

C.i.T., Jodhpur Vs. M/S. Chokshi Contacts (P) Ltd. Udaipur

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Court : Rajasthan

Decided On : Feb-15-2001

Reported in : (2001)166CTR(Raj)383; [2001]251ITR587(Raj); 2001(4)WLC234; 2001(2)WLN507

Judge : Rajesh Balia and; Sunil Kumar Garg, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 80AB, 80B(5), 80C to 80-U, 80-I, 80-I(2), 80-HH and 80-HH(9)

Appeal No. : D.B. Income Tax Reference No. 69 of 1995

Appellant : C.i.T., Jodhpur

Respondent : M/S. Chokshi Contacts (P) Ltd. Udaipur

Advocate for Def. : Anjay Kothari, Adv.

Advocate for Pet/Ap. : Sandeep Bhandawat, Adv.

Judgement :

ORDER

Balia, J.

(1). Heard learned counsel for the parties.

(2). The Income Tax Appellate Tribunal, Jaipur Bench. Jaipur submitted statement of case and referred a question of law arising out of its order dt. 20th Sept., 1993 in ITA No. 110/JP/90 for the assessment year 1987-88, The question of law referred to this Court for its opinion reads as under:

'Whether on the facts and in the circumstances of the case the ITAT was legally justified in directing to allow deduction u/S. 801 without considering the deduction u/S. 80HH, ignoring the provisions of Sec. 80HH(9)'?

(3). The facts giving rise to the present case are that the assessee is a Company manufacturing and selling electrical contacts. The assessee has claimed relief u/S. 801 as well as u/S. 80HH for deduction in respect of gross total income from the industrial undertaking manufacturing electrical contacts under Chapter VI-A of the [Income Tax Act, 1961](#) (for short the Act of 1961) The Assessing Officer while upholding the claim of the assessee that he is entitled to claim relief under Section 801 as well as under Section 80HH, allowed the deduction, firstly u/S. 80HH and then u/S. 801. In doing so, the computation of relief under Sec. 801 was made after deducting the relief admissible u/S. 80HH from the gross total computed for that purpose.

(4). So far as the computation of relief u/S. 80HH is concerned, there is no dispute. However, the assessee aggrieved with the order by computing relief u/S. 80-1 on the gross profit, after reducing the gross total profit for the purpose of computing relief u/S. 80HH, he appealed before the CIT and it allowed the appeal of the assessee and the said order was confirmed by the Income Tax Appellate Tribunal by holding that relief u/S. 80-1 is to be computed without deduction for relief u/S. 80HH in computation of gross profit for that purpose.

(5). It is in the aforesaid circumstances the aforesaid question has been referred to this Court for its opinion.

(6). In the first instance Mr. Bhandawat, learned counsel for the revenue contended that the deduction computing under Sec. 80-HH and 80-1 are both at the same level and the Assessing Officer has merely given effect to Section 80-HH(9) by first adjusting deduction under Sec. 80-HH and then deducting the very

same amount in Section 80-1, therefore there is no cause of grievance for the assessee to have raised challenge. However, we find that this contention of the learned counsel for the revenue is misconceived.

(7). The assessee being a Company is governed by proviso 2(II)(I) and the quantum of deduction permissible u/S. 80-f for the Company is 25% of the gross total profit and not 20% as in the case of Section 80-HH.

(8). It is merely because after deducting the gross total income from the said industrial undertaking by 20% relief granted under Section 80HH on the remainder amount 25% has been computed as relief under Sec. 80-1, which incidentally has come equal to amount of relief computed for the purpose of quantifying deduction u/S. 80HH. If the contention of assessee is to be accepted total quantum of relief will be 25% of principal sum of gross profit without deduction of relief u/S. 80HH therefrom. Obviously that deduction will be much larger.

(9). Faced with this situation, Mr. Bhandawat, learned counsel for the revenue contended that to give effect to Section 80-HH (9) by allowing the deduction u/S. 80HH before computing relief under Sec. 80-1 was granted, the computation has been made correctly in accordance with the provisions of Section 80-HH(9) and no error has been found. He places reliance on the decision of the CIT vs. Shree Engineers, Jodhpur (1). In fact, it merely referred to and followed the earlier decision of this Court in CIT vs. Vishnu Oil & Dal Mills (2).

(10). Before dealing with this judgment of the Rajasthan High Court like view expressed in CIT vs. Nima Specific Family Trust (3).

(11). On the other hand, Mr. Anjay Kothari, learned counsel for the respondent-assessee relied on the provisions of Section 80AB and urged that provision of Section 80AB clearly postulates that no deduction under Chapter VI-A is to be taken into consideration for computing gross profit for the purpose of quantifying deduction in any provision of Chapter VI-A and in view thereof the Tribunal was justified in not permitting deduction of allowance made u/S. 80HH from the gross total income of the assessee. He also contended that since the decision in Shree Engineers (supra) computation appears to have been rendered without taking note

of Sec. 80AB, merely on the basis of earlier decision in Vishnu Oil & Dal Mills (supra) is in per-curiam.

(12). It would be apposite to refer the relevant provisions of the Act of 1961 to understand the true scope of the provisions.

(13). So far as the substantive provisions the Act of 1961 has followed a scheme of its own for computation of income in giving effect to the provisions for levy of charges which also include the deductions permitted to be made for arriving at taxable income.

(14). Chapter 1-A deals with preliminary definition by defining various expression used in the Act subject to the context of the issue.

(15). Chapter II deals with the basis of charge for levying income tax and additional income tax and deals with charging of the tax of income. The scope of total income determined for the purpose of computation of income and certain other matters.

(16). Chapter III deals with the incomes which do not form part of the total income at all.

(17). Chapter IV deals with computation of total income from different sources. For this purpose it divides the sources of income in six sub-heads on the basis of which income from each source is to be computed. Part D of Chapter IV deals with the computation of income from profits and gains of business or profession with which we are concerned.

(18). Chapter E deals with computation of capital gains and Part F deals with income from other sources. Remaining Part A and Part C dealing with income from salaries and from house property respectively.

(19). Part B of Chapter IV which dealt with income from interest on securities has since been deleted.

(20). Part D of Chapter IV deals with computation profits and gains of business or profession providing which of the income fall within the definition of profits and

gains of business or profession, what deductions or adjustments are to be allowed, and what deductions are not permissible and the extent of permissible adjustments and allowance of deduction of various nature with which we are not presently concerned.

(21). Chapter V deals with income of other persons to be included in assessee's total income.

(22). Chapter VI deals with aggregation of income from different sources and set off or carry forward of loss computed under different sources of income of the assessee.

(23). Chapter VI-A which consists of Sec. 80-A to Sec. 80-W deals with specified concession in computing tax as well as specified deduction to be made in computing total income. These concessions or deductions are extended in connection with certain investment expenses and areas of business and trade activity with object of incentive to savings, and promotion to exports as well as economic development with emphasis on providing new industries in backward areas. We in the present case are concerned with specific deductions to be made in computing total income of the assessee under that Chapter. It is further significant to notice that Chapter VIA becomes operative on reaching the last stage of computation of income from different sources until Chapter VI. While ultimately net taxable income for any assessment year is determined only after reaching the result after applying all provisions, as are applicable in respect of different matters. Yet each Chapter deals with independent subject matter at different stages. As noticed briefly above, the Chapter IV sets the stage for computing income from different sources. On computing income from each different source, and income of other persons in certain cases to be added in total income, stage is reached for making adjustments of losses of the current year from any sources as well as losses carried forward from previous year to be adjusted against income of current year.

(24). It is in the light of these provisions we find that these are specific provision made that gross total income computed until before reaching the stage of invoking any provisions of Chapter VIA, is not to be further adjusted for quantifying any

claim to further deduction under Chapter VIA. In this connection provision of Sec. 80B(5) and 80AB inserted by the Finance Act, (No. 2) 1980 w.e.f. call special attention from which it is clear that the expression 'gross total income' which has been used in various Sections of Chapter VI-A has been assigned special meaning to mean total income computed in accordance with provision of [Income Tax Act, 1961](#) except any provision under Chapter VIA. 'Gross total income' has been defined in Sec. 80B(5) which reads as under:

Sec. 80B.....

(5) 'gross total income' means that the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter.

(25). Section 80AB inserted by Finance Act (No.2) of 1980 w.e.f. 1.4.81 reads as under:

Section 80AB:- Where any deduction is required to be made or allowed under any Section (except section 80M) included in this Chapter under the heading 'C.-- Deductions in respect of certain incomes' in respect of any income of the nature specified in that Section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.

(26). These two provisions read together leave no room of doubt in mind that while for computing deduction under any of the provisions of Chapter VI-A which relates to gross total income from any particular source of income which form part of the total gross income of assessee then gross total income from the sources only in respect of which deduction is to be claimed, is first to be computed in accordance with all the provisions of Income Tax Act for computing income from that source without making any deduction under any provision of Chapter VI-A. Quantification of respective deduction in respect of income from that source under Chapter VI-A

is to be made on the basis of such computed gross total income before any deduction under Chapter VIA is adjusted.

(27). The definition of the expression 'Gross Total Profit' makes it imperative to compute the total income in accordance with the provisions of the Act before making any deduction in Chapter VIA which is required to be made in respect of such income included in gross total income of the assessee from all sources. The deduction permissible under various heads dealt with in Chapter IV defining heads of income and providing method and manner of computing income from different sources viz. salaries, house property, profits and gains of business or profession, capital gains and income from other sources, as well as the adjustments are to be made in respect of income from such sources so computed while making aggregation of income and set off or carry forward of loss under Chapter VI of the Act. However, the computation of gross total income from such source for the purpose of Chapter VI-A ends at that. Thereafter no deduction under Chapter VI-A is further permissible to be made for the purposes of arriving at gross total income for the purposes of computing any deduction under Chapter VI-A except under Section 80M with which we are not concerned.

(28). With the insertion of Sec. 80AB, same expression has further been used 'for the purposes of computing such deduction in Chapter VI-A which is included in gross total income of the assessee, the amount of income of that source to which the deduction applies is to be computed in accordance with the provisions of this Act before making any deduction in this Chapter' (Chapter VIA). Thus, the definition of gross total income u/S. 80B(5) envisages computation of gross total income for the purpose of Chapter VI-A before making any deduction under this Chapter. This statement was re-affirmed and re-stated by inserting Section 80AB w.e.f 1st April, 1981 for computing gross total income from any particular source of income forming part of total gross income from all sources, when deduction is provided with respect to such particular source of income.

(29). While definition u/S. 80B(5) operates in general and governs computation of gross total income on aggregate from all sources, where deduction under Chapter VIA is related to entire gross total income, provision of Sec. 80AB operates where

deduction provided under Chapter VIA may not be with reference to entire gross total income of the assessee but such deduction is provided only in respect of income from particular source of income. As will be seen deduction u/S. 80-HH and 80-I both fall in the latter class.

(30). Section 80HH permits any industrial undertaking to which Section applies deduction from such gross total income from such industrial undertaking which is included in the gross total income of the assessee. The deduction is from the gross total income of the assessee from such industrial undertaking to which Sec. 80HH applies. Industrial undertaking to which Section 80HH applies, is one which has begun manufacture or production of articles after 31st day of December, 1970 but before the 1st day of April, 1990 in any backward area and it is not formed by the reconstruction of a business already in existence in any backward area and it is not formed by the transfer to a new business of machinery or plant previously used for any backward area and further it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

(31). Thus income from such industrial unit or hotel which is established in any backward area after 31st day of December, 1970 but before the 1st day of April, 1990 is eligible for deduction u/S. 80HH.

(32). Likewise u/S. 80-1 with which we are concerned it is envisaged that where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other empowered craft, to which said section applied, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof. Such deduction is equal to 25% in the case of assessee being a Company. The provision of Section 80-I applies to an industrial undertaking which fulfills the conditions prescribed in sub-Section (2) of that Section viz it is not formed by the reconstruction of a business already in existence, and is not formed by the transfer of a new business of machinery or plant previously used for any purpose, and it

manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India, and begins to manufacture or produce articles or things or to operate 'such plant or plants, at any time within the period of ten years next following the 31st day of March, 1981 or further period as the Central Government may, by notification in the Official Gazette, specify and further that such industrial undertaking manufactures or produces articles or things, except as provided in clause (b) of sub-section (2), and the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

(33). There is no room of doubt that computation of gross total income of the industrial undertaking for the purpose of deduction u/S. 80-HH and 80-1 operate independently and has to be made without making any deduction under Chapter VIA. Thus, for the purpose of computing gross total income', of such industrial undertaking in respect of which deduction is to be made under Sec. 80-HH or 80-I, deduction quantified under any of the provision can be deducted before computing eligible gross total income for the purpose of computing deduction under other. In other words, for the purpose of computing eligible gross total income to quantify deduction @ 20% under Sec. 80-I and 20% or 25%, as the case may be, under Sec. 80-HH no deduction under either provision can be made for the purpose of computing deduction under the other. In each case gross total income shall have to be computed without making any reducing it by deduction permitted u/S. 80-HH or 80-1 or for that matter under any other provision of the Chapter VIA, and taken to be basis on the basis of which prescribed percentage is to deduct from such income of the assessee.

(34). The question then arises whether Section 80-HH(9) to which reference has been made and reliance has been placed by the learned counsel for the revenue, provides anything to contrary and militates against our above conclusion. That provision reads as under:

Sec. 80-HH (9): In a case where the assessee is entitled also to the deduction under Section 80-I or Section 80-J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this Section.

(35). The language and intent of this provision is clear in itself. While envisaging that all the three deductions viz. u/S. 80-HH, 80-1 and 80-J are simultaneously permissible, and not mutually exclusive, the provision only fixes priority of order in which deduction under each provision is to be adjusted in the gross total income derived from such industrial undertaking to which Section 80-HH or Section 80-I or 80-J respectively apply simultaneously. In case any undertaking falls in the category of any new unit and is established in a backward area it is entitled to avail the benefit under all the provisions. The provision merely envisages that amongst the three deductions allowable, deduction u/S. 80-HH is to be made in first instance which is with an object to promote industrial establishment in backward areas and only thereafter deduction computed u/S. 80-1 or 80-J shall be given effect to. It does not deal with question of permissible deduction under any other Section. It only deals with adjustments against gross profit with respect to 20% or 25% as the case may be. Computation of permissible deduction is to be made unaffected by Sec. 80-HH(9).

(36). It is further of significance, that while sub-sec. (9) of Sec. 80-HH tells us that in the case claim to deduction under Sec. 80-HH and 80-I and/or 80-J exist simultaneously in respect of same industrial undertaking against the eligible gross total income calculated in terms of Sec. 80-AB read with Sec. 80-B(5), deduction under Sec. 80-HH shall be first adjusted, it has not provided to any such priority of deduction amongst requisite deduction to be allowed under Sec. 80-I or 80-J. Thus, clearly sub-sec. (9) of Sec. 80-HH envisages only priority in deduction under Sec. 80HH against eligible gross total income of such industrial undertaking as computed in terms of Sec. 80-AB and 80-B (5) without making any deduction under either of Section of Chapter VIA, to which class all the deductions belong. It makes no provision for recomputing gross total profit after adjusting deduction under Sec. 80-HH which also is part of Chapter VIA, for the purpose of computing deduction u/S. 80-1 or 80-J. There is nothing in the language nor in the context to

take any other view.

(37). In this connection another provision which needs to be noticed is Sec. 80-A. Sub-section (1) of Section 80-A postulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of Chapter VIA, the deductions specified in Sections 80C to 80-U. Sub-section (2) postulates that the aggregate amount of the deductions under Chapter VIA shall not, in any case, exceed the gross total income of the assessee. That makes the purpose behind prescribing priority of deduction in order of preferences to fulfil the object. When gross total income is not enough to be adjusted against all the deduction u/S. 80-HH, 80-1 and 80-J computed independently and it has to be decided which unabsorbed claim to deduction is to be carried forward or not to be allowed as per provision governing the same. In such circumstances it becomes of consequence which deduction is to be adjusted in priority against the available gross total income for that purpose. While specific provision of allowing deduction u/S. 80-HH before deduction u/S. 80-1 or 80-J is allowed, has been made, there is no further order or priority is prescribed. Amongst claims to deduction u/S. 80-1 and 80-J. in the absence of enough gross total income against which the permissible deduction computed independently in accordance with Sec. 80-I or 80-J, it remains the option of the assessee, which claim he opts to be adjusted against available gross total profit for that purpose. The object of Sec. 80HH(9) is not to reduce the limit of eligible deduction u/S. 80-1 or 80-J in any way.

(38). Coming to judgment relied on by learned counsel for the revenue in Shree Engineers case (supra), we are of the opinion that answer to question No.3 which was referred to by the Tribunal has been rendered solely with the reference to earlier decision of the Court in Vishnu Oil & Dal Mills (supra) only without noticing the relevant provision of Section 80A and 80AB and Section SOB(5) and also Section 80HH(9). It may be noticed that decision in Vishnu Oil & Dal Mills dealt with question whether in computing the gross total income for the purpose of Chapter VI-A requires adjustments of unabsorbed carry forward loss or unabsorbed carry forward depreciation in terms of Part D of Chapter IV or in terms of Chapter VI of the Act, which as seen above has to be computed without taking

into provisions of Chapter VIA, but after taking into account other provisions of Act. whether under Chapter IV or Chapter VI. However the Court was not dealing with interaction of the various Sections contained in Chapter VIA on the issue of deduction of any amount which is to be allowed under Chapter VIA. Thus the decision rendered in Shree Engineer's case without reference to relevant provisions of the Act merely by reference to Vishnu Oil Mills case was per incuriam and cannot be taken as a binding precedent and does not assist revenue in any manner.

(39). As a result of aforesaid discussion we answer the question referred to us by the Tribunal in affirmative that is to say in favour of assessee and against the revenue.

(40). There shall be no order as to costs.

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