

Extrusion Process Pvt. Ltd. Vs. Ito

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jun-08-2006

Reported in : (2007)106ITD336(Mum.)

Judge : O Narayanan, P M Devi

Appellant : Extrusion Process Pvt. Ltd.

Respondent : ito

Judgement :

1. This appeal is filed by the assessee. The relevant assessment year is 1996-97. The appeal is directed against the order of the CIT(A)-IX at Mumbai dated 21-11-2002 and arises out of the assessment completed Under Section 143(3) r.w. Section 147 of the Income-tax Act, 1961.

2. The assessee is engaged in the business of manufacture and export of aluminium tubes, cans and other extrusion products, since 1957. In certain earlier assessment years, disputes arose between the assessee company and the central excise department regarding the rate at which excise duty was payable on assessee's products. The assessee, on the basis of show cause cum demand notices issued to it by the central excise department, claimed deductions of the disputed demands in its computations of income for the purpose of income-tax. The appellant's claims for such deductions were allowed in the respective assessment years. Such deductions aggregated to Rs. 1,71,35,268 till 31-03-1980.

The said dispute between the assessee company and the central excise department was finally decided in assessee's favour by the Supreme Court during the previous year ended 31-03-1996; i.e. the previous year relevant to the assessment year under appeal.

3. In view of the decision of the Supreme Court, the assessee company offered the sum of Rs. 1,71,35,268 for income-tax assessment for the assessment year 1996-97 Under Section 41(1) of the Act, as part of assessee's business income. As the amount was included in the business income of the assessee, the deduction available to the assessee company Under Section 80HHC was computed on the business profit which also included the sum of Rs. 1,71,35,268 credited by the assessee company as its income for the impugned assessment year Under Section 41(1).

Initially, the claim made by the assessee was accepted as per the intimation dated 12-03-1998. But thereafter the assessing officer issued a notice Under Section 148 and completed an income escaping assessment through his order dated 06-03-2002. In the income escaping assessment, the AO held that the deeming profit of Rs. 1,71,35,268 brought down by the assessee Under Section 41(1) cannot form part of the business profits for the purpose of Section 80HHC and the deduction available Under Section 80HHC should be computed on the profits reduced by Section 41(1) profits. The assessment was completed accordingly. In first appeal, the GT(A) agreed with the assessing officer and dismissed the appeal filed by the assessee. Therefore, the second appeal before us.

4. Two grounds have been raised by the assessee in this appeal. The first ground is regarding the validity of the reopening of the assessment Under Section 147. The second ground is regarding the computation of business profit for the purpose of Section 80HHC inasmuch as whether the sum of Rs. 1,71,35,268 has to be excluded or not.

5. We heard Shri Arvind Sonde, the learned Counsel appearing for the assessee. The learned Counsel submitted that the assessee is not pressing the first ground regarding the validity of the reopening of assessment.

6. Regarding the second ground, the learned Counsel submitted that the lower authorities have erred to hold that the assessment of central excise liability Under Section 41(1) could not be treated as profit of the business of the assessee for the purpose of Section 80HHC. He contended that profits of the business has to be worked out as per the provisions of law contained in Sections 28 to 43C and, therefore, Section 41(1) is a section directly involved in working out profit or loss of a business and as such any profit deemed under the said Section 41(1) would necessarily to be treated as business profit of the assessee.

7. Shri Ashwani Kumar Singh, the learned senior departmental representative appearing for the Revenue contended that the profit of Rs. 1,71,35,268 was brought in the accounts of the assessee company by operation of the deeming provision of Section 41(1) and, therefore, for the purpose of Section 80HHC, the said amount could not be treated as the profit of the business. The learned departmental representative submitted that the expression "profits of the business" need to be given the practical and pragmatic interpretation so as to exclude any type of deeming incomes or adjustments reflected in the profit & loss account. He submitted that the amount of Rs. 1,71,35,268 was returned back by the assessee company in its accounts Under Section 41(1) for the reason that the deductions claimed by the assessee company in the past towards disputed central excise liabilities were to be nullified as the issue was decided by the Supreme Court in its favour. It is by operation of the statute that the amount of Rs. 1,71,35,268 has been brought to the profit & loss account of the assessee company. The said amount of profit was not generated out of the business activities carried on by the assessee company during the relevant previous year, not to speak of any export activities. The learned departmental representative further submitted that the claim of the assessee is further hit by Explanation (baa) to Section 80HHC(4C) whereby the receipts in the nature of Section 41(1) have to be excluded to the extent of 90% in computing the business profits for the purpose of Section 80HHC.8. We considered the matter in detail. The "profits of the business" means the profits and gains computed under the provisions of Sections 28 to 43C of the Income-tax Act, 1961. Section 41(1), comes therefore, among the provisions relating to the computation of business profits / gains. Section 41(1) provides for treating the assessment of liability as income, provided those liabilities were claimed as

deductions in computing the taxable income for earlier assessment years. It shows that Section 41(1) is not creating any income as such independently without any basis. On the other hand, the income is created Under Section 41(1) on the ground that the corresponding amounts were claimed as deductions in the earlier assessment years. The profits and gains of the assessee were reduced to that extent in the earlier assessment years. When those liabilities ceased to exist, it is very necessary to write back the liabilities as a result of which the amount needs to be offered as income in the accounts Under Section 41(1). Therefore, there is no force in the argument of the Revenue that the income deemed Under Section 41(1) stands alone differently and distinctly from the computation of business income of an assessee provided under the provisions of law contained in Sections 28 to 43C.9. More particularly speaking with reference to Section 80HHC, the law does not differentiate the profits and gains of business on the basis of the colour of segments which contributed such business profits and gains. The exclusion provided in the Act with reference to Section 80HHC is provided under Explanation (baa) where the law directs to exclude 90% of certain receipts. Those amounts are the 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 profit. Any other receipt of similar nature means receipt similar to brokerage, commission, interest, rent. charges. The write back provided Under Section 41(1) for the purpose of nullifying the effect of earlier deductions claimed towards central excise liability is not a receipt similar to brokerage, commission, interest or rent charges. Therefore, Explanation (baa) has no application either.

10. On the other hand, we emphatically find that any amount of profit construed Under Section 41(1) is nothing but business profits in its texture, colour and character. Therefore, the assessing officer is not justified in excluding the amount of Rs. 1,71,35,268 in computing the business profits for the purpose of Section 80HHC. We direct the assessing officer to accept the computation of deduction Under Section 80HHC rendered by the assessee by including the income of Rs. 1,71,35,268.