

Bajaj Auto Ltd. Vs. Dcit, Sr-43

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : May-12-2006

Reported in : (2007)105ITD287(Mum.)

Judge : O Narayanan, S Chowla

Appellant : Bajaj Auto Ltd.

Respondent : Dcit, Sr-43

Judgement :

1. In these three appeals, one appeal in ITA No. 440/Bom/1991 is filed by the assessee. The other two appeals are filed by the Revenue. The common assessment year for all the three appeals is 1988-89. The appeal filed by the assessee and the appeal filed by the Revenue in ITA No.5523/Bom/1991 are cross appeals arising out of the assessment completed Under Section 143(3). These appeals are directed against the order of the CIT(A), Cent.II at Bombay dated 06-03-1991. The second appeal filed by the Revenue in ITA No. II45/Bom/1992 is directed against the order of rectification passed by the CIT(A) Under Section 154 of the Income-tax Act, 1961.

(i) The first ground raised by the assessee company is against the addition of Rs. 50,418 made by the assessing authority against the sundry credit balances written back in the accounts of the assessee.

This issue was considered by ITAT, Mumbai Bench "D" in assessee's own case for the assessment year 1987-88 through their order dated 31-12-2002 passed in ITA No. 49/Bom/91. After considering the facts of the case in the light of the decisions of the Supreme Court in CIT v. Sagauli Sugar Works Pvt Ltd 236 ITR 518 and CIT v. TV Sundaram Iyengar & Sons Ltd 222 ITR 344, the Tribunal found that there are a number of items which were written back by the assessee which call for verification so as to decide which of the above decision should apply in respect of those items. Accordingly, the Tribunal has set aside the issue to the assessing officer for re-examining it in the light of the decisions of the Supreme Court cited above. For this year also the situation is the same.

Therefore, following the order of the Tribunal for the immediately preceding assessment year 1987-88 we remit back the issue to the assessing officer for considering it afresh as directed by the Tribunal for the assessment year 1987-88.

(ii) The second issue raised in the appeal is regarding inclusion of excise duty in the total turnover, for the purpose of Section 80HHC. This issue has already been decided by the Bombay High Court in assessee's favour in the case of Sudarshan Chemicals Industries Ltd 245 ITR 769. Therefore, we direct the assessing officer to exclude the central excise duty element from the computation of total turnover.

(iii) The third issue relates to the deductions claimed by the assessee Under Section 80HH and 80I, in respect of the two wheeler unit at Waluj, Aurangabad. Two grounds are raised by the assessee under this issue. The first ground is that the profits eligible for the deductions Under Section 80HH and 80I should be computed excluding the depreciation admissible Under Section 32. The second ground is that the deduction should be available before reducing the deduction admissible Under Section 32AB. (a) Second ground regarding the deduction of Section 32AB has already been decided by the Tribunal while dealing with the appeal filed by the Revenue for the immediately preceding assessment year 1987-88. The ITAT, Mumbai Bench "D" in its order dated 31-12-2002 passed in ITA No. 1101/Bom/1991 along with ITA No. 49/Bom/1991 has held that the deposits made by the assessee Under Section 32AB could not be deducted for computing the profits of the motor cycle division, for the purpose of working out the deductions

available Under Section 80HH and 80I. The ground raised by the Revenue in the said appeal was that the CIT(A) has erred in holding that the deposits Under Section 32AB could not be deducted while computing the profits of the motor cycle division. The Tribunal found that the issue has already been decided by Delhi Bench of the TTAT in the case of Phoenix Overseas Ltd v. ACIT 56 ITD 274 and following the said decision, dismissed the ground of the Revenue and held that the contention of the assessee was rightly upheld by the CIT(A). In the light of the above decisions, we find that the contention of the assessee needs to be accepted and accordingly we direct the assessing authority to work out the profit of two wheeler unit at Waluj, Aurangabad for the purpose of deductions Under Section 80HH and 80I without deducting therefrom the deposits made by the assessee Under Section 32AB of the Act. This ground is, therefore, allowed.

(b) The other ground raised by the assessee and relating to the issue of deductions Under Sections 80HH and 80I is whether depreciation allowance need to be deducted from the profits of the two wheeler unit, for working out the eligible profits or not. The contention of the assessee is that in view of the amendment to Section 32 and on introduction of the concept of "block of assets", depreciation has to be computed with reference to the undertaking as a whole and not to be computed separately for each unit of the undertaking.

(c) Shri SE Dastur, the learned senior counsel along with PJ Pardiwalla appearing for the assessee argued on this point at length.

1. The learned senior counsel explained that the two wheeler unit of the assessee at Waluj, Aurangabad is eligible for deductions Under Section 80HH and 80I. Even though it is working as a separate unit it forms part of the assessee company and, therefore, the entire assets owned and operated by the assessee company should fall under the respective block of assets maintained by the company as a whole and for purpose of computing the taxable income of the assessee company, the depreciation allowance Under Section 32 has to be worked out on the basis of that consolidated block of assets governing the entire assets owned and operated by the assessee company. Therefore, it is the contention of the learned senior counsel that the value of the assets deployed in the two wheeler unit cannot be

taken separately out of the total block of assets of the assessee company and as a result, the depreciation attributable to the assets deployed in the two wheeler unit could not be worked out and because of this impossibility, no depreciation could be deducted while computing the profits of the two wheeler unit for the purpose of Sections 80HH and 80I. 2. The learned senior counsel explained that he has no difference of opinion with the proposition that deductions Under Section 80HH and 80I and for that matter, deductions under Chapter VIA have to be granted on the profits computed in accordance with the provisions of law. He continued that it means the profits have to be worked out after giving deduction for the eligible depreciation allowance Under Section 32. He agreed that this is the position in law. He, therefore, agreed that even in respect of the two wheeler unit of the assessee which is entitled for the benefit of Sections 80HH and 80I, the eligible profits need to be worked out after giving deduction for the depreciation allowance.

3. But the learned senior counsel explained that in spite of the above legal position, it is impossible on the part of the assessee and on the part of the assessing officer to work out the depreciation allowance attributable to the two wheeler unit, independently. He explained that it is because the assets deployed in the two wheeler unit is part and parcel of the block of assets maintained by the assessee company as a whole for the entire assets owned and operated by the assessee company. All the assets used in different units of the assessee company are brought under a composite block of assets and depreciation has to be allowed on that composite block of assets. It is not possible to single out the value of the assets deployed in the two wheeler unit of the assessee, for the purpose of working out the individual depreciation allowance attributable to the two wheeler unit.

4. The learned senior counsel explained this position on the basis of certain examples, narrated in the course of hearing. He explained that whenever new assets are acquired, the value is added to the prevailing value available in the respective block of assets. When assets are sold by the assessee company, the sale proceeds are as such credited to the respective block of assets. There is no individual treatment on acquisition or disposal of assets. The acquisition cost as well as the disposal proceeds both are reflected under the respective block of

assets without any individual identity. The differential value available under respective block of assets as on the last day of the relevant previous year is the amount available for computing the eligible depreciation. In this scenario, it is possible that even though physical assets are available for deployment in the business of the assessee, the value reflected under the respective block of assets may be a negative value because of the sale proceeds on some assets credited under that block. In such cases no depreciation could be worked out even though assets falling under that block might be used for the business carried on by the assessee. The learned senior counsel, therefore, explained that there is no individual parity between assets and its value. The total value of the assets is immersed as a whole in the block of assets.

5. The learned senior counsel submitted that in the circumstances, it is not possible to know exactly what is the written down value of the block of assets deployed in the two wheeler unit of the assessee even though assets are used for the business of the two wheeler unit, the respective value of the assets could be either a positive value or a negative value depending upon the interpolation made by the acquisition cost and disposal proceeds of assets falling under that particular block. He, therefore, explained that as the machinery to compute the depreciation fails, no depreciation attributable to the two wheeler unit could be worked out and, therefore, even the law provides for deduction of depreciation, for the reason of failure of machinery, no depreciation would be worked out and as a result of which the profit of the two wheeler unit need to be considered without being deducted by the depreciation allowance. He explained that something cannot be deducted from the profits which cannot be worked out.

6. The learned senior counsel invited our attention to Section 32 where it is provided that in the case of block of assets, depreciation shall be allowed on such percentage on the written down value thereof as may be prescribed. He explained that there is no provision for estimating or apportioning the depreciation.

Depreciation is a statutory allowance. It is to be computed strictly in accordance with the provisions of law. The law provides that depreciation shall be worked out on any block of assets on such percentage on the written down value as may be

prescribed.

Therefore, depreciation could be computed only on the basis of the prescribed percentage on the written down value of any block of asset. In the present case, the written down value of the block of assets employed in the two wheeler unit is not decipherable from the total block of assets maintained by the assessee as a whole and when the written down value is not computable, no percentage could be applied and as a result of which no depreciation could be computed.

7. He invited our attention to Section 2(11) where the expression "block of assets" has been defined in the Act. Block of assets means a group of assets falling within a class of assets and in respect of which the same percentage of depreciation is prescribed. The learned senior counsel explained that there is no concept of individual assets and irrespective of the place or unit where an asset is used, it is always brought under a block of assets falling within the same class. He explained that assets are classified nature-wise and not location-wise. Therefore, even if a particular set of assets are deployed in the two wheeler unit, their accounting is with reference to a particular class of assets comprising of such assets deployed in all the different units of the assessee company and, therefore, working out the written down value of those assets deployed in the two wheeler unit is not possible. The learned Counsel submitted that even if such an exercise is mathematically possible, such mathematical exercise is not permissible within the law because block of assets means similar assets having same rate of depreciation irrespective of the place of deployment and depreciation has to be worked out on such block of assets on the written down value and, therefore, wholeness of the block of assets belonging to the assessee cannot be disturbed and independent block of assets cannot be contemplated in respect of independent units of the assessee company.

8. Thereafter, the learned senior counsel took us to the provisions of law contained in Section 43(6) dealing with the expression "written down value". He explained that in the case of any block of assets, the written down value means the ultimate value reflected on the last day of the previous year after increasing by the cost of fresh acquisition and reducing by monies payable on disposal of any assets falling

under the block. Therefore, he explained that the written down value of a block of assets is always expressed as a wholesome unit covering the entire assets falling under that block and this written down value is moved up and down depending upon the acquisition of fresh assets and disposal of the old assets and in this flow of written down value, it is quite impossible to contemplate that the individual unit of the assessee company is having any independent written down value with reference to the assets used in that unit.

9. Thereafter, the learned senior counsel referred to Section 80B(5) where the expression "gross total income" is defined as the total income computed in accordance with the provisions of this Act. The learned senior counsel argued that therefore, the profit is to be computed in accordance with the provisions of this Act and not on the basis of any other enabling method and if this principle is borne in mind, the computation of depreciation allowance Under Section 32 also should be made in accordance with law and only if possible to compute so according to the provisions of law and not on any other mathematical or arithmetical method.

10. The learned senior counsel then referred to the decision of Bombay High Court in the case of Premier Automobiles Ltd v. ITO and Anr. 264 ITR 192 where the court had considered the wholesome character of assets involved in a sale different from itemised identity of the assets.

11. The learned senior counsel further explained that depreciation is not deriving out of any particular business carried on by the assessee but derives out of block of assets which is connected to the entire business carried on by it. The deduction Under Section 80I is to be computed on the profit deriving out of the business carried on by the assessee. Therefore, there is no such co-relation between the depreciation allowance vis-a-vis a particular unit owned by the assessee. On the other hand, he explained that the deduction Under Section 80I is to be worked out on the basis of the profit deriving out of the eligible business and, therefore, the said profit deriving out of the said business cannot be influenced by the depreciation allowance attributable to the overall business of the assessee.

12. The learned senior counsel thereafter referred to Section 80HH(6) where the law has provided a mechanism to overcome any exceptional difficulties in

computing the profits and gains of the eligible unit by providing for computing the profits on a reasonable basis. The learned Counsel pointed out that this mechanism provided in Sub-section (6) of Section 80HH applies only to exceptional difficulties in working out the profits and gains of the business, but not in the matter of working out statutory allowance like depreciation. He also referred to Section 80I(6) where the concept of "stand alone unit" is provided and explained that even the "stand alone unit" concept is subject to the working of the profits and gains of the business in accordance with the provisions of the Act.

13. The learned senior counsel referred to the decision of the Supreme Court in the case of CIT v. Patiala Flour Mills Co Pvt Ltd 115 ITR 640 to bring home the point that the profits and gains of a new industrial undertaking must be computed in accordance with the provisions of the Act in the same manner as they would be in determining the total income chargeable to tax and it must follow afortiori that if the losses, depreciation allowance and development rebate in respect of the new industrial undertaking in the past assessment years have been fully set off against the profit of the assessee from other business or in the matter of fact against the income of the assessee under any other head, no part of such losses, depreciation allowance would be liable to be adjusted over and again in computing the profits and gains of the new industrial undertaking. The learned senior counsel explained that even though the Supreme Court was dealing with the provisions of Section 80J, the above principle regarding computation of income is equally applicable to the provisions of law contained in Sections 80HH and 80I. For this proposition, the learned senior counsel referred to circular No. 281 issued by the Central Board of Direct Taxes dated 22-09-1980 wherein the implications of the provisions of law contained in Sections 80J and 80I have been examined.

14. The learned senior counsel also referred to circular No. 469 dated 21-09-1986 issued by CBDT explaining the new concept of "block of assets" brought into the Income-tax Act and where the concept of block of assets has been explained in contrast to the concept of individual assets hitherto followed.

(d) Smt. Pomella Prasad, the learned Commissioner of Income-tax appearing for the Revenue also argued on this point in a detailed manner.

1. She explained that the deductions allowable under the provisions of law contained in Sections 80HH and 80I are to be computed on the basis of profits and gains of the eligible units computed in accordance with law. She stated that she has no quarrel with the argument of the learned senior counsel on this point. But she further explained that when profits and gains of an eligible unit is computed in accordance with law, the provisions of law contained in Section 32 cannot be excluded. Section 32 of the Income-tax Act provides for depreciation allowance. Therefore, computation of profits and gains in accordance with the provisions of law means computing profits and gains after adjusting for the depreciation allowance for which the assessee is entitled. She, therefore, submitted that question of exclusion of depreciation allowance does not arise at all.

2. She further explained that there is no impossibility as far as the computation part is concerned as apprehended by the learned senior counsel. Even though depreciation allowance is granted on block of assets as a whole, the particulars of individual assets are very much available with the assessee. She explained that even though depreciation allowance is available on the block of assets of an assessee as a whole, it does not mean that the assessee will not keep separate account of block of assets relating to assets deployed in different units of the assessee. In the present case, even though for income-tax purpose, the assessee has worked out the depreciation on the total block of assets as a whole, the assessee is maintaining individual account of block of assets for its different units including the two wheeler unit at Waluj. Therefore, she submitted that it is possible for the assessee to work out the written down value of the assets pertaining to the two wheeler unit on the basis of the individual accounts maintained for it. When the written down value of the assets deployed in the two wheeler unit is available in the accounts of the assessee, the depreciation on the two wheeler per se could be computed and the same could be deducted in computing the profits and gains of the two wheeler unit which eligible for deductions Under Section 80HH and 80I. She submitted that even without the help of any mathematical or arithmetical mechanism and fully in accordance with law it is always possible for the assessee to work out the depreciation in respect of the two wheeler units.

3. The learned Commissioner relied on the decision of the Bombay High Court in the case of CIT v. Bombay State Transport Corporation 118 ITR 399 where the court has held that depreciation has necessarily to be allowed while computing the profits of business.

She further explained that gross total income defined under Section 80B(5) for the purpose of Chapter VIA is an express provision and no exception could be pleaded on the ground of any difficulty because there is no scope for construing the same in a different manner. She has relied on the decision of the Supreme Court in the case of CIT v. Kotagiri Industrial Cooperative Tea Factory Ltd 224 ITR 604. She again relied on the decision of the Bombay High Court in the case of Indian Rayon Corporation Ltd v. CIT 261 ITR 98 to argue that one cannot exclude depreciation allowance while computing profits derived from a newly established undertaking in computing deduction under Chapter VIA. In CIT v. Gannon Dunkerly Ltd 216 ITR 708, the Bombay High Court has held that for the purpose of arriving at deduction Under Section 80I, the profits and gains of the priority undertaking is required to be arrived at as computed under the provisions of the Income-tax Act and, therefore, depreciation is required to be deducted before arriving at such profits and gains.

4. She also relied on the proviso to Sub-section (6) of Section 80HH which provides that if in the opinion of the assessing authority the computation of profits and gains of the industrial undertaking, there exists exceptional difficulty, the assessing officer could compute such profits and gains on such reasonable basis as he deems fit. For this proposition she has relied on the decision of the Andhra Pradesh High Court in the case of CIT v. Sree Krishna Pulverising Mills 241 ITR 262.

5. She explained that gross total income referred in sub (1) of Section 80I is to be read as defined in Section 80B(5) and is required to be computed in the manner provided in the Act as held by the Bombay High Court in the case of Simco Industries Ltd v. AO and Ors. 254 ITR 608.

6. She again relied on another Supreme Court judgment in the case of CIT v. Mother India Refrigeration Industries Pvt Ltd 155 ITR 711 where the court has held

that there cannot be any modification nor deviation from the basic and well recognised principle of commercial accountancy by the statute in respect of deduction of current depreciation. She has also relied on a few other decisions like CIT v. Loonkar Tools Pvt Ltd and Ors. 213 ITR 721 and CIT v. HMT Ltd 203 ITR 811.

(e) We heard both sides in detail and considered the issue in a very detailed manner. The thrust of the argument of the learned senior counsel is that the intention of law suffers from lack of appropriate mechanism. According to him even though the substantive provisions of law provided for deduction of depreciation, there are no machinery provisions available for the same and as such in cases like the present one where computation of unit-wise depreciation is impossible, the deduction of depreciation also becomes impossible in computing the profits and gains of the business. He has drawn an analogy to the facts of the case determined by the Supreme Court in the case of Dr B Shrinivasa Shetty where the court held that no capital gains could be computed as the cost of acquisition could not be ascertained. It is the crux of his argument that all the assets deployed by the assessee in the different units of business carried on by it having grouped and merged into the comprehensive block of assets account, it is not possible to decipher the written down value of those assets deployed in a particular unit and, therefore, the written down value of the assets deployed in that unit cannot be ascertained as a result of which depreciation cannot be computed.

1. We have also considered the examples cited by the learned Counsel at the time of hearing. It is his case that the block of asset concept is a homogenous one where the identity of the individual asset is lost and the value of a particular block of assets at a particular point of time is made up of by adding upto the cost of acquisition of fresh assets and by reducing the sale proceeds of the machineries discarded without regard to the fact that whether there was any loss or profit in respect of those individual assets per se.

The identity of an asset is lost once it is brought under the block of assets. According to him, this is the legal frame work of the block of assets and it is not permissible to take a few assets from the block of assets and work out its written

down value for the reason that the written down value of those assets cannot be computed differently from the entire block of assets. He has also explained that it is possible in certain cases that at the close of the previous year the written down value of a block of assets might be a negative figure even though assets might be in existence and deployed in the business carried on by the assessee. The crux of the argument of the learned Counsel is that there is no compatibility between the legal concept of block of assets and the physical concept of block of assets and because of this incompatibility it is not possible to work out the individual written down value of assets deployed by an assessee in one of its business units.

2. Sections 80HH and 80I fall under Chapter VIA dealing with deductions available to an assessee out of its gross total income.

As already stated, the gross total income has to be computed in accordance with the provisions of law. Gross total income of an assessee is made up of the income worked out under different heads of income. Therefore, it is to be seen that not only gross total income, but income under every head has to be computed in accordance with the provisions of the Act. As far as Sections 80HH and 80I are concerned deductions are available against the profits and gains derived out of the business carried on by the eligible units.

Therefore, needless to say, the profits and gains of the eligible unit also to be computed in accordance with the provisions of the Act.

3. When the profits and gains of the eligible business is to be computed in accordance with the provisions of the Act, the impact of Section 32 cannot be excluded. Sub-section (6) of Section 80I provides that notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking shall for the purpose of determining the quantum of deduction available Under Section 80I be computed as if such industrial undertaking is the only source of the income of the assessee during the relevant previous year. This is the concept of "stand alone unit". The courts have held in a number of decisions that while computing the profits and gains of an eligible unit for the purpose of deductions like 80HH, 80I, the profits and gains should be computed as if that industrial undertaking is the only business of the assessee and the profits and

gains of that eligible unit should not be affected by the profit or loss of any other business carried on by the assessee. This "stand alone unit" test is one of the basic principles governing the exemptions available under the provisions of law like 80HH and 80I, etc. The Bombay High Court in the case of Indian Rayon Corporation Ltd v. CIT 261 ITR 98 has held that one cannot exclude depreciation allowance while computing profits derived from a newly established undertaking for allowing deductions under Chapter VIA. The same decision has been taken by the Bombay High Court in the case of CIT v. Gannon Dunkerly & Co Ltd 216 ITR 708.

4. Therefore, the statute as well as the judicial pronouncement declare it beyond any doubt that the profits and gains of an eligible unit for the purpose of deductions Under Section 80HH and 80-I has to be computed as if that is the only business of the assessee and that profits and gains need to be computed after providing for depreciation allowance.

5. Now the question is whether there is any lack of machinery in implementing the above legal proposition. Even though the total income of an assessee is computed after depreciation allowance granted on the basis of the block of asset maintained for the entire business as a whole, it does not mean that the assessee is not maintaining independent accounts of assets deployed in its different units. It is not the case that because of the concept of block of assets, the physical identity of individual assets is lost. Even in the concept of block of assets, the accounting as well as physical identity of each and every asset is available in the records maintained by an assessee. If so, the particulars of the assets deployed by the assessee in its two wheeler unit at Waluj are available and the unit-wise block of asset account in respect of the two wheeler unit at Waluj is also available. This unit-wise details are consolidated by the assessee for working out the depreciation as a whole for the purpose of computing the total income of the assessee. The integration of the individual block of assets account of different units into a wholesome account for the purpose of working out depreciation and taxable income does not in any way make it impossible for the assessee to work out the depreciation attributable to the individual unit on the basis of the written down value reflected in the unitwise block of assets account. Therefore, the doctrine of

impossibility is non-existent in the present scheme of things while computing the deductions available to an assessee Under Section 80HH and 80I. Practically there is no difficulty.

6. Now the question is whether there is any legal difficulty as presumed by the learned senior counsel. The learned senior counsel has argued that legally it is impermissible to split and divide the total block of assets of the assessee and work out the depreciation for individual units. The question is whether there is any such legal impossibility as far as the issue is concerned.

7. What is to be seen here is that the depreciation of the two wheeler unit of the assessee is considered independently not for the purpose of working out the total income of the assessee company. The working out of the gross total income and total income of the assessee company is something different. In working out the total income of the assessee company it is entitled for certain deductions Under Sections 80HH and 80I. The computations of the deductions available Under Sections 80HH and 80I are different from the over all computation of the taxable income of the assessee company. The legal impossibility visualised by the learned senior counsel may be sometimes relevant in computing the overall total income of the assessee wherein the depreciation allowance of the assessee as a whole has to be worked out against summation of the individual depreciation of different units. It might be possible to argue that such a legal impossibility exists in the matter of such computation leading to the ultimate total income of the assessee company. The issue here is different. Here what is to be computed is the deduction available to the assessee Under Sections 80HH and 80I. For that purpose, the law itself hypothetically treats the eligible units as the only business carried on by the assessee so that the profits and gains or loss of the said eligible unit is independently worked out without being disturbed or influenced by the working results of any other business owned and operated by the assessee. In other words, the computation of the profits and gains of an eligible unit is an independent exercise by itself as visualised in law and made more apparent in Section 80I(6). When the profits and gains of an eligible unit is artificially worked out as an independent exercise for the purpose of Sections 80HH and 80I and when the details of the block of assets deployed in that particular eligible unit is

available with the assessee, we find that there is no such legal impossibility as canvassed by the learned senior counsel.

8. What we would like to re-iterate is that there must be a clear demarcation between the process of computing the overall total income of the assessee on the basis of its composite block of assets and the computation of the profits and gains of the eligible unit on the basis of its individual block of assets. In short, there must be a distinction between the computation of total income and the computation of quantum of deduction available Under Sections 80HH and 80I. 9. When this demarcation is made clear we find that there is no impossibility in computing the depreciation attributable to the eligible unit and, therefore, the profits and gains for the purpose of Sections 80HH and 80I need to be computed after deducting the depreciation allowance.

10. In view of the above discussion we hold that the CIT(A) has justified in holding that the deductions Under Sections 80HH and 80I should be given on the profit of eligible unit worked out after deducting the depreciation. This ground is, therefore, decided against the assessee.

(iv) The fourth issue raised in this appeal is again regarding deductions Under Section 80HH and 80I in respect of the three wheeler unit at Waluj.

(a) The first ground is regarding depreciation and the second ground is regarding the deduction admissible Under Section 32AB. As already held in the above paragraph, the deductions must be given before reducing the deposits made Under Section 32AB, but only after allowing the depreciation Under Section 32. One ground is allowed and one ground is dismissed.

(v) The fifth issue raised by the assessee is again regarding depreciation in the matter of deduction Under Section 80J in respect of the motor cycle division. This issue is decided against the assessee for the reasons already stated in above paragraphs.

(vi) The sixth issue is regarding the import application fees in respect of capital goods amounting to Rs. 19,834. This issue was considered by ITAT, Mumbai

Bench "D" in assessee's own case for the assessment year 1987-88 in ITA No. 49/Bom/1991 dated 30-12-2002.

After considering the issue, the Tribunal has held that the issue has already been decided against the assessee by earlier orders of the Tribunal relating to the assessment year 1980-81. Accordingly this issue is decided against the assessee.

(vii) The seventh issue raised by the assessee is the addition of forfeiture of security deposits of Rs. 17,100. This issue was considered in assessee's own case for the assessment year 1987-88 and held against it. Accordingly this issue is decided against the assessee.

(viii) The eighth issue raised by the assessee relates to disallowances made Under Section 40A(5) of the Act. The disallowances have been made in the context of perquisites extended to the Managing Director of the assessee company.

a. The first ground under this head is against inclusion of the perquisite value of motor car. It is stated that the Managing Director of the assessee company has reimbursed the company for personal use of car and, therefore, no portion of expenses incurred on motor car provided could be considered as perquisite for computing the disallowance Under Section 40A(5)/40(c). The assessing officer is directed to consider the issue in the light of Rule 3 and work out the addition, if any is called for.

b. The second ground under this head is regarding the consideration of perquisite value in respect of motor car as per actual expenses incurred instead of as per Rule 3. This ground is held against the assessee in view of the decision of the Tribunal for the earlier assessment years from 1986-87 and 1987-88.

c. The third ground under this head is in respect of estimating perquisite value of motor car without excluding fixed charges, viz.

depreciation, driver's salary, insurance, taxes, etc. In computing the perquisite value, the running expenses alone need to be considered as other fixed charges are inherent with the running of the car for the purposes of the business.

Therefore, the estimation may be worked out by the assessing officer accordingly.

d. The fourth ground under this head is in the matter of repairs to the building owned by the assessee as a perquisite. This issue has already been considered for the earlier assessment years 1985-86, 1986 and 1987-88 by the Tribunal and held against the assessee.

Therefore, this ground is rejected.

e. The fifth point under this head is in the matter of including proportionate salary during the period of stay abroad. This issue was considered by the Tribunal in assessee's case for the assessment year 1987-88 and held that such proportionate salary could not be included in the value of perquisites and the matter was decided in favour of the assessee. Therefore, this issue is decided in favour of the assessee and the ground is allowed.

(ix) The ninth issue raised is again in the matter of disallowance made Under Section 40A(5) in the case of employees other than Managing Director.

a. the first dispute under this head is in respect of estimating perquisite value of motor car, residential accommodation and servants' salary on the basis of actual expenses incurred instead of as per Rule 3. This ground is decided against the assessee in view of the decisions of the Tribunal for earlier assessment years 1985-86, 1986-87 and 1987-88. The Supreme court has also held against the assessee in the case of CIT v. British Bank of the Middle East 251 ITR 271. This ground is accordingly rejected.

b. The second dispute under this head is in the matter of estimating perquisite value of motor car without excluding fixed charges viz.

depreciation, drivers' salary, insurance, taxes, etc. This issue is decided in favour of the assessee as already held in the case of Managing Director.

c. The third point of dispute is regarding the inclusion of proportionate salary during the period of stay abroad. This issue is again decided in favour of the assessee as held in the case of Managing Director.

x. The tenth issue is whether the sales-tax incentives enjoyed by the assessee in respect of Aurangabad unit amounts to a capital receipt or not. The Revenue has relied on the decision of the Supreme Court in the case of Sahni Steel & Press Works Ltd v. CIT 228 ITR 253 to support the action of the assessing officer. It is also to be seen that for the assessment year 1987-88, the issue was considered in assessee's own case and held against it by the Tribunal. But as the matter stands today we have to see that the issue stands covered by the decision of the Special Bench of ITAT, Mumbai in the case of DCIT v. Reliance Industries Ltd 88 ITD 273 where after considering the decision of the Supreme Court in the case of Sahni Steel & Press Works Ltd and other relevant decisions, the Special Bench has held that the sales-tax incentive allowed to the assessee in terms of the relevant government orders constitute capital receipt and not to be taken into account in computation of total income. In the light of the judgment of the Special Bench cited above we hold that the corresponding amount of Rs. 15,23,07,529 need to be treated as capital receipt and not to be considered for computing the total income of the assessee. This issue is thus decided in favour of the assessee.

xi. The last and eleventh issue raised in assessee's appeal is on the question of allowance or disallowance of sales-tax penalty of Rs. 43,170. This issue of sales-tax penalty was considered by the Tribunal in assessee's own case for the assessment year 1986-87 and accordingly, the addition is confirmed and the issue is decided against the assessee.

3. Next we will take up the cross appeal filed by the Revenue in ITA No. 5523/Bom/1999.

(i) The first ground raised by the Revenue is that the CIT(A) has erred in directing the assessing officer to re-compute the disallowance under Rule 6D by aggregating the expenditure of all tours of the concerned employees instead of each trip undertaken by the employees. This issue has been decided by the Bombay High Court in the case of Aorow India Ltd 229 ITR 285 and in view of this matter, the decision of the CIT(A) on this point is reversed and the disallowance computed by the assessing authority on trip-wise is confirmed. This ground is accordingly allowed.

(ii) The second ground raised by the Revenue is regarding disallowance made under Rule 6D with reference to the local conveyance. This ground is decided against the Revenue in the light of the decision of the Bombay High Court in the case of CIT v. Acme Mfg Co Ltd 249 ITR 460.

(iii) The third ground raised by the Revenue is regarding the expenditure incurred by the assessee on Goregaon property and claimed as expenditure. The very same issue was considered in assessee's own case for the assessment year 1987-88 where the Tribunal has held that the expenditure need to be allowed as deduction. Accordingly, this ground is rejected.

(iv) The fourth ground raised by the Revenue is regarding the disallowance Under Section 40A(12) in the matter of surtax proceedings. The assessee has paid an amount of Rs. 9,000 for surtax matters which according to the assessee is not covered by Section 40A(12). The Tribunal has considered this issue for the assessment year 1987-88 in assessee's own case and held that the claim of assessee was in accordance with law. Therefore, this ground raised by the Revenue is rejected.

(v) The fifth ground raised by the Revenue is whether duty draw back and cash assistance to be taxed on cash basis, amounting to Rs. 10,34,271. This was considered by the Tribunal in assessee's own case for the assessment year 1987-88 and held in favour of the assessee. Same was the decision of the Bombay Special Bench in the case of ITO v. Bajaj Auto Ltd 8 ITD 296. The ground accordingly stands rejected.

(vi) The sixth ground raised by the Revenue is regarding the disallowance Under Section 40A(5) in the case of perquisites and facilities extended to the Managing Director of the assessee company. The first point of objection is whether the disallowance to be considered Under Section 40(c) or Under Section 40A(5). The second point of dispute is on the reimbursement of medical expenses and club fees. Both the issues have been considered by the Tribunal in assessee's own case for the earlier assessment years for 1986-87 and 1987-88. The Tribunal has held in favour of the assessee.

Therefore, the sixth ground is dismissed.

(vii) The seventh ground raised by the Revenue is again on the question of disallowance Under Section 40A(5) in the case of employees other than Managing Director.

a. The first issue under this head is regarding the question of considering cash allowance as salary. There are decisions in favour of the assessee taken by the Tribunal for the assessment years 1986-87 and 1987-88. But in the absence of details placed before us we find it proper to set aside the matter and send back the issue to the assessing officer for fresh consideration in the light of the decision of the Tribunal for earlier assessment years 1986-87 and 1987-88. This ground is accordingly allowed.

b. The second point under this head is regarding reimbursement of medical expenses. This has been decided in favour of the assessee for assessment year 1987-88 and also covered by the decision of the Bombay High Court in the case of Dr Beck & Co (I) Ltd v. CIT 202 ITR (viii) The eighth point raised by the Revenue is regarding disallowance of fine and penalty of Rs. 1,020. In the light of the order of the Tribunal for assessment year 1987-88, the order of the CIT(A) on this point is reversed and the disallowance is confirmed.

This ground is decided in favour of the Revenue.

(ix) The ninth ground raised by the Revenue is that the CIT(A) has erred in treating the penalty charges recovered from machinery suppliers amounting to Rs. 2,59,833 as capital receipts not liable to tax. The learned senior counsel has relied on the decision of the Andhra Pradesh High Court in the case of CIT v. Barium Chemicals Ltd 168 ITR 164. We have considered the matter in detail. We have considered the issue in the context of the definition of "income" provided in Section 2(24), the meaning of the expression "profits and gains of business or profession" as provided in Section 28(iv).

We also considered whether even if it is a capital receipt it should be reduced from the cost of the machinery in terms of Section 43(1).

After considering all the above legal implications, we find that the penalty charges recovered by the assessee are capital receipt not liable to tax. We agree with the reasoning given by the CIT(A) and dismiss the ground raised by the Revenue.

(x) The tenth and last ground raised by the Revenue in this appeal is on the matter of pro-rata deduction of premium on redemption of debentures amounting to Rs. 25,07,120. This point stands covered in favour of the assessee in view of the decision of the Supreme Court in the case of Madras Industrial Investment Corporation Ltd v. CIT 225 ITR 302. Accordingly this ground is dismissed.

4. Next we will consider the appeal filed by the Revenue in ITA No.1145/Bom/1992 directed against the rectification order passed by the CIT(A) Under Section 154 of the Act. The ground of the Revenue is that the CIT(A) has erred in directing to allow deductions Under Section 80HH and 80I without deducting the deposits made Under Section 32AB of the Income-tax Act. This issue has already been considered while disposing of the appeal filed by the assessee and has held that deductions Under Section 80HH and 80I need to be granted before deducting the deposits made Under Section 32AB. Therefore, on the merit of the issue itself, the appeal filed by the Revenue is dismissed.

5. In result, the cross appeals filed by the assessee and the Revenue for the assessment year 1988-89 are partly allowed and the appeal filed by the Revenue against the rectification order of the CIT(A) is dismissed.

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