

Pathi Designs Vs. Dy. Cit

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Court : Income Tax Appellate Tribunal ITAT

Decided On : Sep-30-2004

Reported in : (2005)2SOT408(Bang.)

Appellant : Pathi Designs

Respondent : Dy. Cit

Judgement :

These two appeals are preferred by the assessee for different assessment years challenging the order of the learned CIT(A) dated 1-10-2002 on the following grounds: (i) That the learned CIT(A) erred in upholding the reduction of rebate claimed under section 80HHC by considering the net interest payment and further erred in upholding the addition without appreciating the fact that the borrowed funds for the business were lent as and when funds were not required and in order to reduce the cost of interest and as such, the net interest was accounted in profit and loss account.

(ii) That the learned CIT(A) ought to have considered the decision of the Special Bench of Delhi Tribunal in International Research Park Laboratories Ltd. v. Asst. CIT (1994) 50 ITD 37 (Del-Trib) and also the decision in A.M. Shamsudeen v. Union of India (2000) 244 ITR 266 (Mad).

(iii) That the learned CIT(A) ought to have considered that the assessing officer had no ground to reopen the assessment and to disturb the rebate claimed which is legitimate and in accordance with law. Mere change of opinion do not valid

ground to reopen the assessment as held by Supreme Court.

(iv) That the learned CIT(A) erred in confirming the charge of interest under sections 234B and 234C which is charged and based till the date of reassessment.

The assessee declared an income of Rs. 3,57,950 in its return filed on 31-10-1997. The case was reopened under section 148 to which the authorised representative of the assessee appeared and produced the details before the assessing officer along with books of account and the same were verified. The assessee debited the net interest in profit and loss account. As per the assessing officer, the assessee has claimed excess deduction under section 80HHC. The interest under sections 234B and 234C was also levied by the assessing officer. The assessee carried the same unsuccessfully in appeal before the first appellate authority. Now the assessee is in further appeal before the Tribunal.

At the time of hearing we have heard Shri A.V. Vishnu Bhat, learned CA for the assessee and Shri Y. Rajendra, learned senior representative for the revenue. During argument, the learned representative for the assessee invited out attention to the fact that the first appellate authority has not expressed any opinion on the issue of change of opinion. However, the learned counsel has not pressed this ground. It was also contended that the assessee is having only one business and the accounts were maintained systematically. He further contended that the learned first appellate authority travelled beyond his jurisdiction by saying that nexus is not established. On the other hand, Mr.

Rajender the learned Senior Departmental Representative in nutshell supported the orders of the first appellate authority and placed reliance upon the decision of the Hon'ble Special Bench of the Delhi Tribunal pronounced in *Lalsons Enterprises v. Dy. CIT (2004) 89 ITD 25 (Del-Trib)*, which was again controverted by the learned counsel for the assessee by arguing that the amount was borrowed for business purpose only and the assessee is having no other business. We have considered the rival contentions.

On perusal of record and after hearing the rival contention, we have found that the assessing officer deducted 90 per cent of the gross interest received as against

the claim of the assessee to deduct 90 per cent of net interest. Now the question to be adjudicated is whether 90 per cent of gross interest received or 90 per cent of net interest is to be deducted while computing the profit of business as per Explanation (baa) to section 80HHC. In the taxing statutes, the golden rule of interpretation is that where two reasonable views are possible the view in favour of the assessee/tax payer must be adopted is a simple rule when confronted with the various decisions of the Hon'ble High Courts, but that rule may not always work effectively because every aspect is to be examined in the light of various views expressed by the Hon'ble High Courts and also to take guidance from them with utmost respect. But even so, such an examination can cover only a limited sphere in a spirit of judicial adventurism. In the light of facts of cash case, the reasons given for making the choice and the language used should not be adventuristic or attempt to cross the frontiers that are never to be crossed. However, taking guidance from the judgments and giving cogent and acceptable reasons, empowered with judicial dignity, discipline and decorum and without crossing the well-demarcated frontiers, we are supposed to decide the issue in the light of the facts which are present in the case before us.

According to Circular No. 621, explaining the introduction of Explanation (baa) with effect from 1-4-1992, the formula that existed before that date for computing the export profits on which deduction was to be allowed gave a distorted figure "when receipt like interest, commissions, etc., which do not have element of turnover are included in the profits and loss account" and it was with a view to remove the distortion that it was clarified through the Explanation that 'profits of the business' for the purpose of section 80HHC will not include receipts by way of brokerage, commission, interest, rent, charges or another receipt of a similar nature. As some expenditure might be incurred in earning these incomes, which in the generality of cases is part of common expenses, ad hoc 10 per cent deduction from such incomes is provided to account for these expenses". The ad hoc 10 per cent deduction, given indirectly by saying that only 90 per cent of the receipts will be excluded from the profits of the business as computed, instead of the entire receipts, has been given for common expenses, according to the circular. Such common expenses are generally the indirect or fixed expenses which every businessman has to incur to continue in business, such as salaries and wages,

other administrative expenses and so on. The legislature has fixed on ad hoc percentage as expenditure incurred to earn the receipts, can it be further argued that only the net income which means gross receipt by way of commission, interest, rent etc. minus all the expenditure which has a nexus with the receipt, can be excluded from the 'profits of the business' as computed under the head 'business' The word 'receipts' used in the clause does not refer to gross receipts merely because the word 'net' is not used before it; not does it mean as was suggested, to denote what 'actually comes in' or what is 'actually received by the assessee'. This is because of the controlling words, imposing a qualification or condition, which follow, to the effect that the receipts should be those that have been included in the business profits. Only the net income arising out of the receipts is included on the parity of reasoning the amount of 'receipts' included in the profits of business as computed under the Act is the gross receipts as reduced by the expenditure incurred in relation thereto. The word 'profits' conveys the same meaning as 'net income' i.e., 'gross receipts minus expenses having a nexus'. The principle of netting is pressed into service not on the basis of the theory of real income but on the basis of the computation provisions relating to the business income. If the interest received is found to have a nexus with the business, still it remains to be excluded from the profits of the business by virtue of Explanation (baa)(1), but the claim is that the quantum of such interest income to be excluded must be determined in accordance with the computation provisions relating to business by allowing expenditure by way of interest. The word 'profits' itself implies the principle of netting (gross receipts minus expenditure) and, therefore, there is no further need to incorporate the principle in clause (1) of the Explanation. The sum referred to in section 28(iiib) is the "cash assistance (by whatever name called) received or receivable.....". For the purpose of applying Explanation (baa) below sub-section (4B) of section 80HHC and while reducing 90 per cent of the receipt by way of interest from the profits of the business, it is only the 90 per cent of the net interest remaining after allowing a set-off of interest paid, which has a nexus with the interest received, that can be reduced and not 90 per cent of the gross interest. In the present case before us, the learned counsel for the assessee that the assessee is having no other business and the accounts are systematically maintained and the learned CIT(A) has travelled beyond his jurisdiction by saying

that nexus is not established that the amount was borrowed for business purpose.

The Bangalore Benches of the Tribunal in the case of Pathi Prints (IT Appeal No. 1131 (Bang) of 1998), wherein both of us are the signatories to the order, directed the assessing officer to exclude 90 per cent of the net interest receipts, vide its order dated 3-2-2003. There is also a direct decision of the Special Bench of the Delhi Bench of the Tribunal in the case of Lalsons Enterprises v. Dy. CIT (2004) 89 ITD 25 (Del-Trib). The question before the Hon'ble Special Bench was whether for the purpose of applying Explanation (baa) below section 80HHC (4B) while reducing 90 per cent of receipt by way of interest from profits of business is gross or net. It was held that it is only 90 per cent of net interest remaining after allowing a set-off of interest paid which has a nexus with interest received, that can be reduced and not 90 per cent of gross interest.

In the light of the decision of the Special Bench (supra), the assessing officer is directed to reduce 90 per cent of net interest remaining after allowing a set-off of interest paid which has a nexus with the interest received and not 90 per cent of gross interest. The order of the learned first appellate authority is reversed to this extent in the light of the decision of the Hon'ble Special Bench in Lalsons Enterprises' case (supra).

As far as the issue of 'change of opinion' is concerned, the same was not pressed by the learned counsel for the assessee, so the same is dismissed as not pressed.

As far as the levy of interest under sections 234B and 234C is concerned, the same is mandatory in view of the Hon'ble Apex Court in the case of CIT v. Anjum M.H. Ghaswala (2001) 252 ITR 1 (SC).

In the result, both the appeals of the assessee are disposed of in the aforesaid manner.

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