(2010) 07 P&H CK 0240

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Ref. No. 105 of 1996

Commissioner of Income Tax		APPELLANT
	Vs	
Swastika Oils and Fertilizers		RESPONDENT

Date of Decision: July 5, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 148, 154, 256(2), 80HHA

Citation: (2010) 235 CTR 298

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Judgement

Ajay Kumar Mittal, J.
The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short "the Tribunal"), at the instance of the Revenue, pursuant to the directions of this Court, issued vide order dt. 22nd Nov., 1995, in petition filed u/s 256(2) of the IT Act, 1961 (for short "the Act"), has referred the following question of law for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) allowing deduction u/s 80HHA, when the Tribunal vide its order dt. 21st July, 1987 passed in appeal No. 889/Chd/1984 in the case for asst. yr. 1981-82 confirmed the action of the AO on the same facts ?

2. The controversy between the parties relates to the asst. yrs. 1979-80, 1980-81 and 1982-83. The facts are, however, being taken from the case relevant for the asst. yr. 1980-81. The AO, Patiala, framed assessment on total income of Rs. 3,03,454 on 31st Aug., 1981 and subsequently the said order was rectified twice u/s 154 of the Act, and finally, the income was assessed at Rs. 3,88,340 vide order dt. 2nd Sept., 1983 in which deduction u/s 80HHA amounting to Rs. 90,385 was withdrawn. The AO disallowed the benefit of deduction u/s 80HHA of the Act to the Assessee on the ground that correct

value of machinery and plant on the last day of the previous year exceeded Rs. 10 lacs and the industrial undertaking of the Assessee was not covered under the definition of "small scale industrial undertaking". The Assessee carried appeal against the aforesaid order before the Commissioner of Income Tax (Appeals) [in short "CIT(A)"]. The appeal was allowed on 6th March, 1984 holding that the total value of the machinery installed as on the last date of the previous year, did not exceed Rs. 10 lacs. The income was, thus, computed at Rs. 2,98,155. Subsequently, action was initiated by the AO u/s 148 of the Act for disallowing deduction earlier allowed u/s 80HHA, on the ground that the same was not admissible as the factory of the Assessee was situated within 8 Kms. from the municipal limits of Patiala City. The AO, vide order dt. 23rd Feb., 1985 added the disallowance of the benefit of deduction u/s 80HHA on the premise that the factory of the Assessee was situated within 8 Kms. from the municipal limits of Patiala City.

3. The CIT(A) however, accepted the plea of the Assessee: that the factory was situated at a distance of 8.3 Kms. and not 7.3 Kms. from the municipal limits and accordingly allowed the appeal of the Assessee. The Tribunal dismissed the appeal preferred by the Revenue.

4. The Tribunal, while adjudicating the issue, had recorded the following finding:

The issue that permeates to all these appeals depends upon the fact whether the location of the Appellant"s factory from the municipal limit by nearest approach is more than 8 Kms. or not. In this regard the CIT(A) has given a finding of fact on the basis of material produced before him that distance was 8.3 Kms. from the municipal limit as against 7.3 Kms. determined by the AO. There is no evidence to controvert this. As such on facts, the appeals of the Revenue fail. These are dismissed.

5. Learned Counsel for the Revenue submitted that the finding recorded by the Tribunal that the factory of the Assessee was beyond 8 Kms. from the municipal limits of Patiala City and thus, the Assessee was entitled to deduction u/s 80HHA of the Act, is perverse and against its own order passed in the case of the Assessee relating to the asst. yr. 1981-82.

6. A perusal of the order of the Tribunal shows that the distance of the factory of the Assessee from the municipal limits of Patiala City was 8.3 Kms. and not 7.3 Kms. as determined by the AO. This is a finding of fact based on appreciation of evidence and once it stands established on record that the factory of the Assessee was beyond 8 Kms. from Patiala City, there was no reason to disallow the relief of deduction u/s 80HHA of the Act. Further, the order passed by the Tribunal does not show that the Revenue had ever relied upon or had argued before it with regard to the order in respect of asst. yr. 1981-82. Moreover, neither the order of the Tribunal in the case of the Assessee for the asst. yr. 1981-82 has been produced before this Court nor it has been shown as to on what basis the Tribunal had recorded that the factory of the Assessee was situated within 8 Kms. of the municipal limits in that year. In the absence thereof, the findings which have been

recorded in the present case relating to the asst. yrs. 1979-80, 1980-81 and 1982-83 cannot be said to be perverse merely on the ground that the Tribunal for the asst. yr. 1981-82 had decided the issue in favour of the Revenue.

7. In view of the above, we answer the question referred, against the Revenue and in favour of the Assessee.