Asstt. Cit Vs. Marketeers

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SooperKanoon Citation : sooperkanoon.com/72075

Court : Income Tax Appellate Tribunal ITAT Amritsar

Decided On : Apr-17-2002

Reported in : (2004)91TTJ(Asr.)708

Appellant : Asstt. Cit

Respondent : Marketeers

Judgement :

This appeal by the revenue and the C.O. by the assessee are directed against the order of the Commissioner (Appeals), Jalandhar, dated 16-11-1994, relating to assessment year 1991-92.

The only affective ground raised by the department in this appeal, reads as under : "1. That on the facts and in the circumstances of the case, the learned Commissioner (Appeals) has erred in directing the assessing officer to recompute the deduction under section 80HHC after including the interest of Rs. 1,63,800 on FDRs with business income of the assessee." "1. The Commissioner (Appeals) has rightly directed the Assistant Commissioner to recompute the deduction under section 80HHC including interest income received by the assessee for a sum of Rs. 1,63,800. The order of the Commissioner (Appeals) be upheld.2. The assessee craves leave to add, amend, alter or delete any of the grounds of cross-objections before or at the time of hearing." After hearing the learned representatives of both the parties, we find that the issue is squarely covered in favour of the assessee and against the revenue by the decision of this Bench of the Tribunal in ITA No. 45/Asr/1988 and ITA No. 208/Asr/1989 in the case of M/s

Hansa Exports Corporation v. IAC and Dy. CIT v. Hansa Export Corporation order dated 24-5-1993, relating to assessment year 1987-88. While deciding the similar issue, the Tribunal vide para 8 of its order has held as under : "8. The interpretation given by the learned Commissioner (Appeals) to section 80HHC is in accordance with the interpretation given by the CBDT, who clarified in Circular No. 564, dated 5-7-1990, as reproduced in (1990) 184 ITR 137 (St). This is also amply clear from the fact that section 80HHC was amended by, Finance Act (No. 2) Act,. 1991, by inserting Expln. (baa) with effect from 1-4-1982, which is held to be applicable to assessment year 1992-93 and subsequent assessment years, according to which any receipt by way of brokerage, commission, interest, rent charges or any of a similar nature is to be excluded from the 'profits and gains of business or profession for the purpose of working out deduction under section 80HHC. As far as assessment year under consideration is concerned, which is assessment year 1987-88, since the interest as well as the miscellaneous income forms part of 'profits and gains of business or profession' of the assessee, the learned Commissioner (Appeals) was justified in directing that these should have been included in the profit and gains derived from the business for working out deduction under section 80HHC." Recently, the Hon'ble jurisdictional High Court has decided a similar issue in favour of the assessee and against the revenue., The judgment is reported in the case of CIT v. Isher Dass Mahajan & Sons (2002) 253 ITR 284 (P&H), wherein it has been held that : "The addition of clause (baa) to the Explanation to section 80HHC of the Income Tax Act, 1961, is indicative of the legislative intent to exclude income on account of interest and rent, etc. from the benefit under section 80HHC of the Income Tax Act with effect from 1-4-1992, only." In other words, the said Explanation is not applicable in earlier years. Respectfully following the decision of the jurisdictional High Court in the case of CIT v. Isher Dass Mahajan & Sons (supra), we do not find any merit in the appeal of the revenue and accordingly the same is dismissed.

As regards the C.O., it seems that the assessee has filed the C.O.merely in support of the order of the learned Commissioner (Appeals).

In fact, he has not asked for specific relief in the C.O.In that view of the matter, the C.O. filed by the assessee also becomes infructuous.

In the result, the appeal of the department as well as C.O. by the assessee are dismissed.