Cwt Vs. Kil Kothagiri Tea and Coffee Estate Co. Ltd.

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Court : Kerala

Decided On : Jun-14-2004

Reported in : [2004]140TAXMAN89(Ker)

Appeal No. : IT. Reference No. 179 of 1997 & I.T. Appeal Nos. 134, 143 & 150 of 2001 14 June 2004

Appellant : Cwt

Respondent : Kil Kothagiri Tea and Coffee Estate Co. Ltd.

Advocate for Pet/Ap. : P.K.R. Menon and George K. George, *for the Revenue* P. Balachandran and Smt. Preetha S. Nair, *for the Assessee*

Judgement :

Sankarasubban, J.

In all the above cases, the assessee is the same, namely, the Kil Kothagiri Tea & Produce Co. Ltd. While ITR No. 179 of 1997 deals with the assessment year 1987-88, the other three cases relate to the assessment years 1988-89, 1989-90 and 1990-91. In ITR No. 179 of 1997, the reference is at the instance of the assessee. In all the other three cases, the appeal is filed by the department.

2. In ITR No. 179 of 1997, the Income Tax Appellate Tribunal took the view that under section 32AB of the Income Tax Act (hereinafter referred to as the Act) for

the purpose of deduction of 20% profit, only the income from business or profession should be taken into account, while in the other three cases, the Tribunal has taken up opposite view and held that any income which is included in the profit and loss account under Parts II and III of Schedule VI to the Companies Act has to be taken into account. Thus the decision of the Tribunal in ITR No. 179 of 1997 conflicts with the decisions in the other three cases. In ITR No. 179 of 1997, the question of law referred is as follows : 'Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the profits of eligible business computed in accordance with the requirements of Parts II and III of Schedule VI to the Companies Act, 1956 should be reduced by income from coffee, income from investments, interest and rent for the purpose of computing the deduction allowable under sub-clause (ii) of clause (b) to section 32AB(ii)' So far as the appeals are concerned, the questions of law raised before this court are as follows :

' 1. Whether, on the facts and in the circumstances of the case do items of income like rent, interest, agricultural income, etc., are qualified to be considered as an integral part of the profits for the purpose of deduction under section 32AB of the Income Tax Act?

2. Whether, on the facts and in the circumstances of the case and in the light of the definition of 'eligible business' obtained in section 32AB is not the order of the assessing officer excluding certain items of income for the purpose of determining the benefit under section 32AB in accordance with law

3. Whether, on the facts and in the circumstances of the case the Tribunal is right in directing to allow the deduction under section 32AB without excluding the income from coffee, produce investments agriculture and interest income and rent?'

3. Under section 32AB(ii) of the Income Tax Act, a sum equal to 20% of the profits of eligible business or profession as computed in the accounts of the assessee audited in accordance with sub-section, will be allowed as deduction. 'Eligible business' is defined under sub-section (2)(1) of section 32AB of the Income Tax Act. it is as follows :

'(i) eligible business or profession shall mean business or profession, other than

(a) the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule carried on by an industrial undertaking, which is not a small scale industrial undertaking as defined in section 80HHA;

(b) the business of leasing or hiring of machinery or plant to an industrial undertaking, other than a small scale industrial undertaking as defined in section 80HHA, engaged in the business of construction, manufacture or production of any article or thing specified in the Eleventh Schedule.'

Section 32AB(3) of the Income Tax Act states that :

'(3) The profits of eligible business or profession of an assessee for the purposes of sub-section (1) shall,

(a) in a case where separate accounts in respect of such eligible business or profession are maintained, be an amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provisions of sub-section (1) of section 32 from the amounts of profits computed in accordance with the requirements of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956), as increased by the aggregate of'

So far as the department is concerned, its contention is that in computing the profits of eligible business, the only income from profession or business as stated in the Income Tax Act can be taken into consideration. On the other hand, learned counsel for the assessee submits that in granting concession of 20% profit, every head of profit which is stated under Parts II and III of Schedule VI to the Companies Act shall be taken into consideration. The assessee claimed deduction under section 32AB of the Income Tax Act on its entire income including the income from coffee, income from investments, interest and also rent on buildings. Learned counsel submits that even though the source of the amount for deposit or purchase of the new machinery should come from income chargeable to tax under the head 'profits and gains of business', the definition of eligible business or

profession' is in a sense wide. Deduction is allowable on an amount equal to 2096 of the profits of the eligible business. Clause (h) of section 32AB(2) coins the definition of the expression 'eligible business or profession' for the purpose of the assessment years 1987-88 to 1990-91 so as to mean and include business or profession but does not include the business or profession coming in sub-clauses (a) and (b). According to the counsel, dividend from Companies, interest on deposits and rental income from properties are all incomes credited in the profit and loss account and so all those items should be considered as part of the profit of the Company. Further the income from coffee also was credited to the profit and loss account prepared in accordance with the requirement of Parts II and III of the Sixth Schedule to the Companies Act and so that income also should be considered as part of the eligible profit.

4. According to the assessee, in calculating the profits all the profits shown under the Companies Act should be taken into consideration. On the other hand, learned counsel for the department submitted that so far as the income is concerned, only the profit and gains from profession can be taken into account in not the profit and gains of the Company as a whole should be taken into account. According to them, mention made in clause (iii) of section 32AB of the Act is that the income shown as profession or business in the balance sheet can be taken into consideration and not all the other.

5. This court had occasion to interpret the profits of eligible business under section 32AB of the Income Tax Act. In CIT v. Apollo Tyres Ltd : [1999]237ITR706(Ker) , it is stated thus :

'Section 32AB provides that where an assessee, whose total income includes income chargeable to tax under the head profits and gains of business or profession, has, out of such income utilised any amount during the previous year for the purchase of new machinery or plant, the assessee shall be allowed a deduction of a sum equal to twenty per cent of the profits of eligible business as computed in the account of the assessee audited in accordance with sub-section (5). A reading of section 32AB and the Circular No. 461 dated 9-7-1986 makes it clear that the benefit of the said section will be available to all business income

derived from whatever sources other than those mentioned in sub-clauses (a) and (b) of clause (i) of sub-section

(2) of the said section. Sub-section

(1) of section 32AB itself contemplates that the total income of an assessee consist of other incomes also. When it comes to the deduction part, such a distinction is not made. The deduction available under the said subsection is an amount equal to twenty per cent of the profits of the eligible business. So, what is required for fixing the quantum of deduction is to find out the profits of eligible business from out of the total income. By virtue of the definition contained in clause (i) of sub-section

(2) of section 32AB, eligible business means business other than those provided in sub-clauses (a) and (b) thereof. Admittedly, the activity of purchase and sale of units of Unit Trust of India does not fall under the said two sub-clauses. Therefore, it has to be held that the business of buying and selling of units of the Unit Trust of India is an eligible business and the profits thereof qualifies for inclusion for determining the quantum of deduction available under the said sub-section. Sub-section

(3) of section 32AB is attracted only in a case where the assessees total income consists of income from eligible business as well as non-eligible business.' (p. 711)

The above case was taken up in appeal before the Supreme Court in CIT v. M.L. Mahajan : [2002]255ITR272(SC) . In the above decision, the Supreme Court held thus : 'the business of the assessee-company of buying and selling of units was an 'eligible business' as contemplated under section 32AB, and the income earned from its investment in the units of the UTI had to be included in computing the profits of 'eligible business' under section 32AB. The fact that the income was shown under a different head of income did not deprive the assessee-company of the benefit under section 32AB so long as the investment in the units was in the course of its 'eligible business'.

6. Before the Madras High Court, a similar question arose in the decision reported in CIT v. Tamil Nadu Mercantile Bank Ltd. : [2002]255ITR205(Mad) . It was held thus :

'Section 32AB of the Income Tax Act, 1961, provides a benefit to the assessee. The benefit so provided is an incentive to an assessee, who deposits any amount in a development bank before the expiry of six months from the end of the previous year or before furnishing the return of his income, whichever is earlier. That incentive is also available if the assessee utilises any amount during the previous year for the purchase of any new ship, new aircraft, new machinery or plant, without depositing any amount in the deposit account with a development bank. The benefit is given by way of deduction, such deduction being allowed before the loss, if any, brought forward from earlier years, is set off under section 72 of the Income Tax Act, 1961 (1) of a sum equal to the amount or the aggregate of the amounts, so deposited and any amount so utilised; or (ii) of a sum equal to twenty per cent of the profits of eligible business or profession as computed in the accounts of the assessee audited in accordance with sub-section (5), whichever is less. The manner in which the profits of the business should be computed is dealt with in sub-section (3), which requires computation to be in accordance with the requirement of Parts II and III of the Schedule VI to the Companies Act, 1956. The computation so made is to be increased by the aggregate of the amount set out in sub-clauses (i) to (vii), therein. It is thereafter to be reduced by any amount or amounts withdrawn from reserves or provisions if such amounts are credited to the profit and loss account. It is thus amply clear that it is the computation made in accordance with sub-section (3) of section 32AB which is to be the basis for determining the twenty per cent of the profits of the business for the purpose of section 32AB(1)(ii). The computation of income under the provisions of the Income Tax Act is of no relevance for the purpose of determining the extent of benefit under section 32AB (1) or (2)....' (p. 205)

7. In the light of the above decision, we are of the view that the income from eligible business including the income from all the sources except those which are exempted has to be taken into consideration. In the above view every income which is computed under the Companies Act has to be taken into consideration.

Hence, so far as ITR 179 of 1997 is concerned, the question of law is answered in the negative and in favour of the assessee. So far as the other three cases are concerned, we dismiss the same.