(2005) 08 AHC CK 0226

Allahabad High Court

Case No: Income Tax Reference No. 44 of 1997

The Commissioner of Income Tax		APPELLANT
	Vs	
Lucky Laboratories Ltd.		RESPONDENT

Date of Decision: Aug. 9, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 80A(1), 80A(2), 80C, 80D

Citation: (2006) 200 CTR 305 : (2006) 284 ITR 435

Hon'ble Judges: Rajes Kumar, J; R.K. Agrawal, J

Bench: Division Bench

Advocate: Shambhu Chopra and S.C, for the Appellant;

Judgement

Rajesh Kumar, J.

The Income Tax Appellate Tribunal has referred the following two questions u/s 256(1) of the Income Tax Act (hereinafter referred to as "Act") relating to the assessment years 1992-93 for opinion to this Court:

"(1) Whether on the facts and in the circumstances of the case, the IT AT was legally justified in deleting the addition of Rs.48.98 lacs made by the A.O. on account of lowering of prices of the goods sold which the ITAT have allowed as a measure of business expediency?

(2) Whether on the facts and in circumstances of the case, the" ITAT was legally justified in directing to compute the deduction u/s 80I on total income without excluding any deduction u/s 80HH over looking the provisions of Sub-section (9) of Section 80HH?"

2. The brief facts of the case are as follows:

The assessee/opposite party (hereinafter referred to as "assessee") is a public limited company engaged in the manufacture and sale of various items such as hair

oil, toothpaste, shaving cream, perfumes etc. The main buyer of the product was Dabur India Limited who have sold them under their own brand name. The Assessing Authority found that there was a steep fall in the sale from Rs.27,87 crores in the previous preceding year to Rs. 16.76 crores and gross profit from Rs.4,49,26,484/- to Rs, 1,23,40,225/- and gross profit rate from 20.9 percent to 9.52 percent. The assessee was asked to explain about the fall in the. gross profit. The reason for fall in the G.P. has been given as follows:

i) Fall due to lowering of prices.	Rs.48.98 lacs.
ii) Increase in manufacturing and operational expenses.	Rs.31.37 lacs.
iii) Increase in materials cost (out of this a sum of Rs.29.22 lakhs is on account of increase in the rates of GN oil, mineral oil and til oil).	Rs.62.25 lacs.
Total	Rs. 142.60

3. The Assessing Authority accepted the reasons given at serial nos. 2 and 3. but did not give benefit for lowering of the prices of the goods for sale to Dabui India Limited. The Assessing Authority, accordingly, made addition o; Rs.48.98,000/- towards extra profit. The Assessing Authority has also allowed the claim u/s 80I of the Act at gross total income as reduced by the deduction u/s 80HH of the Act. The assessee filed appeal before the Commissioner of Income tax (Appeals). The Commissioner of Income tax (Appeals) has confirmed the addition of Rs.48,98,000/-. The Commissioner o Income tax (Appeals), however, accepted the plea with regard to the claim o deduction u/s 80I of the Act and held that the calculation for th purposes of allowing deduction u/s 80I of the Act has to be done on th whole amount of gross total income and not on the remainder after givin allowance u/s 80HH of the Act. The Commissioner of Income Ta (Appeals) has made following observation for confirming the addition c Rs.48,98,000/-.

"I have gone through the facts brought on record by the A.O. as well as the submissions made by the Learned A.R. of the appellant. The reasons given for fall in G.P. rate by the appellant appear to be quite strange. With the Sales-tax exemption, the appellant was supplying at higher rates and when the exemption was withdrawn, the appellant company started selling at lower rates. In fact this should have been otherwise. It is relevant to note that for A.Y. 91-92, the appellant had given discount on sales to the buyers while no discount was given for A.Y. 92-93 under reference. If this was the situation, it is not understood why the appellant would supply at a lower rates despite increase in manufacturing cost due to various elements like increase in cost of raw material and withdrawal of sales-tax exemption. All the facts on the record indicate that the appellant was a captive manufacturing unit for M/S Dabur India Ltd. This is more evident from the facts that the director of the appellant company are employees of M/S Dabur India Ltd and they were under the command of M/S Dabur India Ltd so much so that they could not even wait in the Income Tax office in compliance of summons issued by the A.O.

beyond a particular time. The plea of the appellant company that they had to fall in line as other suppliers started supplying at a lower rate does not hold for want of details and prudency in conducting the business. The appellant company had not brought out any fact . indicating that a new competitor offering lower rates had entered into the supply sphere of the appellant.

Considering the above facts, the only conclusion which could be drawn is that the lowering of prices by the appellant company was not for the purpose of business or the business expenditure required such cut in rates but for some extraneous consideration. The A.O. was, therefore, correct in making addition of Rs.48,98,000/- which represented the fall in sale receipts due to lowering of prices by the appellant company. The addition of Rs.48,98,000/- is, therefore, confirmed."

4. The assessee as well as the Revenue went in appeal before the Tribunal. The Tribunal allowed the appeal of the assessee and deleted the addition of Rs.48,98,000/- and also upheld the view of the Commissioner of Income Tax (Appeals) in respect of the allowance of deduction u/s 80I of the Act on the total gross income. The Tribunal held as follows:

"We find considerable force in the submissions of Shri Ganeshan that inference of diversion of income in the case of two companies returning income in lacs and crores cannot be drawn. There is no material on record to hold that any device or tax avoidance was manipulated by the assessee or Dabur (India) Ltd.

The learned C1T (A) in the impugned order described assessee company as capitative manufacturing unit. She held, "All facts on record indicate" addition. Similar sentiment is encode in assessee''s letter dated February 23,1993 filed before the assessing officer:

"The company''s operations during the previous year, 1991-92 has definitely gone down in comparison to the operations registered in the year 1990-91. The relation of the company with Dabur India Limited who was its esteemed customer became constrained from the month of September, 1991 onwards as we were not receiving the orders from them to our satisfaction. They were continuously pressing us to reduce our rate as our rate was not economical to them to buy our manufactured products. As a result, we had "to stop our production during the month of September 1991. Considering the viability of our company and the established long relationship with our customer, finally we had to bring down our rate with the assurance to get reasonable order from them. Even we had to open our branches in Patna and Delhi for attracting more customers to sell our products. Inspite of taking all such measures for increasing the operation of the company, we could not get the desired support from our esteemed customer. The G.P. chart is enclosed.

There is absolutely no material on record to hold that facts stated by the assessee in above letter are not correct. There is no reason to disbelieve and reject above explanation. It is an undisputed position that assessee was making specified goods

as per orders received from Dabur India Limited. The Dabur being main customer, was in a position to dictate terms to the assessee. The revenue has not produced any evidence to show that goods produced by the assessee could be sold in open market at unrevised rates if Dabur had refused to purchase them. The claim that on Dabur''s refusal to purchase, the assessee had to stop its production in September, 1991, has not been refuted or challenged by the revenue. Further there is evidence on record to show that orders were placed for supply of specific goods on specific rates. The assessee, therefore, had a limited choice either to supply goods as per orders or close its business. Even the excise department approved sale rates of the assessee. This was done as per order place by Dabur India Limited as is clear from approval of excise authorities placed before the assessing officer wherein order dated 24.8.1991 is specifically mentioned. In above circumstances, if assessee revised its sale rates in respect of goods sold to Dabur, it cannot be said that it was done for non-business considerations. No plausible reason is available as to why assessee and its management would pass on its profit to M/S Dabur India Limited, a concern much bigger than the assessee. The ratio laid down in the case of Patiala Manufacturer (P) Ltd. (supra) is fully applicable to the facts of the case and there is no justification to tax income which would have accrued to the assessee in case it had not sold goods at cheaper rates. The said income had already been shown and assessed in the hands of Dabur (India) Limited, and cannot be taxed twice. The assessing officer'' had thoroughly examined the records of Dabur India Limited and disallowed the claim indispute as, that company did not make corresponding reduction in its sale rates. But the assessing officer failed to appreciate that as seller, the assessee could not control sale rates of Dabur India Limited."

5. With regard to the deduction u/s 80I of the Act, the Tribunal observed as follows

"Both the parties have come up in appeal. The learned D.R. supported the impugned order of A.O. It was, however, conceded that the view taken by the CIT (A) was quite in line with the view taken by the Benches of HAT in the decisions referred to by learned CIT (A). Shri Ganeshan, however, conceded that only interest received on FDR with Crindlays Bank amounting to Rs. 18.841/- and on other FDR amount to Rs. 2,38,966/-kept for purposes of bond furnished to Excise Department be included in gross income for computing deduction u/s 80HH The balance interest received may be excluded. To support the view taken by the CIT (A) on 80 I, Shri Ganeshan relied upon decision of ITAT in the case of. Future Software (P) Ltd. v. Dy. Commissioner of income tax, 1990 SOT 677. In view of the above submissions, we direct that deduction u/s 80 be allowed after excluding interest received other than interest on FDRs mentioned above. The other deduction u/s 80I be computed on total income without excluding any deduction u/s 80 HIT. The A.O. is directed to revise assessee''s income as per above observations."

6. We have heard Sri Shambhu Chopra, learned Standing Counsel appearing on behalf of the Revenue. No one has appeared on behalf of the assessee.

7. With regard to question No. 1, learned Standing Counsel only submitted that the assessee has lower down the price as a device to reduced income. No other argument has been raised. We have perused the order of the Tribunal and do not find any error in it. The Tribunal has given plausible reason for accepting the claim of the assessee for lowering the price, which resulted in the fall in gross profit Learned Standing Counsel is not able to assail these findings. In the circumstances, we do not propose to interfere with the finding of the Tribunal and the view taken in this regard.

8. So far as question no.2 is concerned, learned Standing Counsel submitted that in view of Sub-section (9) of Section 80HH of the Act, the deduction u/s 80I of the Act should be allowed only after reducing the deduction u/s 80HH of the Act on the balance amount. We do not agree with the submission of the learned Standing Counsel. Sub-sections (1) and (9) of Section 80HH of the Act reads as follows:

"80 HH(1). Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof."

(9). In a case where the assessee is entitled also to the deduction u/s 80I or Section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this section."

9. Section 80I of the Act reads as follows.

"(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel (or the business of repairs to ocean-going vessels or other powered craft), to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof:

Provided that in the case of an assessee, being a company, the provisions of this Sub-section shall have effect (in relation to profits and gains derived from an industrial undertaking or a ship or the business of a I hotel), as if for the words "twenty per cent", the words "twenty-five percent" had been substituted".

10. Both Sections 80HH and 80I contemplates deductions from gross total income and falls under Chapter VIA. Section 80I of the Act contemplates the deduction from profits and gains to an amount equal to twenty percent derivedfrom industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft. The section does not say that the deduction is permissible after reducing the deduction allowed u/s 80HH of the Act.

u/s 80HH of the Act, deduction to the extent of twenty percent is contemplated on the profits and gains derived from an industrial undertaking or the business of a hotel established in a backward area. This section indicates that the deduction contemplated is based on profits derived from such industrial undertaking, hence deduction is profit based. Sub-section (9) of Section 80HH of the Act only says that if the assessee is entitled for deduction u/s 80I as well as Section 80HH, the effect shall first be given to the provisions of this section. Section 80HH(9) only talks about priority. It does not refer to the quantum of deduction. Neither Section 80HH nor Section 80I of the Act says that while computing the deduction u/s 80I of the Act, the deduction already allowed u/s 80HH of the Act be excluded. In our opinion, both the sections independently contemplate separate deductions. If the assessee fulfills the conditions of both the sections, it is entitled for deductions as contemplated therein. In the absence of any provision, while computing the deduction u/s 80I of the Act, the deduction already allowed u/s 80HH cannot be excluded. The view of the Tribunal in this regard is accordingly upheld. However, it may be mentioned here that Section 80A(l) of the Act says that in computing the total income of an assessee, there shall be allowed from gross total income, in accordance with and subject to the provisions of this . Chapter, the deductions specified in Section 80C to 80U. Sub-section (2) of Section 80A further says that the aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee. In this view of the matter, total deduction u/s 80HH and 80I should not exceed the gross total income of the assessee. In the circumstances, while quantifying the deduction, the priority should be given to the deduction u/s 80HH in view of Sub-section (9) of Section 80HH of the Act.

11. The view taken above is supported by the Division Bench decision of the Madhya Pradesh High Court in the case of J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, and the decision of the Bombay High Court in the case of Commissioner of Income Tax v. Nima Specific Family Trust reported in 248 ITR 29. In both the aforesaid cases, it has been held that the unit is entitled to special deduction under both the Sections 80HH and 80I. So far as the benefit of Section 80I is concerned it is to be granted on the gross total income and not on the on the income reduced by the amount income allowed u/s 80HH.

12. In the result, both the questions referred to us are answered in the affirmative i.e. in favour of the assessee and against the Revenue. However, there shall be no order as to costs.