

Cit Vs. Prakashchandra Basant Kumar

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Court : Madhya Pradesh

Decided On : Nov-02-2004

Reported in : [2005]144TAXMAN541(MP)

Appeal No. : ITA No. 83 of 1999 2 November 2004

Appellant : Cit

Respondent : Prakashchandra Basant Kumar

Advocate for Pet/Ap. : Mr. R.L. Jain & Ku. Mandlik, *For the Appellant* None, *For the Respondent*

Judgement :

Sapre, J.

1. The decision rendered in this appeal shall also govern disposal of other connected ITA Nos. 66 of 1999, 84 of 1999 and of 2000 because the question involved in all these appeals are common and secondly, they relate to same assessee.

2. This is an appeal filed under section 260A of the Income Tax Act by the revenue (Commissioner of Income-tax) against a common order dated 24-02-1999, passed by ITAT. in ITA Nos. 301/Ind/94, 624, 625, 916 and 917/Ind/96 in respect of assessment year 1990-91, 1991-92, 1992-93. It was admitted for final hearing on

following two substantial questions of law by this Court:

1. Whether on the facts and in the circumstances of the case and in law the Income Tax Appellate Tribunal was justified in holding that no proportionate deduction on account of depreciation expenses of vehicles, ginning charges received from others and interest on deposits/borrowings should be made for working out eligible profits for the purposes of deduction under section 80HH & 80I?

2. Whether on the facts and in the circumstances of the case and in law the ITAT was justified in holding that the deduction under section 80I is allowable on the gross total income unreduced therefore the deduction allowed under section 80HH of the Income Tax Act even though the decision of the Hon. M.P. High Court in the case of M/s. J.P. Tobacco Products (P) Ltd. : [1998]229ITR123(MP) deciding the issue in similar manner has not been accepted by the department and SLP has been filed before the Hon. Supreme Court is pending?'

3. It may be mentioned at the outset that other appeals are also filed by the revenue against this very impugned order. However, in some appeals only one question of law is framed whereas in other appeal no question of law is framed. It was however, conceded by the learned counsel for the appellant that the questions of law framed in this appeal would equally apply for disposal of other appeals whether framed, or not.

4. At the outset learned counsel for the appellant fairly conceded that so far as question no. 2 referred supra is concerned, the same stands already answered and decided against the revenue by the decisions of this court reported in : [1998]229ITR123(MP) Since upheld by Supreme Court also. It is in this case, this court decided the question as to how and in what manner, the deduction under section 80I is required to be calculated. Since the Tribunal rightly relying upon this decision upheld the manner in which the deduction in question was calculated by assessing officer in favour of assessee, this question has to be answered against the revenue and in favour of assessee without going into any details.

5. So far as question no. 1 is concerned, the facts relating to this question are that assessee has two units. One is called main Unit and other is called Unit no. 2. The assessee owns car, scooter, trucks and tankers. The assessee however confined his claim of depreciation on these vehicles to their main Unit and accordingly debited in the accounts of main Unit the claim of depreciation. According to assessing officer since the assessee had used these vehicles in both the Units and hence, he allocated the depreciation in both the Units thereby reducing the profit earned by assessee in Unit no. 2 after taking into account the claim of depreciation so allocated. Since the assessee had claimed deduction under section 80HH/80I in Unit no. 2 only, due to assessing officer's allocating part of depreciation in Unit no. 2, the assessee could not claim the deduction on the entire profit that they had earned from Unit No. 2 as to take its full benefit under section 80HH/80I.

6. The assessee, therefore, filed appeal to CIT(A) and challenged the action of assessing officer in allocating the depreciation in regard to the vehicles in question in the profits of two Units i.e. main Unit and Unit no:2. The case of assessee was that the vehicles in question are owned by Unit no. 1, they are used only by Unit no. 1 i.e. for the activities of Unit no. 1. that as and when these vehicles were needed by Unit no.2, the same were given by Unit no. 1 on hire to Unit no. 2, that, amount received from Unit no.2 by Unit no. 1 for the use of these vehicles was credited in the account books of Unit no.1. It is this factual issue which was gone into by CIT(A) and eventually decided in favour of assessee. This resulted in setting aside of an order passed by assessing officer which had allocated the depreciation between the two Units. This finding of fact was challenged by revenue in appeal before the Tribunal. However, the Tribunal too upheld the finding of fact and dismissed the appeal filed by revenue giving rise to filing of this second appeal.

7. In our considered opinion, the issue involved on this question really does not involve any question of law as such but it is based on concurrent finding of facts based on peculiar facts of the case. The assessing officer bifurcated the claim of depreciation in two Units. However, the CIT(A) and Tribunal accepted the factual version of assessee on the question as to how and in what way they used the

vehicles in question and why they claimed depreciation only in Unit no. 1 and not in Unit no. 2. This found favour to both CIT(A) and Tribunal. It is on the basis of these factual findings, the CIT(A) and Tribunal held that since the vehicles in question are owned by Unit no. 1 and hence, the claim of depreciation could be adjusted in Unit no. 1 and not in Unit no. 2 where, the assessee had claimed the benefit of section 80HH and 80I.

8. We cannot examine this finding of fact in this appeal. It is for the reason that no substantial question of law is framed on this finding and nor it can be framed. Secondly, what is framed is an abstract question of law which in our humble view does not arise out of impugned order of Tribunal. In other words, the benefit of section 80HH/80I was granted to assessee on a finding of fact recorded in relation to Unit no. 2 by directing that there can be no allocation of depreciation inter se two Units because the vehicles in question belongs to Unit no. 1.

9. We, thus, do not find any substantial question of law on this issue. Since, section 260A(4) of the Act enable us to examine this issue at the time of final hearing of the appeal and hence, we are inclined to hold that question no. 1 is not a substantial question of law which really do arise out of the impugned order nor it was answered by Tribunal as such. We thus decline to answer the same.

10. In this view of the matter appeal is found to have no substance. It is dismissed.

No costs.

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