

P and G Enterprises P. Ld. Vs. Dcit

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Nov-18-2004

Reported in : (2005)93ITD138(Delhi)

Judge : P Parikh, K Singhal

Appellant : P and G Enterprises P. Ld.

Respondent : Dcit

Judgement :

1. The main issue arising in this appeal relates to the interpretation of Clause (baa) of Explanation after Sub-section (4B) of Section 80HHC of Income-tax Act, 1961 (Act).

2. The assessee was engaged in the business of export of leather garments. Under the Duty Entitlement Pass Book Scheme (hereafter called DEPB Scheme), the assessee was entitled to certain credit against each export and against the same, it was entitled to import certain goods.

The duty payable thereon could be adjusted against such credit. In case, assessee was not interested in importing goods, it could transfer such credit to other exporter/importer engaged in the same line of business against cash receipts. The assessee, instead of importing goods, transferred the credits to other parties. The sum of Rs. 1,90,23,953/- was received by the assessee against transfer of such credits and the same was shown as business receipts Under

Section 28(iia) in the books of account for the year under consideration.

Accordingly, the assessee claimed deduction Under Section 80HHC in respect of business profits inclusive of the above sum. The AO, after considering the reply of assessee and various decisions, held the above receipts falling within the ambit of Section 28(iv) of the Act. While computing the deduction Under Section 80HHC, the AO excluded 90% of the above receipts, Award money of Rs. 13,500/- and duty drawback of Rs. 4,38,482/- in determining profits of business as per Clause (baa) of Explanation mentioned above. As a result thereof, the profits of business was worked out in negative profit i.e. loss of Rs. 52,86,947/- even after adjusting 90% of duty draw back under the proviso to Section 80HHC(3). Hence deduction Under Section 80HHC was denied.

3. The order of AO was challenged before the CIT(A). On the basis of arguments made on behalf of assessee, the following issues were identified and considered by the CIT(A): (ii) Whether DEPB is assessable as revenue receipt Under Section 28(iia) or Under Section 28(iv); (iii) Whether DEPB is a hundred per cent export receipt and does not fall in the category of incentives; (iv) Whether DEPB is a revenue receipt to be treated as other receipt as mentioned in explanation (baa) to Section 80HHC(4C); (v) Whether the receipt from DEPB would be treated as export incentives entitled for deduction under proviso to Section 80HHC(3).

(vi) Whether any loss computed under Sub-clause (a) (b) or (c) of Section 80HHC(3) should be reduced from the 90% of the proportionate export incentives as per proviso to Section 80HHC(3).

The findings recorded by the CIT(A) were (i) that DEPB receipts were in the nature of revenue receipts assessable as business receipts Under Section 28(iv) of the Act; (ii) that it was not derived from business of export though it was attributable to such business. Further, it could not be considered as export receipts since such receipt was not in the nature of convertible foreign exchange as part of sale proceeds of exported goods. Hence, it would be considered as any other receipt within the scope of Explanation (baa) to Section 80HHC; and (iii) that it could not be considered as export incentives for the purpose of the proviso to Section 80HHC(3). Hence, decision of ITAT in the case of Lalsons. 8.9 ITD 25(SB) would

not be applicable. Therefore, in case of loss computed Under Section 80HHC(3), no deduction was allowable. In view of these findings, the action of AO excluding 90% of DEPB receipts was upheld. Consequently, it was held that no deduction was allowable Under Section 80HHC since computation Under Section 80HHC(3) resulted in loss in as much as proviso became inapplicable in view of Supreme Court judgment in the case of M/s Ipca Labs, 266 ITR 521. He also held that interest income was rightly assessed as income from other sources.

Aggrieved by the same, the assessee is in further appeal before the Tribunal.

4. The learned counsel for the assessee, Mr. Aggarwal, has not challenged the finding of the CIT(A) that DEPB receipts were in the nature of revenue receipts chargeable to tax as business income Under Section 28(iv) of the Act, he has restricted his arguments to the effect that 90% of DEPB receipts could not be excluded while determining the profits of business under Explanation (baa) to Section 80HHC in as much as the legislature itself has not excluded receipts Under Section 28(iv) and restricted such exclusion to receipts falling Under Section 28(iia) to (iic) only. Proceeding further, it has been argued that the words "any other receipts of a similar nature" would refer to such receipts as brokerage, commission, interest, rent, charges etc and not otherwise. Hence, receipts Under Section 28(iv) cannot be excluded since such receipts cannot be considered in the nature of such items. On the other hand, the learned DR has strongly relied upon the order of CIT(A) by submitting that receipts Under Section 28(iv) would fall within the scope of the word "any other receipts of a similar nature" as these words are of widest amplitude and would, therefore, include any receipt other than the sale proceeds of exported goods in convertible foreign exchange. Regarding interest income, it was pleaded that it has been assessed as income from other sources and assessee has not been able to controvert such finding.

Consequently, such interest was rightly excluded from the profits of business. In reply, it was stated by the learned counsel for assessee that it is only the net interest that should be assessed and not the gross interest.

5. The submissions of both the parties have been considered carefully.

Before us, there is no dispute to the finding of CIT(A) that DEPB receipts are in the nature of revenue and business receipts chargeable to tax Under Section 28(iv) of the Act and consequently would form part of profits of business. The only question to be considered is whether 90% of such receipts can be excluded from the profits of business in view of Explanation (baa) to Section 80HHC(4B) for the purpose of computing deduction Under Section 80HHC(3).

6. The aforesaid Clause (baa) which was inserted in the Explanation to Section 80HHC(4B) w.e.f. 1.4.92 by Finance (No. 2) Act of 1991 reads as under: "(baa) 'Profits of the business' means (he profits of the business as computed under the head "Profits and gains of business or profession" as reduced by- : (1) ninety percent of any sum referred to in Clauses (iiia), (iiib) and (iiic) of Section 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 At this stage, it would be appropriate to mention that upto Asstt. Year 1991-92, the deduction Under Section 80HHC was allowed with reference to the profits of business as computed under the head "Profits and Gains of business or Profession". Hence, if any receipt was assessed as business income under the head "Profits & Gains of Business of Profession", then assessee was entitled to deduction Under Section 80HHC. This led to great litigation between the assessee and the department. In order to resolve the controversy, the legislature defined "Profits of business" in a different manner by introducing Clause (baa) in the Explanation to Section 80HHC(4A) and simultaneously amended provisions of Sub-section (3) of Section 80HHC by Finance (No.2) Act of 1991. So, the legislature in its own wisdom excluded certain receipts from the ambit of profits of business as computed under the head "Profits and Gains of business of profession". This background is to be kept in mind while defining the scope of Clause (baa).

7. Let us now examine the scope of the above provision. The bare perusal of the same shows that the legislature has excluded 90% of certain items under two categories i.e. (i) 'any sum referred to in Clauses (iiia); (iiib) and (iiic) of Section 28', and (2) 'of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature'. In the former category, it has used the word 'sum' while in the second category, it has used the word 'receipt'. In view

of such distinction, we are of the view that the words 'any other receipts of a similar nature' would not apply to the first category.

8. At this stage, we would like to mention that at the time when the legislature inserted Clause (baa) in the Explanation to Section 80HHC(4B), Clause (iv) of Section 28 was already on the Statute book in addition to Clauses (iiia) to (iiic) of Section 28. That clearly means that non inclusion of Clause (iv) of Section 28 in the first category referred to above was deliberate one on the part of legislature. Had the legislature; intended to exclude 90% of sum referred to in Section 28(iv), it could easily include the same in the aforesaid first category. Thus, deliberate omission to include Section 28(iv) in the first category clearly suggests mat the legislature never intended to exclude 90% of the aforesaid sum.

9. Now, the only question which remains to be considered is whether Clause (iv) of Section 28 can be included within the ambit of the words falling in the second category. As already noted, the legislature has used the word 'receipt' at two places in the second category.

Therefore, considering the rule of Ejusdum Generis, the words "or any other receipt of a similar nature" would take its colour from the words "brokerage, commission, interest, rent, charges" etc. The rule of Ejusdum Generis is well known principle for construction of a statute.

According to "Principle of Statutory Interpretations" by Shri G.P.Singh, it has been defined as - "When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified." The above principle has been recognized by the apex court in various cases mentioned by the author at page 383 of Eighth Edition. Reference can be made to one of those cases i.e Kavalappara Kottanathil Kochuni v. State of Madras, AIR 1960 SC 1080 at page 1103. Coming to the present case, the perusal of Clause (baa) of Explanation to Section 80HHC(4B) reveals that the specific words refer to receipts which are by way of compensation for either services rendered or for use of the property. Therefore, the words "any other receipts of a similar nature" would include only such receipts which can be considered as compensation for the services rendered or for use of property and,

therefore, its scope cannot be extended to receipts in respect of sale of duty entitlement accrued to assessee on account of export. Hence, DEPB receipts falling Under Section 28(iv) would not fall within the ambit of the words "any other receipts of a similar nature". Even otherwise, an item which has been deliberately not included in the first category by the legislature, cannot be said to be included in the second category by implication. If the contention of Id. DR is accepted then the very purpose of the legislature to exclude the receipts Under Section 28(iv) from the first category would be defeated.

10. In view of the above discussion, it is held that 90% of DEPB receipts assessable Under Section 28(iv) cannot be excluded from the profits of business as computed under the head "Profits and Gains of business or profession" for the purpose of computing profits of business under Clause (baa) of the Explanation to Section 80HHC(4B).

Consequently, order of CIT(A) is modified to that extent and AO is directed to recompute the deduction Under Section 80HHC in accordance with our finding.

11. Regarding the award money, the learned counsel for assessee has not seriously challenged the order of the CIT(A). Hence, no interference is called for in the order of CIT(A) on that count.

12. Regarding interest income also, no serious arguments were made by learned counsel for assessee. Such income has been assessed as income from other sources and no argument was made to challenge such finding.

The only argument was that deduction on account of interest on borrowed funds be allowed Under Section 57(iii). This contention of assessee cannot be accepted as there is no material available before us in this regard. Even otherwise, interest on borrowed funds stands allowed Under Section 36(1)(iii), if any, and no purpose would be served in shifting of such allowance from one head to the other. Hence, the order of CIT(A) is upheld on this count also.