

ito Vs. Bdh Industries Ltd.

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : May-31-2006

Judge : Salil Kapoor, S Pransukhka

Appellant : ito

Respondent : Bdh Industries Ltd.

Judgement :

1. This is an appeal by revenue for the year 2001-02 against the order of Commissioner (Appeals)-IX, Mumbai dated 22-1-2004 raising the following effective grounds: (1) On the facts and in the circumstances of the case and in law, the Commissioner (Appeals) erred in directing the assessing officer to exclude excise duty of Rs. 60,79,328 and sales tax of Rs. 21,44,732 from the total turnover in computing the deductions under Section 80HHC. (2) The learned Commissioner (Appeals) erred in holding that assessing officer has erred in reducing the gross job work receipts of Rs. 20,32,000 from the profits of the business for the purpose of calculating the deduction under Section 80HHC instead of net job work receipts of Rs. 1,01,600 wrongly relying on the decision of Hon'bleBombay High Court in the case of Bangalore Clothing Co. Ltd. 260ITR 371.

(3) The learned Commissioner (Appeals) erred in holding that 90 per cent scrap sales of Rs. 2,71,224 is not deductible from profit available for deduction under Section 80HHC without assigning any reasons and without appreciating that scrap sale is only a local sale and not export sale.

(4) On facts and circumstances of the case and in law, the learned Commissioner (Appeals) erred in directing the assessing officer to allow, in computation of total income under Section 115JB, the deduction under Section 80HHC with reference to book profit whereas, by virtue of Clause (iv) of the Explanation below Section 115JB(2) read with Section 80HHC(3) and Clause (bad) of the Explanation below Section 80HHC, the deduction has to be quantified by apportionment of the profits of the business as computed under the head Profits and gains from business or profession.

2. As regards ground No. 1, at the outset, the learned DR himself admitted that the issue relating to inclusion of excise duty and sales tax in the total turnover for the computation of deduction under Section 80HHC is covered in favour of the assessee by the judgment of Hon'ble Bombay High court in the case of CIT v. Sudarshan Chemicals Industries Ltd . Obviously, the AR did not make any observation but accepted the proposition. Therefore, respectfully following the judgment of Hon'ble Bombay High Court in the case of Sudarshan Chemicals Industries Ltd. (supra), we dismiss this ground of revenue.

3. As regards ground No. 2, the issue involved in this appeal is that assessing officer while computing deduction under Section 80HHC excluded gross job receipts amounting to Rs. 20,32,000 from the business profit in terms of Explanation (baa) to Section 80HHC(4C). In the appeal before Commissioner (Appeals), the assessee raised following grounds of appeal with regard to this issue: 2. The learned Income Tax Officer has grossly erred in reducing the gross job work receipts of Rs. 20,32,000 from the profits of business for the purpose of calculating deduction under Section 80HHC instead of net job work receipts of Rs. 1,01,600.

4. While adjudicating this issue, the learned Commissioner (Appeals) allowed the deduction on net job receipts amounting to Rs. 1,01,600 from net business profit in respect of gross receipts taken by the assessing officer. Actually, this was the contention raised before the Commissioner (Appeals) in that appeal. The learned Commissioner (Appeals) allowed net receipts to be excluded from the computation of business profit for the purpose of deduction under Section 80HHC by relying on

the decision of Hon'ble Bombay High Court in the case of CIT v. Bangalore Clothing Co. (2003) 260 ITR 271. The revenue being aggrieved raised the issue before us as ground No. 2.

5. The learned DR pointed out that the assessee did not raise the issue of acceptance of job receipts as operational income as such in the appeal before the Commissioner (Appeals) and limited issue before Commissioner (Appeals) was whether gross receipts or net receipts should be excluded. In support of his contention, the learned DR placed reliance on the decision of Hon'ble Madras High Court in the case of CIT v. V. Chinnapandi (2006) 153 Taxman 233 and put forth his argument that in view of the judgment of Hon'ble Madras High Court in relation to deduction of gross interest; in this case also gross receipts should be deducted which has rightly been done by the assessing officer.

6. On the contrary, the learned AR referred to judgment of the Tribunal in ITA No. 2854/M/2000 in assessee's own case for assessment year 1996-97 and contended that job receipts have been held to be operational income by the Tribunal in the said case. Accordingly, he pleaded for treatment of job receipts as operational income in view of the judgment of Hon'ble Bombay High Court in the case of Bangalore Clothing Co. (supra).

7. In his rejoinder, the learned DR rebutted the arguments of the learned AR by arguing that in the said order of the Tribunal referred by the learned AR, the issue of acceptance of job receipts whether to be operational income or miscellaneous income has been decided and not the gross receipt or net receipt should be excluded has been decided.

8. After hearing rival submissions, we find that we have already pointed out to the grounds of appeal filed by the assessee before the Commissioner (Appeals). There was a limited issue of deciding whether gross receipts or net receipts should be excluded. However, the learned Commissioner (Appeals) has allowed net receipts to be excluded relying on the judgment in the case of Bangalore Clothing Co. (supra). In our consideration, after perusal of the judgment in the case of Bangalore Clothing Co. (supra) the issue decided is whether job receipts in the facts of each case can be held to be operational income or other receipts like rent,

brokerage, commission etc. in terms of Explanation (bad) to Section 80HHC. Therefore, the learned Commissioner (Appeals) was wrong in applying the ratio of the judgment in the case of Bangalore Clothing Co. while allowing net receipts to be excluded for the computation of income for the purpose of deduction under Section 80HHC. Therefore, we are unable to decide on this very aspect that whether job receipts is an operational income in the case of assessee or not. However, we find that learned Commissioner (Appeals) has rightly allowed the net receipts to be excluded but wrongly relying on the judgment of Bangalore Clothing Co. 's case (supra) for the netting purpose. In the case of Lalson Enterprises v. Dy. CIT (2004) 89 ITD 25' (Delhi) (SB) (Mag.) it has been held that net interest should be excluded provided nexus is established. We restore this issue back to the file of assessing officer for fresh consideration. Needless to say that assessee would be given adequate opportunity of hearing to establish the nexus between the job receipts and the business of the assessee.

9. As regards ground No. 3, the assessing officer has found that in the miscellaneous income amounting Rs. 3,95,362, sale of scrap amounting Rs. 2,71,224 was also included. Therefore, the assessing officer excluded 90 per cent of the same treating it as miscellaneous income in terms of Explanation (baa) to Section 80HHC from the deduction allowable under Section 80HHC. However, the learned assessing officer also excluded Rs. 2,71,224 from the export turnover and against this action of the assessing officer, the assessee filed an appeal before the Commissioner (Appeals) pleading that assessing officer has wrongly reduced the scrap sales from the export turnover. Before the Commissioner (Appeals), it was also pleaded that 90 per cent of the scrap sales included the income should not be deducted from the computation of deduction allowable under Section 80HHC. The learned Commissioner (Appeals) without deliberating much on this issue, simply accepted the contention of the assessee and directed the assessing officer not to exclude 90 per cent of the same from the deduction allowable under Section 80HHC.10. In appeal before us, the revenue has raised the above ground and learned DR argued that assessee has submitted contradictory facts in the statement of facts before the Commissioner (Appeals), so as that assessee has been aggrieved by the reduction of the scrap sales from the export turnover by the assessing officer as well as exclusion of 90 per cent of the same from the

deduction allowable under Section 80HHC. It was contended by the learned DR that since the scrap sales included in the miscellaneous income is a local sales and not export sale, the assessing officer has rightly excluded 90 per cent of the same from the business profit in terms of Explanation (baa) to Section 80HHC. Apart from this argument, the learned AR did not make any substantial argument in support of his ground.

11. After hearing rival submissions, we find that in the Tribunal order referred by the learned AR and perused by us, the Tribunal did not decide the issue whether 90 per cent of the scrap sales if taken in the miscellaneous income should be excluded from the computation of deduction under Section 80HHC or not. It has only been held by the Tribunal that sale of scrap will not form part of export turnover. We find that learned assessing officer has rightly deducted 90 per cent of the scrap sales included in the miscellaneous income by the assessee.

However, assessing officer has wrongly deducted the same from the export turnover as well, though the assessee himself has not included it in the export turnover, which was categorical finding of the assessing officer in his order that miscellaneous income includes scrap sales. Accordingly, this issue is restored back to the file of assessing officer to compute the deduction under Section 80HHC afresh.

12. The remaining ground relates to computation of book profit under Section 115JB wherein question involved is whether in the computation of book profit in terms of Explanation to Section 115JB net profit as per books of the assessee relating to export business should be reduced or profit from export business, computed as per Explanation (bad) to Section 80HHC(3), should be deducted. The Assessing Officer found that assessee's entitlement of deduction under Section 80HHC is nil whereas assessee has reduced the net profit as per book profit in the computation of book profit. The assessing officer rejected this computation of book profit and allowed nil deduction in the computation of book profit. The learned Commissioner (Appeals) relying on the judgment of the Hon'ble Supreme court in the case of Appollo Tyres and (CBDT Circular No. 680), held that book profit should be reduced according to the Profit and Loss Account figure as against the nil

deduction computed by the assessing officer. Being aggrieved, the revenue is in appeal before us.

13. The learned DR placed reliance on the decision of ITAT, Mumbai in ITA No. 301 /Bom./94, dated 25-11 -2005 of G.P. Electronics argued that in the similar facts and circumstances, the Tribunal held that in the computation of book profit, assessee's entitlement of deduction under Section 80HHC alone be reduced and if as a result of this computation if there is a loss no deduction should be allowed in the computation of book profit.

14. The learned AR on the other hand placed before us a copy of the Circular No. 680, dated 22-2-1994 of the CBDT in support of his claim that as per the language of the circular, the assessee is entitled for deduction in the book profit as per Explanation 3 to Section 115 J and in support of his argument, the learned AR also placed reliance on the judgment of Hon'ble Kerala High Court in the case of CIT v. GTN Textiles Ltd. and argued that in the said judgment of Hon'ble Kerala High Court, the Circular No. 680 was considered.

15. After hearing rival submissions, going through the orders of the authorities below, material placed before us, we find that the issue before for adjudication is whether in the computation of book profit under Section 115JB, the deduction allowable under Section 80HHC should be allowed to be reduced or not. It will be pertinent to mention that in the relevant assessment year 2001-02, in the case of the assessee, Section 115JB is applicable and not Section 115J. Circular 680 placed before us by the assessee relates to Explanation III to Section 115J and since Section 115J is not operative in the relevant assessment year. This circular was issued by the CBDT to clarify with reference to Section 115 J as there was some ambiguity in the Explanation III to Section 115J and CBDT has clarified that assessee will be entitled for deduction from book profit under Profit and Loss Account after adjustments envisaged in Explanation III to Section 115J. It will be useful to reproduce Explanation III to Section 115J as under: ((iii) the amounts (as arrived at after increasing the net profit by the amounts referred to in Clauses (a) to (f) and reducing the net profit by the amounts referred to in Clauses (z) and (ii)) attributable to the business, the profits from which are eligible for deduction under

Section 80HHC or Section 80HHD; so, however, that such amounts are computed in the manner specified in Sub-section (3) or Sub-section (3 A) of Section 80HHC or Sub-section (3) of Section 80HHD, as the case may be; or) 16. Now the question of allowability of deduction under Section 80HHC is clarified in Explanation to Section 115JB, which reads as under: (iv) the amount of profits eligible for deduction under Section 80HHC, computed under Clause (d) or Clause (b) or Clause (c) of Sub-section (3) or Sub-section (3A), as the case may be, of that Section, and subject to the conditions specified in that Section; or.

17. Now on perusal of Explanation to Section 115J and Explanation to Section 115JB, it becomes amply clear that the language of Explanation 115 JB explicitly allows only deduction relating to eligible business under Section 80HHC to be computed in the manner laid down under Section 80HHC(3) Clause a, b, c. The language of Explanation of Section 115 JB is entirely different from that of Section 115J. In the relevant assessment year, Section 115JB is operative and therefore reliance placed by the assessee on the circular and the judgment of Hon'ble Kerala High Court in the case of GTN Textiles (supra) loose significance. Therefore, as per clear provisions of Explanation to Section 115JB, we are left in no doubt that assessee is entitled in the computation of book profit the amount, which the assessee is entitled for deduction under Section 80HHC, which in this case as per the computation done by the assessing officer is nil. Therefore, in the light of the above discussion, we hold that assessing officer was justified in rejecting the computation of book profit made by the assessee and computation of the book profit as per Explanation to Section 115JB. The learned Commissioner (Appeals) has overlooked the application of Explanation to Section 115 J in the case of the assessee. Therefore, we allow this ground of the revenue.

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