

Cit Vs. Navabharat Enterprises

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Court : Andhra Pradesh

Decided On : Sep-24-2001

Reported in : [2001]253ITR316(AP)

Appeal No. : Case Referred No. 249 of 1991 24 September 2001

Appellant : Cit

Respondent : Navabharat Enterprises

Advocate for Pet/Ap. : S. R. Ashok, *for the Revenue* C. Kodandaram, *for the Assessee*

Judgement :

S. R. Nayak, J.,

The following questions have been referred to this court for opinion by the Income Tax Appellate Tribunal, Hyderabad Bench 'B' (hereinafter referred to as 'the Tribunal')

'1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the assessee was entitled to deduction under section 80HHC(1)(b) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in cancelling the orders of the Commissioner

(Appeals)-I, Hyderabad, passed under section 263 of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee need not export the same goods to get deduction on' the incremental turnover under section 80HHC(1)(b) of the Income Tax Act, 1961 ?'

The assessee-company filed a return for the assessment year 1983-84 declaring nil income. The assessment was completed by the income Tax Officer on 26-3-1986, on a total income of Rs. 23,27,310. The Commissioner revised the said order under section 263 of the Income Tax Act after forming an opinion that the assessment order for the assessment year 1983-84 was erroneous and it was prejudicial to the interests of the revenue on the ground that the assessee-company was not entitled to additional deduction under section 80HHC(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The Commissioner opined that though the words used are 'such goods' in both the limbs of clause (b) of sub-section (1), the repetition of the same words is indicative of the fact that the goods exported in both the years must be the same for entitling the assessee-company to claim extra deduction on account of the incremental turnover.

In the appeal filed by the assessee-company, the Tribunal opined that the Commissioner is erroneous and the deduction allowed by the assessing officer is justified. In taking this opinion, the Tribunal placed reliance on the judgment of the Income Tax Appellate Tribunal, Madras Bench 'C', in the case of N. B. Abdul Gafoor v. ITO . Accordingly, it set aside the order of the Commissioner of Income-tax and restored the order passed by the Income Tax Officer.

The short question that falls for our consideration is whether the words 'such goods or merchandise' occurring in clause (b) of sub-section (1) of section 80HHC qualify the words 'any goods or merchandise' occurring in subsection (1) of section 80HHC of the Act or whether these words are referable to some other provisions in sub-section (1). sub-section (1) speaks about export of any goods or merchandise, whereas clause (b) which deals with deduction refers to turnover of 'goods and merchandise'. The qualifying words 'such goods' occurring in clause (b) are undoubtedly referable to 'any goods or merchandise' occurring in sub-

section (1). If that is so the view taken by the Commissioner cannot be sustained. The Commissioner has taken the view that the goods in order to qualify for deduction should be the same. In this context, the judgment of the Calcutta High Court in CIT v. Indian Products Ltd. : [1994]207ITR647(Cal) may be referred. In that case, during the relevant previous years, the assessee-company exported tea, jute and coffee. The assessee-company claimed relief under both the clauses (a) and (b) of sub-section (1) of section 80HHC of the Act. The Income Tax Officer was of the view that since no coffee was exported by the assessee-company in the immediately preceding previous year, the assessee-company was not entitled to any relief under section 80HHC(1)(b) on the export of coffee during the relevant previous year corresponding to the assessment year 1984-85. The export turnover during the relevant year was Rs. 36,28,960. The Income Tax Officer, however, allowed relief under section 80HHC(1)(b) in respect of export of both tea and jute since both these items had also been exported by the assessee-company even in the immediately preceding financial year corresponding to the assessment year 1983-84. The Commissioner (Appeals) confirmed the aforesaid action of the Income Tax Officer. The Tribunal accepted the contention of the assessee-company and directed the Income Tax Officer to allow full deduction under clause (b) of sub-section (1) of section 80HHC of the Act, even in respect of export of coffee. On a reference, the Calcutta High Court held that (page 656) :

'In our view, a deduction under both clause (a) and clause (b) of sub-section (1) is permissible in respect of the export turnover of the qualifying goods or merchandise other than those specifically excluded by clause (b) of sub-section (2). Under clause (a), the deduction shall be equal to one per cent of the export turnover of the qualifying goods or merchandise during the relevant previous year and under clause (b) a deduction of an amount equal to five per cent of the amount by which the export turnover of the qualifying goods or merchandise during the previous year exceeds the export turnover of such qualifying goods or merchandise during the immediately preceding previous year. In other words for the purposes of clause (b) one has to compare the aggregate export turnover of all qualifying goods or merchandise during the relevant previous year with the aggregate export turnover of all qualifying goods or merchandise during the immediately preceding previous year. No individual classification of the qualifying

goods or merchandise is contemplated either in clause (a) or clause (b). The interpretation that we are taking as aforesaid is incidentally the same as was taken by the Central Board of Direct Taxes in the explanatory notes forming part of Circular No. 372 (see : [1984]146ITR9(Guj)), dated 8-12-1983, issued in explaining the different provisions of the Finance Act, 1983. Paragraph 42.2 of the said circular explains the expression such goods or merchandise' to mean qualifying goods or merchandise.'

We are in respectful agreement with the view taken by the Calcutta High Court in the above judgment.

In the result and for the foregoing reasons, we answer the questions in favour of the assessee and against the revenue.

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