

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
[Income Tax]

ORIGINAL SIDE

ITA 304 of 2005

C.I.T. KOLKATA XI

Versus

M/S. V.M.T. FIBRE GLASS & INDUSTRIES

BEFORE:

The Hon'ble JUSTICE SOUMITRA PAL

The Hon'ble JUSTICE MIR DARA SHEKO

Date : 26th November, 2015.

Mr. M. P. Agarwal, Adv.
Mr. Arnab Chakraborty, Adv
Mr. Kushagra Shah, Adv.

Soumitra Pal, J.:-

This appeal, relating to assessment year 1990-91, was admitted on the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is correct in holding that the Assessing Officer was not justified in rejecting the application of the assessee under section 154 of the Income-tax Act, 1961, for rectification of adjustment made in intimation under section 143(1)(a) of

the Income-tax Act, 1961, with regard to claim for deduction under section 80HHC of the Act.

Facts, as evident from the record, are as follows:

The respondent, that is, the assessee, had filed its return showing an income of Rs.97,310/- after claiming deduction of Rs.36,51,903/- under Section 80HHC of the Income Tax Act, 1961. While processing the return under Section 143(1)(a) of the Act, the Assessing Officer computed income at Rs.10,20,000/-. The assessee had profit of Rs.42,68,504/- in the pipe division and a loss of Rs.5,19,294/- in sheet division. The assessee had claimed deduction of Rs.8,56,043/- under section 80HHC with reference to profit in the pipe division. In the adjustment made under Section 143(1)(a) of the Act, the Assessing Officer deducted the loss of Rs.5,19,294/- in the sheet division from the profit in the pipe division and allowed deduction under Section 143(1)(a) with reference to the net profit only. According to the assessee, the Assessing Officer was not entitled to make the adjustment and deduction under Section 80HHC was to be allowed with reference to the export profits only. The application under section 154 in this regard for rectification of the adjustment under Section 143(1)(a) was filed before Assessing Officer which was rejected.

Aggrieved, the assessee preferred appeal before the CIT (A) which was allowed holding that the Assessing Officer was not entitled to make such adjustment under Section 143(1)(a).

Against the order of the CIT(A), the Revenue preferred appeal before the Income Tax Appellate Tribunal which was dismissed. Against the order of the Tribunal, this appeal has been preferred.

Mr. M.P. Agarwal, learned Advocate appearing on behalf of the appellant referring to Section 80HHC and relying on the judgment of the Supreme Court in IPCA Laboratory Limited vs. Deputy Commissioner of Income Tax : 266 ITR 521 and on the judgment of the Bombay High Court in IPCA Laboratories Limited vs. G. Meena, Deputy Commissioner of

Income Tax (No. 2) : 251 ITR 418 submits that since the law is well settled and deduction has to be allowed on the net profit after adjusting the loss in different units, the Assessing Officer was justified in passing the assessment order under Section 143(1)(a) and thus the application under Section 154 was not maintainable.

Mr. Arnab Chakraborty, learned advocate for the respondent relying on the order passed by the CIT(A) and the Tribunal submitted that the Assessing Officer was not justified in rejecting the application under Section 154.

In order to appreciate the issue it is appropriate to refer to the relevant portion of the order under Section 154 passed by the Assessing Officer which is as follows :-

"I am of the opinion that the Assessing Officer is competent to disturb the computation of deduction u/s. 80HHC as claimed by the assessee, and recompute proper quantum of deduction as per provisions of Sec. 80HHC of the I.T. Act in course of processing of the return u/s. 143(1)(a). It is seen that at the time of processing for computation of deduction u/s. 80HHC, the Assessing Officer considered the entire turnover of the business (Pipe Division as well as Sheet Division) of the assessee firm and similarly combined profit was taken into consideration for the purpose of calculation of deduction u/s. 80HHC. I do not find any irregularities which may be rectified in the instant case. Therefore, petition u/s. 154 filed by the assessee firm has no merit and no rectification lies in the instant case. Hence the petition u/s. 154 is disposed of by denying any rectification of the total income processed u/s. 143(1)(a)."

The said order was challenged by the assessee in appeal before the CIT(A). The relevant portion of the order in appeal is as under:-

"It is also relevant to point out that the desired report from the Assessing Officer has not yet been received. In this letter dated 22.06.2004 the A.O. has written that the inspite of his best effort he could not locate the relevant asstt. folder. Considering that the report is not likely to be received from the Assessing Officer and also considering that this is a very old appeal it is being decided on the basis of facts and materials available on record. In this case the A.O. has

recomputed the deduction claimed u/s. 80HHC and worked out the total income at Rs.10,20,000/-. The A.O. has taken the entire turnover of the business and has taken the combined profit for calculation of deduction u/s. 80HHC. Identical issue was raised before the ITAT, Kolkata in the case of the Appellant for A. Yr. 1991-92. The ITAT observed that "since this issue is squarely covered by at least 2 reported decisions of coordinate benches of this Tribunal namely decision reported in 68 ITD 358 (DEL) and 63 ITJ 761 (AHMD). In those decisions the coordinate benches of the Tribunal have taken a view that for the purpose of computation of deduction u/s. 80HHC profit to the export unit only is to be taken into a/c.". Following the above mentioned 2 decisions the ITAT, Kolkata Bench upheld the contention of the Appellant and allowed the appeal. It directed the A.O. To recompute the admissible deduction u/s. 80HHC. Considering the facts that this case is squarely covered by the decision of the ITAT, the appeal is allowed. The A.O. is directed to recompute the deduction u/s. 80HHC.

For the statistical purpose the appeal may be treated as ALLOWED."

As already noted, the Revenue being dissatisfied filed an appeal before the Tribunal. The Tribunal while dismissing the appeal and upholding the order of CIT(A) had passed an order, the relevant portion of which is extracted hereinbelow:-

"It is not in dispute that this issue has arisen out of 154 proceedings which were in turn related to the processing of return of income under section 143(1)(a) of the Act. In the course of processing the return of income under section 143(3)(1)(a) of the Act, the A.O. reduced the assessee's claim made under section 80HHC. As a result thereof, the assessee filed an application under section 154 of the Act before the A.O. saying that reduction of relief under section 80HHC is not a matter to be covered by the provision of section 143(1)(a) of the Act. It is also seen that 143(1)(a) order was made on 24.09.92 when the situation with regard to the deduction u/s. 80HHC was debatable one. Therefore, the reduction of deduction under section 80HHC, while processing the return of income under section 143(1)(a), was beyond the A.O.'s jurisdiction, and as such the same was rectified u/s. 154 of the A.O. Act. The Ld. CIT(A)

has stated that the issue in question is fully covered by at least two reported decision of Tribunal. In this view of the matter, we, therefore, find that the A.O. was not justified in making prima facie adjustment with regard to the deduction claimed under section of the Act. If there was any doubt as to the claim of the assessee under section 80HHC, the Income Tax Officer should have proceeded under section 143(2) or 147 of the Act and then he should have decided the matter on merits in accordance within the provisions of law. But it is settled that it is not a matter to be covered under section 143(1)(a) of the Act, and as such he was required to rectify the same under section 154 of the Act by withdrawing the prima facie adjustment made by him to the returned income. The order of the Id. CIT(A) is modified accordingly. The order of Id. CIT(A) is, therefore, upheld for the reasons given by us.

In the result, the appeal filed by the Revenue is dismissed."

The real question is whether the Assessing Officer was justified in passing the order under Section 143(1)(a) with regard to the deduction under Section 80HHC. It is to be noted that Section 143(1)(a) empowers the Assessing Officer to compute the total income or loss after making adjustments, namely, "any arithmetical error in the return" "or" "an incorrect claim, if such incorrect claim is apparent from any information in the return". It is nobody's case that there was any arithmetical error in the return. Moreover, the claim, assuming to be incorrect was not apparent from the information in the return which could have been dealt by the Assessing Officer under Section 143(1)(a). Thus, the issue was a debatable one as correctly held by the Tribunal. If the Assessing Officer was of the view that there was reason to believe that the claim was inadmissible, he should have served notice on the assessee specifying the particulars of such claim or such loss or deduction or relief under Section 143(2) or if he had reason to believe that the income had escaped assessment should have served notice under section 148 of the Act. The Assessing Officer chose neither of the two avenues. Thus the judgment of the Supreme Court in IPCA Laboratory Ltd. (supra), relied on by the appellant, wherein the question for consideration was whether the appellants were entitled to deduction

under section 80HHC in respect of the sum of Rs.3.78 crores by ignoring the loss of Rs.6.86 crores is not applicable as it is not a case regarding the processing of a return under section 143. The judgment of the Bombay High Court in IPCA Laboratories Ltd. (supra) does not support the case of the Appellant as therein notice was issued under Section 148 of the Act, unlike the case in hand, where no such notice was issued. Therefore, the submission on behalf of the appellant cannot be accepted. Hence, the question is answered in the affirmative, against the Appellant and in favour of the assessee.

The appeal is dismissed.

(SOUMITRA PAL, J.)

I agree.

(MIR DARA SHEKO, J.)

sm/sg.