

Cit Vs. Electro Alloy Special Steel Castings (P) Ltd.

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Court : Chennai

Decided On : Dec-11-2002

Reported in : [2003]128TAXMAN666(Mad)

Appeal No. : TC Appeal No. 466 of 1999 11 December 2002

Appellant : Cit

Respondent : Electro Alloy Special Steel Castings (P) Ltd.

Advocate for Pet/Ap. : T. Ravikumar *for the Applicant.*

Judgement :

N.V. Balasubramanian, J.

The counsel for the respondent was absent on 4-12-2002. Today also the counsel for the respondent is not present. However, since the respondent has been served, we proceed to dispose of the matter. The appeal was admitted on the following question of law:

'Whether the Appellate Tribunal is right in law in holding that for the assessment year 1989-90 the assessee was entitled to the benefit of the section 80HH of the Income Tax Act, even though Hosur, in which town, the assessee's industrial undertaking is indicated had ceased to be a notified backward area in the year 1986?'

The appeal has been preferred against the order passed in M.P. No. 103 MDS/1998 by the Income Tax Appellate Tribunal, Chennai.

2. The brief facts necessary for filing the miscellaneous petition before the Appellate Tribunal arose in the following circumstances:

The respondent (hereinafter referred to as assessee) filed an appeal against the order of the Commissioner (Appeals) before the Income Tax Appellate Tribunal contending that the order of Commissioner holding that the assessee was not entitled to deduction under section 80HH of the Act was not correct in the eye of law. The Appellate Tribunal considered the matter in the appeal preferred by the assessee and by its order dated 1-6-1998, it held that the assessee was entitled to deduction under section 80HH of the Act. The Appellate Tribunal relied on the Circular of the Central Board of Direct Taxes bearing No. 484 dated 1-5-1987 and held that though the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 received the assent of the President on 10-9-1986, the Board has clarified that notwithstanding the aforesaid amendment, all areas specified in the Eighth Schedule will continue to enjoy the benefit of section 80HH of the Act in respect of an industrial undertaking which began to manufacture or produce articles before 10-9-1986 or in respect of the business of a hotel, which starts functioning before 10-9-1986. The Tribunal relied on the circular issued by the Board dated 1-5-1987 and held that the Commissioner (Appeals) was not correct in holding that the assessee was not entitled to deduction under section 80HH and allowed the appeal.

3. Admittedly, the revenue has not challenged the order of the Income Tax Appellate Tribunal, though it was adverse to the interest of the revenue and the order of the Appellate Tribunal has become final. However, the revenue approached the Income Tax Appellate Tribunal by way of Miscellaneous Petition under section 254 of the Income Tax Act, 1961, with a prayer to rectify the order of the Tribunal on the ground that a mistake had crept in the order of the Tribunal by not considering the circular issued in Circular Notification No. 165 dated 17-12-1986 and in the list of backward area. Hosur has been excluded from the eligible area for the grant of exemption under section 80HH of the Act. The Tribunal

considered the miscellaneous petition filed by the revenue and held that Notification No. 165 dated 19-12-1986 was duly considered by the Appellate Tribunal, when it passed the order in the main appeal preferred by the assessee and the mistake had crept in the order of the Tribunal calling for rectification of its order.

4. The Tribunal also noticed that the Commissioner (Appeals) by subsequent order dated 24-9-1992 has issued an order of amendment to his order dated 8-8-1991, extending the benefit of section 80HH of the Act to the assessee relying upon the Board's Circular dated 1-5-1987. Therefore, the Appellate Tribunal dismissed the miscellaneous petition. The revenue has challenged the order passed by the Appellate Tribunal in the miscellaneous petition in the appeal.

5. We heard Mr. T. Ravikumar learned Junior Standing counsel for the revenue.

6. There is no dispute that the revenue has not challenged the order of the Appellate Tribunal passed in the appeal in I.T.A. No. 1908/Mds/1991 dated 1-6-1998 and the present appeal is directed only against the order passed by the Appellate Tribunal in the miscellaneous petition filed by the revenue.

7. Learned counsel for the revenue submits that on the basis of the Circular No. 484 dated 1-5-1987 the assessee was not eligible for deduction under section 80HH of the Act. We find that the Appellate Tribunal relied upon the same circular to hold that the industries, which were set up prior to the assent of the President on 10-9-1986 to the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 would be eligible to get deduction under section 80HH of the Act. The Board has also clarified that such industries shall continue to enjoy the benefit under section 80HH.

8. Therefore, it is clear on the facts of the case that more than one view is possible on the interpretation of section 80HH of the Act and there is no glaring mistake present in the order of the Appellate Tribunal requiring the Tribunal to rectify its order. Hence, we hold that the Appellate Tribunal was correct in holding that the order passed in the appeal does not call for any rectification.

9. Further, the question of law framed by the revenue has no relevance to the order, as the question has been framed challenging the finding rendered in the main appeal, as if the order passed by the Appellate Tribunal in appeal is challenged in the present appeal.

10. Consequently, we do not find any reason to interfere within the impugned order of the Appellate Tribunal. Accordingly, the appeal stands dismissed and the question of law framed for consideration also does not require any answer, as the revenue has not framed the proper question of law for our consideration.

11. In fine, the appeal stands dismissed. No costs.

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