

A-one Cycles Ltd. Vs. Asstt. Cit Vs. J.H. Gotla (1985) 156 Itr 323 (Sc)

A-one Cycles Ltd. Vs. Asstt. Cit Vs. J.H. Gotla (1985) 156 Itr 323 (Sc)

SooperKanoon Citation : sooperkanoon.com/70149

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jun-24-1998

Appellant : A-one Cycles Ltd. Vs. Asstt. Cit

Respondent : J.H. Gotla (1985) 156 Itr 323 (Sc)

Judgement :

1. The appeal, preferred by the assessee, is directed against the order of the CIT(A) for the asst. yr. 1992-93.

2. The only ground raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of Rs. 77,42,530 out of the claim of deduction of Rs. 94,97,000 under s. 80HHC of the IT Act.

2.1. The facts, in brief, as borne out from the records are that the assessee-company carried on business of manufacture of engineering machinery and manufacture and export of leather garments. Both these business activities were carried out separately as engineering division and leather garment division. Leather division was in Delhi whereas the engineering division was functioning at Sahibabad. The leather division primarily dealt in export of manufactured and trading leather garments.

The assessee-company claimed deduction under s. 80HHC of Rs. 94,97,000 and in support the audit report in Form No. 10CCAC had been filed. The AO, however, allowed the claim under s. 80HHC to the extent of Rs. 17,54,465 only. The AO curtailed the claim made under s. 80HHC mainly on the following grounds : (a)

The assessee declared profit from export of leather garments at Rs. 94,97,000 and in the engineering division the assessee declared a loss of Rs. 17,92,200. The AO adjusted the loss claimed in the engineering division against profits shown in leather garment division from export sales for the purposes of allowing deduction under s. 80HHC. (b) The AO noted that sub-s. (3A) which prescribes computation of profits derived by supporting manufacturers does not have any clause or proviso thereunder to allow deduction for export incentives earned on the sale of goods made through the trading house. He differentiated the provisions of sub-s. (3) and sub-s. (3A) to the effect that whereas the former through the proviso allow deduction on account of export incentive but latter does not have similar proviso. The AO, therefore, concluded that sub-s. (3) relates to only direct exports and export incentives received thereon are to be considered for deduction under s. 80HHC only in respect of the direct export business and not on export made through trading house as a supporting manufacturer.

(c) The AO in the absence of details furnished adopted the direct export sales of Rs. 1,52,30,851 as representing the trading goods only and the balance export sales consisting of trading goods and manufactured goods were taken as made through the trading house. The AO also observed that as the supporting manufacturer the assessee-company is not entitled to deduction under s. 80HHC on profit derived on trading export sales through the trading house.

The assessee-company was, however, entitled to benefit on the profit derived from manufactured goods export sales made through the trading house.

(d) The AO as per the working given in the assessment order computed the profits from business, direct cost, indirect cost on exports, increase of profit on account of export incentives and finally worked out the trading profit at Rs. 22,62,866 and loss from supporting manufacturer exports at Rs. 5,08,401 and adjusting the loss against the profit so worked out he allowed the deduction at Rs. 17,54,465 against the claim made of Rs. 94,97,000 under s.

80HHC.2.2. On appeal, it was contended that exports were made only from the leather garment division and, therefore, the AO was not justified in first setting off the loss of engineering division from the profit of the leather garment division.

2.3. The objection so raised by the assessee was not considered to be well founded by the CIT(A). According to the CIT(A), s. 80HHC(1) speaks of computing the total income of the assessee which means all profits/losses of the entire business activity. He further made a reference to cl. (baa) of second Expln. to s. 80HHC and noted that profits of the business means profits of the business as computed under the head profits and gains of business or profession and since the assessee had two business activities the profit of the business would mean net profit from these activities and accordingly results of the engineering division have also to be taken into consideration.

2.4. The next objection raised by the assessee was against not allowing the benefit of export incentives on the export made through the trading house. According to the assessee-company deduction was allowable in respect of export incentives as per the proviso to sub-s. (3) of s.

80HHC in respect of the entire exports including the deemed exports.

The CIT(A) noted that this objection has been duly dealt with in the booklet brought out by the Bombay Chartered Accountants Society wherein they undertook a study of the provision of s. 80HHC published in 1993.

The relevant extract from the booklet is contained in para 16.9 reproduced by the CIT(A). The CIT(A) observed that it is clear therefrom that whereas for direct export there is specific provision in sub-s. (3) to exempt a part of export incentive, no such provision exists for supporting manufacturer. The objection thus raised in this behalf was also not found valid.

2.5. The assessee also objected to the AO's presuming the entire direct export of Rs. 1,54,30,851 to represent the trading goods only as there was no basis for such presumption. It was also claimed that sale of trading goods through the trading house also qualify for deduction under s. 80HHC. The CIT(A) noted that if the components of trading goods is reduced from the direct export the assessee will have a larger share of trading goods in its sale through trading house and to that extent the eligible exports through the trading house consisting of manufactured or processed goods will be reduced and to that extent the profits will further be

reduced. The CIT(A) referred to the definition of supporting manufacturer in cl. (d) of second Expln. to sub-s. (4A) of s. 80HHC which leaves no room for doubt that the trading goods will not qualify for deduction under s. 80HHC. The CIT(A) further observed that the definition speaks of a person manufacturing goods including processing of goods or merchandise and selling such goods or merchandise. According to the CIT(A) the AO was reasonable enough to accord such treatment in the absence of specific details that placed the assessee in an advantageous position and he should not have any grievance on this score.

2.6. In the last the assessee objected to the loss determined at Rs. 5,08,401 on account of profit from sales through trading house and claimed that there was no justification to reduce the relief available on this account. The CIT(A) noted that the objection raised is not supported by any material to substantiate the same. The CIT(A) further noted that s. 80HHC(1) speaks of exemption of profit derived from the export of goods or merchandise and in some respects deemed exports have also been treated at par with direct export. It is, therefore, consequential that the total profit of the entire export activity including the deemed export should be composite figure. The CIT(A), therefore found nothing wrong with the view taken by the AO in this behalf.

3. Aggrieved, the assessee has challenged the above finding of the CIT(A) before us.

4. The learned counsel of the assessee Shri O. P. Sapra made a submission that the assessee-company carried on business in the manufacture and export of leather garments at Naraina in Delhi.

Besides, it had another unit called Eastern Engineering Industries engaged in the manufacture and sale of industrial machinery meant for pharmaceutical units at Sahibabad in U.P. Both units were distinct with different names and situated at different places with different staff and maintaining separate books of account. The assessee-company had claimed deduction under s. 80HHC at Rs. 94,97,000 as per the calculation given in Form No. 10CCAC by the auditors. The AO has, however, allowed deduction at only Rs. 17,54,465 and the same has been confirmed by the CIT(A). The claim made has not been fully allowed on account of

various reasons as discussed by the lower authorities. The first reason given for inadequate disallowance under s. 80HHC is the action of the AO for adjusting the loss of Rs. 17,92,200 of the engineering unit against the export profit of the leather garment unit.

Such loss could not legally be adjusted against the export profits of the leather garment unit while allowing deduction under s. 80HHC in view of the plain reading of s. 80HHC and also placing reliance on the ratio of decision in the case of CIT vs. Canara Workshop (P) Ltd. (1987) 161 ITR 320 (SC) and CIT vs. Sidh Ganga Oil Extraction (P) Ltd. (1993) 201 ITR 968 (Kar). The learned counsel has further pointed out that cl. (baa) of Second Explan. to s. 80HHC simply corresponds to profit of the export business to be computed under the head "profits and gains of business or profession" and it nowhere lays down that if there was a loss in altogether different units not connected with the export unit the same will also be adjusted against the export profits.

The learned counsel, therefore, pleaded that the lower authorities were not justified in adjusting the loss of engineering unit against the profit of leather garment unit for the purpose of allowing deduction under s. 80HHC. The learned counsel submitted that the second issue/reason for allowance of inadequate deduction under s. 80HHC was on account of non-allowance of deduction under s. 80HHC on incentive benefits received on exports through export house namely, Fortune International Ltd which has given up its claim of such incentives and s. 80HHC benefits on such exports. The learned counsel submitted that the assessee-company is itself an export house duly recognised by the Government. The disallowance made is claimed to be unjustified on account of the following :
(a) Export house's disclaimer certificate clearly reads that they did not claim deduction under s. 80HHC in respect of export turnover of Rs. 5,48,32,883.

(b) CIT(A)'s reliance on para 16.9 of the booklet brought out by Bombay Chartered Accountants Society was incomplete. Full text of the relevant para of the booklet is placed in the paper book.

According to learned counsel the CIT(A) ignored the following further words "this is entirely unfair and illogical". The learned counsel has further submitted that those

were the comments of the Bombay Chartered Accountants Society, according to which also non-allowance of deduction of such incentives will be unfair and illogical.

(c) There was no need to bring in a separate proviso below s.

80HHC(3A) in view of the proviso already provided below s. 80HHC(3) because s. 80HHC(4) clearly talks of deduction under s. 80HHC(1) of the IT Act.

(d) Form No. 10CCAB issued by the auditors as prescribed under r.

18BBA(2) of the IT Rules clearly mention about non-claiming of benefit under s. 80HHC by export house. It is also claimed that both the authorities below had not disputed the fact that the assessee-company was entitled to deduction under s. 80HHC on such export turnover and it is also not in dispute that the above incentives constituted export business profit under s. 28(iia) i.e., sale of replenishment licence, (iib) i.e., cash assistance, and (iic) i.e., duty drawback.

(e) Attention has also been invited by the learned counsel to item 99 of the Budget Speech by the Finance Minister in 1998-89 reported in 170 ITR (St) 19 and Notes on Clauses given at p. 157 thereof where it is clearly mentioned that if an assessee being a supporting manufacturer has sold goods to any export house, he will be allowed deduction on the whole of the income earned on the sale of goods to the export house in respect of which a certificate has been issued under proviso to sub-s. (1). Learned counsel has also pointed out that the assessee-company exported the goods as per the orders of the export house directly to foreign constituents and had received the incentive also directly from the Government and the same are duly credited in the bank account of the assessee-company.

(f) If deduction under s. 80HHC in respect of such incentives is not allowed to the assessee-company and which has also not been allowed to the export house Fortune International Ltd. then whole object of s. 80HHC will be frustrated and the same is obviously against the spirit of s. 80HHC. Elaborating further it is stated that action of the authorities below has resulted in non-allowance of deduction

under s. 80HHC both to the trading house in view of their disclaimer certificate and to the assessee-company thereby making s. 80HHC as redundant. In support of this proposition the learned counsel has placed reliance on the following decisions : (i) Bajaj Tempo Ltd. vs. CIT (1992) 196 ITR 188 (SC) wherein it was held that the provision in a tax statute granting incentive for promoting growth and development should be construed liberally.

(ii) K. P. Varghese vs. ITO (1981) 131 ITR 597 (SC) wherein it was held that a statutory provision must be so construed, if possible, that absurdity, and mischief may be avoided. Where the plain literal interpretation of statutory provision produces, a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction.

(iii) CIT vs. J. H. Gotla (1985) 156 ITR 323 (SC) where it was held that though equity and taxation are often strangers, attempt should be made that these do not remain always so and if a construction results in equity rather than in injustice then such construction should be preferred to the literal construction.

According to the learned counsel the next reason given for inadequate deduction is that the AO should have ignored the negative figure of Rs. 5,08,401 in view of the decision of the Tribunal Chandigarh Bench in the case of A-One Cycles Ltd. vs. Asstt. CIT (1997) 59 TTJ (Chd) 75.

4.1. The learned counsel in the alternative, without prejudice to the submissions made above, has submitted that the AO has committed an arithmetical error while calculating deduction under s. 80HHC on the incentives in respect of direct exports also at Rs. 4,32,034 which actually works out at Rs. 18,19,319 is evident from in the application under s. 154 before the AO and copy placed in the paper book and which has not yet been disposed of by the AO despite the repeated requests made. Such apparent mistakes need to be rectified.

4.2. The learned counsel has, therefore, pleaded that the lower authorities have not appreciated the facts as well as provision of s.

80HHC while granting deduction under s. 80HHC and he further prayed that the deduction as claimed, may be allowed.

4.3. The learned Departmental Representative on the other hand strongly relied upon the orders of the lower authorities and has further submitted that the lower authorities have correctly applied the provisions of the section to the facts of the present case and deduction under s. 80HHC as per the working given has been correctly allowed and sustained. The learned Departmental Representative, therefore, submitted that the order of the CIT(A) deserves to be upheld.⁵ We have carefully considered the facts, material evidence on record and submissions made by the learned representatives of the assessee as well as the Revenue. Before we go into the allowance of the claim of the assessee-company we would state and examine the correct facts as borne out from the records.

5.1. As mentioned above, the assessee-company was running two industrial units. One unit called Eastern Engineering Industries, was engaged in the manufacture and sale of industrial machinery for pharmaceutical concerns at Sahibabad in U.P. This unit was run independently and separate books of account were maintained therefor.

Its books of account have also been got audited as per the provisions of s. 44AB of the IT Act for the current year. From the copies of accounts filed in the paper book we find that the assessee-company during the current year made total sales of Rs. 20,13,341 and it had other income of Rs. 44,668 and the assessee incurred in this unit a loss of Rs. 20,82,193 during the current year. Its audited accounts are placed at pp. 60 to 80 of the paper book. The assessee-company had another unit known as leather division engaged in the manufacture and export of leather garments. This unit was situated in Naryana in Delhi.

The assessee-company has maintained separate books of account for leather division and the same have also been audited as per provisions of s. 44AB. Its audited report is placed at pp. 48 to 58 of the paper book. During the current year the assessee-company effected export sales (FOB) of Rs. 1,54,50,851. It also exported goods through a trading house namely, Fortune International Ltd., of Rs. 4,94,18,989 besides effecting central sales of Rs. 45,473 and local sales of Rs.

1,15,698. We also note that as per the shipping bills and invoices produced (pp. 101 to 163 of the paper book) the assessee-company exported leather goods as per the orders of the export house directly to foreign constituents and also received payments therefor directly.

The assessee-company also received various incentives directly from the Government on such exports made through the export house and the same also stands credited in its bank account (pp. 131 to 139, 151 and 152, 162 and 163 of the paper book). The assessee-company thus received in all the export benefits in respect of the following : Rs. Duty drawback 45,78,628 Cash incentive 40,70,272 Sale of replenishment and other licence 9,30,325 ----- 95,79,225 The total export sales in leather division was of Rs. 6,50,11,011. The assessee also received on account of export benefits, foreign exchange rate variation, interest, etc. at Rs. 1,00,70,498. Thus the total credits in the P&L a/c were of Rs. 7,50,81,509 and thereagainst the assessee claimed total outgoings of Rs. 6,52,51,793. The assessee thus earned a net profit in the leather division of Rs. 98,99,716.

5.2. The assessee-company has also filed a report from the auditors in form No. 10CCAC as required in sub-s. (4) of s. 80HHC and the same is placed at p. 6 of the paper book. In the report export turnover in respect of trading goods has been shown at Rs. 2,52,02,300 and the balance export relating to manufactured and processed goods are of Rs. 3,97,46,700. There being no details the AO adopted the entire direct exports (FOB), as of trading goods only. This leaves the trading goods export sales at Rs. 97,41,449 and manufactured goods export sales at Rs. 3,97,46,700 through the export house. Though the objection was raised before the lower authorities about the figures so adopted but before us no objection has been raised for adopting the above figures for trading export sales and manufactured goods export sales directly as well as through the export house and the same figures are therefore to be adopted in computing the deduction under s. 80HHC.5.3. The first issue raised by the assessee-company is against adjusting the loss of engineering unit at Rs. 17,92,200 against the export profits of the leather unit for the purpose of computing the benefit under s. 80HHC. Sec. 80HHC provides that where an assessee being an Indian company or a person resident of

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 provision 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. It is clear from the plain reading of the section that while computing the income a deduction shall be allowed of the profit derived from export of goods or merchandise. In the present case the assessee has been running a leather division independent of the engineering division and its books of account had been maintained separately. The assessee-company has also drawn the manufacturing/trading account, P&L a/c, balance sheet of the leather division separately and its accounts have also been got audited under s. 44AB of the IT Act. The deduction, therefore, has to be allowed under s. 80HHC from the profits derived from export business of leather division. The AO adjusted the loss suffered in engineering division with the profit earned in the leather division before allowing the deduction under s. 80HHC. As mentioned above engineering division is a separate unit engaged in manufacturing of pharmaceutical machinery and the assessee had maintained separate books of account for this unit and the same have also been audited under s. 44AB. Manufacturing account, P&L a/c, balance-sheet have been separately prepared for the engineering unit. Engineering unit being a separate unit there was, in our opinion, no justification for adjusting its loss against the profit of the leather division before allowing deduction under s. 80HHC. Deduction under s. 80HHC is otherwise allowable on the profit derived from export business of leather division. The learned counsel has placed reliance on the ratio of the following decision : (a) CIT vs. Canara Workshop (P) Ltd. (supra). - This related to the claim of deduction under s. 80E in respect of repayment of loan taken for higher education. The Hon'ble apex Court held that in computing the profits for the purpose of deduction under s. 80E the loss incurred by the assessee in the manufacture of alloy steels (a priority industry) could not be set off against the profits of the manufacture of automobile ancillaries (another priority industry).

The assessee was entitled to a deduction on the entire profit of the automobile parts industry included in the total income without deducting therefrom the losses in the alloy steel manufacture.

(b) CIT vs. Siddaganga Oil Extraction (P) Ltd. (supra). - The claim involved in this case was under s. 80HH. The Hon'ble High Court held that the loss in another unit cannot be set off against income from new industrial undertaking in backward area. Headnotes of the decision on the issue are extracted below : "Sec. 80HH of the IT Act, 1961, provides for the deduction of 20 per cent, from the "profits and gains" derived from the industrial undertaking. The gross total income of the assessee would include the income derived from several sources or units. The profits and gains of one unit is only one of the constituents of the gross total income. Even item of additions and deductions to be considered at the stage of computing the taxable income to be arrived at from the gross total income need not necessarily be considered while computing the profits and gains of one unit for purposes of s. 80HH Under s. 80HH, the relevant question is whether there is profits and gains derived from an industrial undertaking, which was ultimately added to the gross income of the assessee. If there is any such profits and gains, the assessee is entitled to the benefit of s.

80HH. If the loss sustained by another unit is set off against this profits and gains of an industrial undertaking, the resultant figure would not reflect the profits and gains of the said industrial undertaking, in any sense, much less in a commercial sense : it will be an unnatural and artificial "profits and gains" of that industrial undertaking. Hence, loss sustained elsewhere cannot be fastened to the profits and gains of the said industrial undertaking for purposes of s. 80HH." Though the decisions cited above are not on deduction under s. 80HHC directly but the ratio of the above decisions would apply with equal force to the claim for deduction under s. 80HHC as well on the facts and circumstances given above.

5.4. The lower authorities have also referred to cl. (baa) under Expln.

to sub-s. (4A) of s. 80HHC. Clause (baa) is reproduced hereunder : "(baa) - "Profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by : (1) ninety per cent of any sum referred to in cl. (iiia), (iiib) and (iiic) of s. 28 or of any receipts by way of brokerage commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and (2) the profits of any branch, office,

warehouse or any other establishment of the assessee situated outside India." The plain reading of the clause would show that it nowhere provides that if there was a loss in another unit not connected with the export unit, the loss would be adjusted against the profit of the export unit.

5.5. Considering all the facts, provisions of the section and case laws cited above we hold that lower authorities were not justified in adjusting the loss of engineering division with the profit of the leather division for working out the deduction under s. 80HHC. The AO is, therefore, directed to compute the deduction under s. 80HHC from the profit computed of leather division without reducing the loss suffered in engineering division.

5.6. The second issue raised by the assessee is against not allowing the deduction under s. 80HHC on incentive benefits received from export of goods through export house. We find that the assessee-company exported leather garments through the trading house during the current year to the extent of Rs. 4,94,18,989. The export house M/s. Fortune International Ltd. has given a certificate in Form No. 10CCAB that they had during the period relevant to asst. yr. 1992-93 exported goods or merchandise manufactured and sold to them by the assessee-company amounting to Rs. 5,48,32,883 and they have further confirmed that they have not claimed deduction under sub-s. (1) of s. 80HHC of the IT Act in respect of such export turnover. A certificate so given is placed at p. 8 of the paper book. Further, details of the export made are placed at pp. 10 to 13 of the paper book according to which 60,023 pieces of leather garments were exported to Russia. According to the assessee, the assessee-company exported the goods directly to Russia as per the orders of the export house and assessee-company received the payment therefor directly and also the export incentives thereon directly from the Government and the same stands credited in its bank account. The Revenue has not controverted the position so stated about the exports made through the export house. The assessee-company has claimed deduction in respect of the export benefits received relating to its direct export as well as the export made through the export house. The Revenue has objected to the claim in respect of export incentives received as relating to the export made through the export house mainly for the reason that a separate proviso below sub-s. (3A) of s.

80HHC has not been inserted as similar to that provided under sub-s. (3) of s. 89HHC. Proviso to sub-s. (3) of s. 80HHC relating to direct export provides that-"profits computed as per the procedure prescribed therein shall be further increased by the amount which bears to 90 per cent of any sum referred to in cl. (iiia) (not being profits on sale of licence acquired from another person) and cl. (iiib) and (iiic) of s. 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee." The above proviso shows that the export benefits received of the category above would also be considered as profit for the export business for the purpose of deduction under s. 80HHC. The procedure for computing the profit in the case of a supporting manufacturer is given in sub-s. (3A) of s. 80HHC but a similar proviso as is given under sub-s. (3) has not been inserted under sub-s. (3A). Such an omission in respect of the supporting manufacturers may be for the reason that supporting manufacturers sell goods or merchandise to export house or trading house and the export house/trading house in turn export the said goods.

The export benefits are naturally received from the Government by the export house and the same are not passed on to the supporting manufacturers and, therefore, there arises no question of claiming deduction under s. 80HHC in the case of supporting manufacturers on export incentives. However, in the present case the position is little different. The export house received export orders and the same were passed on to the assessee-company for execution. The assessee-company exported goods directly to the foreign constituents and also received not only the payments for such exports but also the export incentives directly from the Government. The assessee-company though exported goods as per orders of the export house but for all practical purposes these exports could be termed as direct export by the assessee-company and accordingly, the assessee-company would be entitled to deduction under s. 80HHC on all the export benefits received including that received on exports made as per orders of the export house.

5.7. We also note that the Finance Minister in his Budget Speech presented on 29th February, 1988, for the asst. yr. 1988-89 [reported in 170 ITR (St.) 1] made it clear in para 99 thereof that to increase exports he proposes to enhance the existing tax concession under s.

80HHC for export profits so as to exempt hundred per cent of export profit from income-tax. It was also proposed to extend the benefit to supporting manufacturers exporting through trading or export houses.

The notes on clauses relating to sub-s. (1A) and sub-s. (3A) given on p. 157 of the report reads as under : "The new sub-s. (1A) provides for deduction in relation to a supporting manufacturer. Under the new sub-section, if an assessee being a supporting manufacturer has sold goods or merchandise to any Export House to Trading House, in computing his income chargeable to tax, he will be allowed a deduction of the whole of the income earned on the sale of goods or merchandise to the Export House or the Trading House in respect of which a certificate has been issued under the proviso to sub-s. (1).

Sub-cl. (b) seeks to insert a new sub-s. (3A) in the section specifying the basis for computation of the profits derived from the sale of goods or merchandise in the case of a supporting manufacturer. The new sub-section provides that in a case where the business of the supporting manufacturer consists exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the whole of the profit of the business of such manufacturer shall be the profit derived from the sale of goods of merchandise in respect of which the deduction is allowed. In a case where the business carried on by the supporting manufacturer does not consist exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the amount of profit eligible for deduction shall be determined on the proportionate basis." 5.8. It is clear from the Budget Speech of the Finance Minister and Notes on clauses relating to new provisions inserted in the Act, providing for benefits profit of s. 80HHC to the supporting manufacturer, that supporting manufacturers are also entitled to hundred per cent exemption on export profits as was available for the direct exporters. The export incentives in the shape of cash assistance, duty drawback and profit earned on sale of replenishment licence are income within the meaning of s. 28(iia), (iib) and (iic) of the IT Act and the same has been earned apparently from the export business of the assessee-company. Such export incentives being the income, have, therefore, necessarily to be considered for the purpose of claim of deduction under s. 80HHC, even in cases of supporting manufacturers; if received.

5.9. Moreover, the provisions of tax statute granting incentives and benefits for promoting growth and development of the industry are required to be construed liberally and to the best advantage of the taxpayers. This was the view taken by the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. (supra). Further, it is settled law that while interpreting the statutory provision, harmonious view be taken so as to achieve the obvious intention of the legislature. The Hon'ble Supreme Court in the case of K. P. Varghese (supra) observed as under : "A statutory provision must be so construed is possible, that absurdity and mischief may be avoided. Where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction." The Hon'ble Supreme Court further observed at p. 599 of the report that : "..... the speech made by the mover of the bill explaining the reason for its introduction can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in justice though not only in western countries but also in India, that the interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible." 5.10. Though the section does not specifically provide for benefit under s. 80HHC on export incentives to supporting manufacturers as such incentives are normally received by the trading/export houses but in the present case the assessee-company being a supporting manufacturer has received the export incentives directly from the Government on the goods exported as per the orders received through the export house and the same have been assessed as income as per the provisions of s. 28 of the IT Act. Therefore, the benefit of s. 80HHC is legitimately admissible to the assessee-company in a way similar to the benefits available to the direct exporters. Having regard to all the facts, provisions of law and the ratio of decisions of the apex Court, cited supra, we direct the AO to allow benefit under s. 80HHC to the assessee-company on export benefits received in the shape of duty draw-back, cash assistance and profit on sale of replenishment licences received on exports made as per orders received from the

export house.

6. The assessee has also challenged the computation of the claim under s. 80HHC, otherwise allowable and in support reliance is placed on the Tribunal's decision in the case of A-One Cycle Ltd. vs. Asstt. CIT (supra).

6.1. On hearing the rival parties on the issue we would hold that the computation of claim under s. 80HHC would now materially undergo change in view of the finding given by us above. The question of computation is therefore, left to the AO. We, therefore, direct the AO to compute the claim of the assessee under s. 80HHC in view of the finding given by us, aforesaid Tribunal's decision and the relevant provisions of s.

80HHC of the IT Act, of course, after affording due opportunity of being heard to the assessee-company.

7. In the result, assessee's appeal is treated to have been allowed as indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com