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Court : Madhya Pradesh

Decided On : Nov-01-2004

Reported in : [2005]144TAXMAN13(MP)

Appeal No. : IT Ref. No. 13 of 1997 1st November, 2004

Appellant : Vippy Solvex Products Ltd.

Respondent : Cit

Advocate for Pet/Ap. : S. C. Goyal, *for the Assessee* R.L. Jain with Ku. Mandlik,
for the Revenue

Judgement :
ORDER

A.M. Sapre, J.

This is an income-tax reference made at the instance of assessee under section 256(1) of the Income Tax Act by the Tribunal by an order passed in RA Nos. 18 & 19/Ind/1996 which in turn arise out of an order passed by Tribunal on 12-1-1996, in ITA Nos.: 507 508/Ind/1991 to answer following question of law by this court

'Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the assessing officer was correct in adjusting the brought forward business loss of the earlier year(s) against the business profit of the

current year and since after such adjustment, the gross total income was computed at nil, the assessee was not entitled to deduction under section 80HHC of the Income Tax Act, 1961 ?'

2. In order to answer the question referred supra, facts as stated in the statement of case drawn by the Tribunal need to be taken note of infra.

3. The question relates to assessment years 1985-86 and 1986-87. It relates to the manner in which the deduction is required to be calculated under section 80HHC as it stood in the year 1985-86 and then 1986-87. As is clear from the question, the issue is whether losses for the earlier years can be brought forward for adjustment against the business profit of the current year and whether if after such adjustment, the gross total income is computed at nil, the assessee can be allowed to claim any deduction under section 80HHC of the Act.

4. The assessing officer, CIT(A) and Tribunal was of the consistent view that loss of earlier year has to be adjusted against the business profit of the current year before deductions under Chapter VI-A are allowed for determining the gross total income of assessee.

5. Heard Shri S. C. Goyal, learned counsel for the applicant, and Shri R. L. Jain, learned counsel with Ku. Mandlik for revenue.

6. Having heard learned counsel for the parties and having perused record of the case, we are inclined to answer the reference against the assessee and in favour of revenue.

7. At the outset, learned counsel for the assessee fairly conceded that the question insofar as it relates to assessment year 1986-87 is concerned, the same stands answered against the assessee by the latest decision of Supreme Court rendered in the case of IPCA Laboratory Ltd. v. Dy. : [2004]266ITR521(SC) . It is in this case, their Lordships examined the question as to whether assessee was entitled to deduction under section 80HHC in respect of sum of Rs. 3.78 crores by ignoring the loss of Rs. 6.86 crores suffered in export business The Supreme Court had a close look at section 80HHC as it existed after 1-4-1986. Their

Lordships, inter alia, held that though section 80HHC has been incorporated in the Income Tax Act, 1961, with a view to provide incentive for earning foreign exchange and a liberal interpretation of such provision may be called for, the plain language of the said section being clear, the benefits which are not available cannot be conferred by ignoring or misinterpreting the words in the section, Their Lordships considering the word 'profit' occurring in sub-sections (1) and (3)(a) and (b) of section 80HHC held that the said word 'profit' means a positive profit and that if there is a loss in the business then no deduction would be available to assessee. Their Lordships held that positive profit has got to be worked out after taking into consideration the losses. The meaning of the word 'profit' in the proviso appended to sub-section (3)(c), according to their Lordships, is no different and it carries the same meaning, i.e., the positive profit worked out after taking into consideration the loss.

8. In our opinion, the question insofar as assessment year 1986-87 is concerned, it is squarely covered by the decision of Supreme Court rendered in the case of IPCA Laboratories (supra) against an assessee. Indeed, once it is held that loss has to be adjusted against the profit, then it logically follows that loss of earlier year has got to be set off against the current year profit even for the purpose of deduction under section 80HHC.

9. The question that still arises for consideration is, whether this law can be applied even for the assessment year 1985-86 when section 80HHC was differently worded.

10. In order to answer the question referred to this court, following sections are relevant :

'1. Section 80A(1) In computing the total income of an assessee, 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 to 80U,

2. Section 80A(2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.

3. Section 80AB Where any deduction is required to be made or allowed under any section (***) included in this Chapter under the heading 'C. Deductions in respect of certain incomes' in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.

4. Section 80B(5)'gross total income' means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter (***) (...).

5. Section 80HHC(1) Where an assessee, 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 assessee, a deduction of the profits derived by the assessee from the export of such goods or merchandise.

6. Section 2(45) 'total income' means the total amount of income referred to in section 5, computed in the manner laid down in this Act.'

11. Mere perusal of section 80A(1) and (2) would show that sub-section (1) provides the manner in which total income of an assessee is to be calculated in accordance with the provisions of the Act whereas sub-section (2) operates like a ceiling for claiming total deduction falling under Chapter VI-A. It says that in no case, aggregate amount of deductions under Chapter VI-A shall exceed the gross total income of the assessee. Then comes section 80B(5). It defines what is gross total income for the purpose of Chapter VI-A. In other words, while calculating gross total income for the purpose of deductions falling in Chapter VI-A, one is required to take into account the definition contained in section 80B(5). It means 'total income computed in accordance with the provisions of this Act before making

any deductions under this Chapter'. Then comes, section 2(45) which defines the word 'total income'. This means, the total amount of income referred to in section 5 computed in the manner laid down in this Act.

12. Then comes section 80AB. This section provides as to how deduction is to be calculated in respect of any income of the nature specified in those sections which fall in Heading C of Chapter VI-A. In other words, the cases arising out of sections which are part of Heading C are governed by section 80AB. One such section which falls in Heading C is 80HHC.

13. In our opinion, the use of expression 'computed in accordance with the provisions of the Act' in aforementioned sections is significant. This implies that if assessee has an income falling in sections 60 to 64 of Chapter V, then it is required to be included. Similarly, if the case of assessee falls in sections 70 and 71 of Chapter VI which deals with cases of set off of losses from one source against income from another source as also carry forward and set off of business loss, then also the same has to be given effect to while computing the total income of assessee. Whatever then is arrived at becomes gross total income of assessee. It is from such gross total income of assessee deductions provided in Chapter VI-A are to be allowed.

14. It is thus clear that one cannot ignore the requirement of section 72 of the Act which is an essential part while determining and computing the total income of an assessee. Its taking into consideration becomes an act which makes the computation in accordance with the provisions of the Act. In other words, it is because of use of the aforementioned expression, section 72 gets attracted for determining the total income of assessee. Even otherwise, the principle of accountancy does recognise carry forward and set off of business losses as one of the relevant facts while calculating the net profit of current year and hence, the same cannot be ignored while examining the case of assessee under section 80HHC.

15. In this view of matter, we are of the considered opinion that even for assessment year 1985-86, the case of assessee was in no way different than that of assessment year 1986-87. In other words, despite some amendment made in

the wordings of section 80HHC with effect from 1-4-1986, it did not make any change insofar as it related to computation of total income of an assessee and hence, law laid down by Supreme Court in the case of IPCA Laboratories (supra) would equally apply to cases of the nature which is subject-matter of this reference prior to amendment in section 80HHC *ibid*.

16. Accordingly, we answer the question against the assessee and in favour of revenue. In other words, we answer the question referred by holding that Tribunal was justified in holding that assessing officer was right in adjusting the brought forward business loss of the earlier year(s) against the business profit of the current year and since after such adjustment the gross total income was computed at nil and hence, assessee was not entitled to deduction under section 80HHC of the Income Tax Act. No costs.

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