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Cit Vs. Alpine Solvex Ltd.

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Court : Madhya Pradesh

Decided On : Nov-25-2004

Reported in : [2005]144TAXMAN67(MP)

Appeal No. : Income Tax Appeal No. 91 of 1999 25 November 2004

Appellant : Cit

Respondent : Alpine Solvex Ltd.

Advocate for Pet/Ap. : R.L. Jain and Ku. V. Mandlik, *for the Appellant* G.M. Chafekar and D.S. Kale, *for the Respondent*.

Judgement :
ORDER

Sapre, J.

This is an appeal filed by revenue (CIT) under section 260A of the Income Tax Act against an order, dated 26-2-1999, passed by the Tribunal (ITAT) in I.T.A. No. 1026/Ind./97.

2. It may be mentioned at the outset that on 12-7-2000, this court dismissed the appeal by passing following order:-

'12-7-2000;

Shri R.L. Jain, L.C. for the appellant. Heard.

The appeal is dismissed. (R.D. Vyas, J. Shambhoo Singh, J.)'

3. The appellant i.e. Revenue, therefore, filed a special leave to appeal to Supreme Court being S.L.D. No. 3417 of 2001. Their Lordships of Supreme Court by order dated 9-5-2001 granted leave and passed an order in C.A. No. 3769 of 2001 whereby the appeal filed by revenue was allowed. Their Lordships then formulated the substantial question of law arising out of the order passed by Tribunal and remanded the case to this court for deciding the appeal on merits. This is what Their Lordships held:

'Special leave granted. Heard the learned Attorney General.

In our opinion, a substantial question of law did arise in this case, which is as follows:

'Whether on the facts and in the circumstances of the case and in law the ITAT was justified in holding that the liquidated damages received by the assessee on account of breach of contract are nothing but a part of profit received from the industrial undertaking on which the assessee is entitled for deduction under sections 80HH and 80IA?'

The High Court, in our opinion, was wrong in dismissing the appeal in limine. We, therefore, allow this appeal set aside the High Court's order and direct the High Court to hear the appeal on merits.

Sd/-..... J.

(B.N. Kirpal) Sd/-..... J.

(Ruma Pal) Sd/-..... J.

(Brijesh Kurnar)'

This is how this appeal has come up for final hearing before this court consequent upon the remand order. This court is now required to decide the appeal on

following substantial question of law framed by the Supreme Court:

'Whether on the facts and in the circumstances of the case and in law the ITRAT was justified in holding that the liquidated damages received by the assessee on account of breach of contract are nothing but a part of profit received from the industrial undertaking on which the assessee is entitled for deduction under sections 80HH and 80IA?'

4. The respondent an assessee is a limited company engaged at the relevant time in the business of manufacture and sale of what is known as 'Soya Doc' and 'Soya Oil.

5. In the assessment years 1993-94 and 1994-95, the assessee claimed that they received a sum of Rs. 57,83,675 from their supplier of raw material as also from their customer by way of liquidated damages. According to assessee they in course of business activity had entered into contracts for purchase of raw material with their raw material supplier as also for sale of their finished products with their customers /purchasers. It was contended that due to non performance of these contracts by their supplier and purchasers, the assessee received the aforementioned sum as liquidated damages from defaulting supplier and purchasers pursuant to term in every individual contract. According to assessee, this amount being in the nature of profit derived from their Industrial Undertaking, the same is liable to be deducted treating the same to be profit/gains derived from an Industrial Undertaking for the purpose of calculating deductions under sections 80HH and 80I of the Income Tax Act. It is this question which arose before the taxing authority.

6. The assessing officer by order dated 13-3-1997 (page 16) rejected the claim of assessee. He held that the sum received by assessee by way of liquidated damages from the defaulting parties, i.e., supplier and purchaser is not a profit which can be said to have been derived from assessee's Industrial Undertaking and hence, the same cannot be treated as profit and/or gains within the meaning of twin sections, i.e., Section 80HH or 80I ibid while allowing deductions. This view of assessing officer was upheld by CIT (A) by order dated 19-9-1997 (page 44). However, assessee felt aggrieved filed second appeal to Tribunal.

By impugned order, the Tribunal allowed the appeal and set aside the orders of assessing officer and CIT (Appeals). It is against this order, the revenue (CIT of Income Tax) filed appeal to this Court. It was dismissed by this Court. As observed supra, the order of dismissal was set aside by Supreme Court in an appeal filed by revenue and the appeal was remanded again to this court for deciding the same on merits on a substantial question of law framed by the Supreme Court.

7. Heard Shri R.L. Jain, learned senior counsel with Ku. V. Mandlik, learned counsel for the revenue and Shri G.M. Chafekar, learned senior counsel with Shri D.S. Kale, learned counsel for the assessee.

8. Having heard learned counsel for the parties and having perused record of the case, we are inclined to allow the appeal and set aside the order of Tribunal.

9. The question that really arise for consideration in this appeal is, what is meaning of words 'any profits and gains derived from an Industrial undertaking' used in sections 80HH and 80I ibid? The word 'derived from' was subject-matter of judicial interpretation. It was held that expression 'derived from' has a definite but narrow meaning and it cannot receive a flexible or wider concept (See Sterling Foods v. CIT : [1984]150ITR292(KAR) CIT v. Paras Oil Extraction : [1998]230ITR266(MP)).

10. It is not in dispute that a sum of Rs. 57,83,675 claimed by an assessee to be in the nature of profit said to be derived from the Industrial Undertaking was not an amount earned directly by sale of their finished commodity manufactured in their undertaking/plant. In other words, the amount claimed was alleged to be received by an assessee from their supplier and purchaser not as a price/value of the goods but it was in the nature of compensation/ damages on account of breach alleged to have been committed by them qua assessee in performance of contract. We cannot thus equate such sum at par with actual profit which the assessee earned by sale of the finished goods.

11. In our opinion, the assessee is entitled to claim deduction of that amount which they have derived as direct profit by sale of manufactured goods in their newly set up industrial undertaking. The object underlined in these sections is to give incentive to the assessee who earns/derive income from their actual

manufacturing activity, i.e., by sale of their products. Any indirect or incidental profit cannot be regarded as profit earned out of main business activity. It has to be taxed as an income earned from other sources as defined under section 56(1) read with section 14(f) ibid.

12. Submission of learned counsel for the assessee was that amount received by an assessee is nothing but profitable price of the goods and having direct nexus with the business activity of the assessee. In reply, learned counsel for the revenue contended that assessee in order to create artificial profit has entered into such bogus contracts with their purchasers/suppliers with a view to show bogus profit so that they may earn more benefit under section 80HH/80I. In our opinion, the submission of learned counsel for the assessee has no merit. As held supra, the words derived from has got to be given restricted meaning and hence, we cannot include such type of earning (even assuming it to be genuine) within the meaning of expression as profit/gains derived from Industrial Undertaking. (See Cochin Co. v. CIT : [1978]114ITR822(Ker) , Hindustan Lever Ltd. v. CIT (I980) 121 ITR 951 North East Gases (P) Ltd. v. CIT Orissa Tyres Ltd. v. CIT (1991) 188 ITR 3422 CIT v. Bihar Alloy Steels Ltd. : [1994]206ITR350(Patna) Godavari Sugar Mills Ltd. v. CIT (1991) 191 ITR 3594 and CIT v. Coch in Refineries Ltd. : [1985]154ITR345(Ker)).

13. In our opinion, therefore, we cannot subscribe with the view taken by the Tribunal. In this view of the matter, the appeal succeeds and is allowed. impugned order of Tribunal is hereby set aside.

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