

Cit Vs. Allied Industries

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Court : Himachal Pradesh

Decided On : Oct-21-2009

Judge : Deepak Gupta and; V.K. Ahuja, JJ.

Appellant : Cit

Respondent : Allied Industries

Disposition : Appeal by Revenue dismissed

Judgement :

Deepak Gupta, J.

1. This appeal was admitted on the following questions of law:

1. Whether on the facts and in the circumstances of the case the Hon'ble Tribunal was right in law in holding that income of Rs. 2,50,000 surrendered by the assessee during the assessment proceedings was income derived from the business of the industrial undertaking and thus eligible for deduction under Section 80-IB as the assessing officer had not specifically proved that the income was not from the business and profession?

2. Whether on the facts and in the circumstances of the case the Hon'ble Tribunal was right in law holding that 100 per cent deduction under Section 80-IB was allowable to the assessee on the surrendered income whereas the assessee

surrendered the income of Rs. 2,50,000 on account of unaccounted expenses and also undertook to pay the tax on the surrendered income.

This income could be taxed only under Section 69C of the Act under the head Income from other sources and there was no question of it being taxed as income from business and much less as derived from the business of industrial undertaking ?

2. Briefly stated the facts of the case are that for the assessment year 2001-02 the assessee filed a return declaring income of Rs. 24,340. The case was taken up for scrutiny and statutory notices along with detailed questionnaire were issued to the assessee.

3. The assessee is carrying on the business of manufacture of tractor and automobile components. Production commenced on 10-7-1998. The assessee had earned net profit of Rs. 33,21,659 and 100 per cent deduction of this profit was claimed under Section 80-IB of the Income Tax Act, 1961. It is not disputed that the assessee firm is entitled to this benefit. The assessing officer found that one of the partners of the assessee firm Smt. Neena Mahajan is also running a firm under the name and style of M/s Ankur Industries, Chandigarh, where the gross profit and net profit rate is much lower than that in the assessee firm. The assessee was asked to explain this discrepancy.

4. The assessee filed reply and stated that the sister concern is producing parts for some other tractor manufacturer and also furnished an explanation that in the assessee firm since new machinery had been installed there was no expenses for repair and maintenance and hence the higher rate of profit. During the course of assessment proceeding, the assessee offered a sum of Rs. 2,50,000 for taxation to cover up all discrepancies. Relevant portion of the order reads as follows:

These defects were brought to the notice of the assessee-firms general power of attorney Shri A.K. Mahajan, who explained that being new machinery in M/s Allied Industries, no expenses have been borne for repair and maintenance and other expenses have been debited on actual basis. Further he offered a sum of Rs. 2,50,000 for taxation to cover up all types of discrepancies and also this amount

will include disallowance on account of late payment of ESI. This offer has been made subject to no penalty under Section 271(1)(c) of the Income Tax Act. Accordingly, a sum of Rs. 2,50,000 is added to the taxable income of the assessee-firm.

5. The assessing officer added this income to the income of the assessee but did not permit the assessee to claim deduction of this income under Section 80-IB. The assessee then filed an appeal and stated that even if this income of Rs. 2,50,000 was added the same had to be included in the income which was entitled for deduction of tax. Both the Commissioner (Appeals) as well as the Tribunal held that the amount of Rs. 2,50,000 offered by the assessee as addition for the purpose of taxation would amount to profits and gains of business and were entitled for deduction under Section 80-IB.

6. Shri Vinay Kuthiala, learned Counsel for the revenue contends that the amount of Rs. 2,50,000 offered by the assessee falls within the purview of Section 69C of the Income Tax Act, 1961 and though it may be deemed income for the purpose of the Act it is not income arising out of the business of the company and as such not entitled to deduction under Section 80-IB. Under Section 80-IB only the profits and gains derived from a business falling within the purview of the said section can be deducted at the rates provided.

7. If the order of the assessing officer quoted hereinabove is read it is apparent that the assessee firm offered a sum of Rs. 2,50,000 for taxation to cover up all types of discrepancies. It was nowhere the case of the assessee or the revenue that this was income derived from undisclosed sources. Section 69C has no applicability because to make Section 69C applicable it has to be first established that there is some unexplained expenditure. There is no finding of unexplained expenditure being made by the assessee. The judgment cited by Shri Kuthiala, learned Counsel for the revenue, i.e. Kedar Nath Modi v. CIT : (1993) 200 ITR 685 (Del) has no applicability to the present case since in that case there was unexplained expenditure which is not there in the present case.

8. The addition of Rs. 2,50,000 was made to the income of the business itself. Therefore, it will have to be deemed to be income from the business of the

company. If it is income derived from the business then such income is to be considered while working out the deduction allowable under Section 80-IB of the Act. There is no finding of any authority that the income was derived from any other undisclosed source. The addition was made to the income of the assessee and had been assessed under the head of profits and gains of business. Since the entire profits of the business are entitled for 100 per cent deduction, the addition on account of such discrepancy will only result in the enhancement of the income of the business and would be entitled for such deduction.

9. We may make it clear that we have decided this case on the peculiar facts and if in a given case the department proves that the income was derived not from the business but from some other sources then such a deduction may not be permitted. However, in this case neither the AO) nor any other authority has come to the conclusion that the income was from any other source. Therefore, the questions have to be answered in favour of the assessee and against the revenue. The appeal is accordingly rejected.

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