

Cit Vs. Venus Electricals

Cit Vs. Venus Electricals

SooperKanoon Citation : sooperkanoon.com/744121

Court : Gujarat

Decided On : Mar-10-2008

Reported in : [2008]304ITR347(Guj)

Judge : D.A. Mehta and; Z.K. Saiyed, JJ.

Appellant : Cit

Respondent : Venus Electricals

Judgement :

D.A. Mehta, J.

1. The Tribunal, Ahmedabad Bench 'A' has referred the following two questions under Section 256(1) of the Income Tax Act, 1961, at the instance of the revenue:

1. RA No. 572/Ahd/1996 Asst yr. 1989-90:

Whether the Tribunal is right in law and on facts in holding that the assessee is entitled to relief under Section 80I of the rate of 20 per cent of the profit without allowing deduction under Section 80HH ?

2. RA No. 573/Ahd/1996 Asst. yr. 1989-90: Whether the Tribunal is right in law and on facts in confirming the view taken by the Commissioner (Appeals) holding that interest received from bank, insurance etc. should be considered as a part of business income for computing the deduction under Section 80HH of the Act ?

2. The two questions, though relatable to the same assessment year i.e., 1989-90, arise out of two cross-appeals before the Tribunal which were decided by the Tribunal vide common order dated 23-8-1996.

3. The relevant accounting period for the assessment year in question is financial year ended on 31-3-1989. The assessee, a registered firm, claimed deduction under Sections 80HH and 80I of the Act on gross total income of Rs. 62,44,000. The assessing officer partially disallowed the relief under Section 80I of the Act by first of all computing deduction under Section 80HH of the Act and deducting the same from the figure of profits for the purposes of computing the relief under Section 80I of the Act. The assessee did not succeed in its appeal before Commissioner (Appeals) and hence, preferred second appeal before the Tribunal. The Tribunal allowed the appeal of the assessee on this count.

4. Mr. M.R. Bhatt learned senior standing counsel appearing for the applicant-Revenue, has been heard. Though served there is no appearance on behalf of the respondent assessee. Hence, at the request of the court, Mr. Bhatt has very fairly invited attention to the decision of this Court rendered in case of CIT v. Amod Stamping : [2005]274ITR176(Guj) which view has since been confirmed by the Apex Court for different reasons in the case of A.M. Moosa v. CIT .

5. Hence, it is not necessary to set out the facts and contentions in detail. For the reasons stated in the judgment rendered on 28-1-2004 in the case of CIT v. Amod Stamping (supra) as well as in case of CIT v. Sidhpur Isabgul Processing Co. Ltd. : [2001]252ITR777(Guj) , question No. 1 referred in relation to relief under Section 80I of the Act, is answered in the affirmative i.e., in favour of the assessee and against the revenue.

6. In relation to question No. 2, the question itself shows that there are two types of interests stated to have been received from bank and insurance company. The assessing officer has stated that the interest income of Rs. 3,19,850 is interest received from the bank on investment by way of fixed deposits and the character of such receipts cannot undergo change. Therefore, the said income cannot be stated to be profits derived from industrial undertaking so as to become eligible for computing deduction under Section 80HH of the Act. In the first appeal,

Commissioner (Appeals) has recorded that the interest receipt was on account of margin money deposit against letters of credit in favour of foreign suppliers. Thereafter, Commissioner (Appeals) has granted relief by holding that the amount of Rs. 3,19,850 is liable to be included in the net profits for the purposes of deduction under Section 80HH of the Act. This finding of Commissioner (Appeals) has been confirmed by the Tribunal.

7. Insofar as. income received by the assessee from the insurance company is concerned, the assessing officer has merely said that the assessee is not eligible for deduction under Sections 80HH and 80I of the Act on the income of Rs. 19,007. In relation to this sum there is no finding either by Commissioner (Appeals) or the Tribunal.

8. Mr. M.R. Bhatt has contended that the finding of the Tribunal in relation to both the items cannot be sustained in law in light of the ratio of the Apex Court decision in case of Pandian Chemicals Ltd. v. CIT : [2003]262ITR278(SC) .

9. Considering the state of facts recorded in the orders of the assessing officer, Commissioner (Appeals) and the Tribunal, it is not possible to answer the question even by applying the ratio of the apex court decision in case of Pandian Chemicals Ltd. v. CIT (supra). In the result, the second question is left unanswered, leaving it open to the Tribunal to adjust its decision in accordance with law enunciated by the apex Court, if applicable on facts of the case.

10. Accordingly, the reference stands disposed of to the aforesaid extent. There shall be no order as to costs.