Scm Creations Vs. Assistant Commissioner of Income Tax

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Court : Chennai

Decided On : Mar-06-2008

Reported in : (2008)218CTR(Mad)126

Judge : K. Raviraja Pandian and ;Chitra Venkataraman, JJ.

Appeal No. : Tax Case (Appeal) Nos. 310 and 311 of 2008 and Misc. Petn. No. 242 of 2008

Appellant : Scm Creations

Respondent : Assistant Commissioner of Income Tax

Advocate for Def. : N. Muralikumaran, Adv.

Advocate for Pet/Ap. : A. Thiagarajan, Adv. for S. Ramesh Kumar, Adv.

Disposition : Appeal allowed in favour of assessee

Judgement :

K. Raviraja Pandian, J.

1. The two appeals are filed by the assessee relating to the asst. year. 2002-03 and 2003-04. The assessee is a partnership firm engaged in the business of manufacture and export of hosiery garments.

2. The issue involved in these two appeals are whether the relief under Section 80-IA should be deducted from profits and gains of business before computing relief under Section 80HHC.

3. The Counsel on either side submits that the issue had to be decided in favour of the assessee, as this Court already, by following the decision of CIT v. V. Chinnapandi : [2006]282ITR389(Mad) , has decided the issue in favour of the assessee in Tax Case No. 344 of 2004 reported as Dy. CIT v. Chola Textiles (P) Ltd. (2008) 218 CTR (Mad) 123-Ed., wherein this Court has held as follows:

5. It is submitted across the Bar by the learned Counsel appearing for either side that the very issue has been considered and held against the Revenue by the Madhya Pradesh High Court in the case of J.P. Tobacco Products (P) Ltd. v. CIT : [1998]229ITR123(MP) . It has also been further submitted that the Bombay High Court also has taken the same view in the case of CIT v. Nima Specific Family Trust (2001) 165 CTR (Bom) 518 : (2001) 248 ITR 29. The judgment of the Madhya Pradesh High Court has been taken to the Supreme Court and the Supreme Court in Jt CIT v. Mandideep Engg. & Packaging Industries (P) Ltd. , has rejected the SLP by giving the following reasons:

2. The Madhya Pradesh High Court in J.P. Tobacco Products (P) Ltd. v. CIT : [1998]229ITR123(MP) took the view that both the sections are independent and, therefore, the deductions could be claimed both under Section 80HH and 80-IA on the gross total income. Against this judgment, a special leave petition was filed in this Court which was dismissed on the ground of delay on 21st July, 2000 [see (2000) 245 ITR 71]. The decision in J.P. Tobacco Products (P) Ltd. v. CIT (supra) was followed by the same High Court in the case of CIT v. Alpine Solvex (P) Ltd. in IT Appeal No. 92 of 1999 decided on 2nd May, 2000. Special leave petition against this was dismissed by this Court on 12th Jan., 2001 [see : [2001]247ITR36(SC)]. This view has been followed repeatedly by different High Court in a number of cases against which no special leave petitions were filed meaning thereby that the Department has accepted the view taken in these judgments. See CIT v. Nima Specific Family Trust (2001) 165 CTR (Bom) 518 : (2001) 248 ITR 29; CIT v. Chokshi Contacts (P) Ltd. (2001) 166 CTR (Raj) 383 :

(2001) 251 ITR 587; CIT v. Amod Stamping : [2005]274ITR176(Guj) ; CIT v. Mittal Appliances and Ors. : [2004]270ITR65(MP) ; CIT v. Rochi Ram & Sons ; CIT v. Prakash Chandra Basant Kumar : [2005]276ITR664(MP) ; CIT v. S.B. Oil Industries (P) Ltd. ; CIT v. S.K.G. Engineering (P) Ltd. : [2006]285ITR423(Delhi) and CIT v. Lucky Laboratories Ltd. (2006) 200 CTR (All) 305.Since the special leave petitions filed against the judgment of the Madhya Pradesh High Court have been dismissed and the Department has not filed the special leave petitions against the judgments of different High Court following the view taken by the Madhya Pradesh High Court, we do not find any merit in this appeal. The Department having accepted the view taken in those judgments cannot be permitted to take a contrary view in the present case involving the same point. Accordingly, the civil appeal is dismissed. No costs.

4. Following the same, the appeals are allowed to the extent indicated above. Consequently, connected miscellaneous petitions are closed. No costs.