of Rs. 11,50,000 and Rs. 7,50,000 on account of interest and commitment charges respectively made under the head 'Business income' ?

5. Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the order of the assessing officer by applying the same net profit rate on the sale of tea manufactured out of own grown green leaf and the sale of tea manufactured out of the green leaf purchased from outside for the purpose of apportionment of business ?

6. Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in setting aside the order passed by the Commissioner (Appeals) to delete the profit of Rs. 6,49,554 as assessed under the Central income-tax and take it as 100 per cent, business profit ?

6. Questions Nos. 1, 2 and 3 are in respect of the deduction under Section 68 of the Act. Learned Counsel for the appellant has submitted that the above question stands answered by this Court in the case of Bazaloni Croup Ltd. v. CIT , wherein this Court held (page 28):

From the aforesaid decisions, we are of the considered view that for computation of the composite income derived from sale of tea grown and manufactured by the seller and exported out of India under Section 2(1A) of the Act of 1961 read with Rule 8 of the Rules of 1962, the deduction under Section 80HHC in respect of profits derived from export of tea out of India would be allowed as permissible deduction before apportionment of non-agricultural income and agricultural income under Rule 8 of the Rules of 1962, and, thereafter, the income so computed, as if it is a business income, is to be apportioned on the basis of 40 per cent, being

non-agricultural income and 60 per cent, being the agricultural income. Accordingly, the appeals are allowed and the judgments and orders of the Tribunal are set aside. In the facts and circumstances there will be no order as to costs.

7. In view of the above, questions Nos. 1, 2 and 3 stands answered accordingly and the decision in Bazaloni Group Ltd. (Gauhati), shall apply in the present case.

8. Coming to questions Nos. 4 and 5, learned Counsel for the appellant is fair enough to submit that the decision of the Constitution Bench of the apex court in Distributors (Baroda) P. Ltd. v. Union of India : [1985]155ITR120(SC) , is against him, where the apex court has observed (page 134):

We may, therefore, first examine the language of Section 80M for arriving at its true interpretation. But before we do so, let us consider what is the object behind grant of relief under Section 80M. It was common ground between the parties that the main object of the relief under Section 80M is to avoid taxation once again in the hands of the receiving company of the amount which has already borne full tax in the hands of the paying company. Vide the written submission under the heading 'Object of relief on intercorporate dividends' filed by the learned Counsel on behalf of the assessee in the course of the arguments. Now when an amount by way of dividend is received by the assessee from the paying company, the full amount of such dividend would have suffered tax in the assessment of the paying company and it is obvious, that, in order to encourage inter-company investments, the Legislature intended that this amount should not bear tax once again in the hands of the assessee either in its entirety or to a specified extent. But the amount by way of dividend which would otherwise suffer tax in the hands of the assessee would be the amount computed in accordance with the provisions of the Act and not the full amount received from the paying company. Therefore, it is reasonable to assume that in enacting Section 80M, the Legislature intended to grant relief with reference to the amount of dividend computed in accordance with the provisions of the Act and not with reference to the full amount of dividend received from the paying company. It is difficult to imagine any reason why the Legislature should have intended to give relief with reference to the full amount of dividend received from the paying company when that is not the amount which is liable to

suffer tax once again in the hands of the assessee. The Legislature could certainly be attributed with the intention to prevent double taxation but not to provide an additional benefit which would go beyond what is required for saving the amount of dividend from taxation once again in the hands of the assessee. Bearing in mind these prefatory observations in regard to the legislative object, we may now proceed to construe the language of Section 80M.

Section 80M, Sub-section (1), opens with the words 'where the gross total income of an assessee...includes any income by way of dividends from a domestic company' and proceeds to say that in such a case, there shall be allowed in computing the total income of the assessee, a deduction 'from such income by way of dividends' of an amount equal to the whole of such income or 60 per cent, of such income, as the case may be, depending on the nature of the domestic company from which the income by way of dividends is received. The opening words describe the condition which must be fulfilled in order to attract the applicability of the provision contained in Sub-section (1) of Section 80M. The condition is that the gross total income of the assessee must include income by way of dividends from a domestic company. 'Gross total income' is defined in Section 80B, Clause (5), to mean the 'total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A or under Section 280-O'. Income by way of dividends from a domestic company included in the gross total income would, therefore, obviously be income computed in accordance with the provisions of the Act, that is, after deducting interest on monies borrowed for earning such income. If income by way of dividends from a domestic company computed in accordance with the provisions of the Act is included in the gross total income, or, in other words, forms part of the gross total income, the condition specified in the opening part of Sub-section (1) of Section 80M would be fulfilled and the provision enacted in that sub-section would be attracted.

9. In view of the decision quoted above, questions Nos. 4 and 5 are answered against the appellant.

10. Coming to question No. 6, we have perused paragraph 14 of the impugned judgment and find that the assessee has already calculated the expenses incurred for manufacture of tea, etc., and as such, the question of fact was rightly decided by the assessing officer and affirmed by the Tribunal. In our opinion, no question of law as such arises.

11. In view of above, the appeal is partly allowed. The decision of the Tribunal in so far as the application of Section 80HHC is concerned, as formulated in questions Nos. 1, 2 and 3 are answered in favour of the appellant and questions Nos. 4, 5 and 6 are answered in favour of the revenue.

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