(2001) 11 KL CK 0069

High Court Of Kerala

Case No: Income-tax Reference No. 29 of 1998

Commissioner of Income Tax	APPELLANT
Vs	
Parekh Brothers	RESPONDENT

Date of Decision: Nov. 13, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 41(1), 41(2), 80HHC, 80HHC(1)

Citation: (2002) 253 ITR 43

Hon'ble Judges: P.K. Balasubramanyan, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: P.K.R. Menon and George K. George, for the Appellant; P. Balakrishnan and K.S. Menon, for the Respondent

Final Decision: Allowed

Judgement

P.K. Balasubramanyan,J.

1.For the assessment year 1987-88, the assessee claimed a deduction of Rs. 11,20,750 u/s 80HHC of the income tax Act, 1961. He also created a reserve of a sum equivalent to Rs. 11,20,750 in the profit and loss account of the previous year. The Assessing Officer found that there was an error in calculation and found that the deduction allowable u/s 80HHC of the Act was only an amount of Rs. 10,89,472. The Assessing Officer allowed that deduction in view of the fact that the assessee had created a reserve in his profit and loss account for the previous year, of a sum of Rs. 11,20,750. The Assessing Officer made an addition to the business income u/s 41(1) of the Income Tax Act of a sum of Rs. 5,60,851. The assessee appealed. Before the Commissioner of Income Tax (Appeals) the assessee contended that the addition of the amount of Rs. 5,60,851 as business income was not justified. Alternatively, the assessee contended that even if it was taken as business profit, the same also should be reckoned for deduction u/s 80HHC of the Act. The Commissioner of Income Tax (Appeals) did not accept the contention of the assessee that the same

could not be added as business income u/s 41(1) of the Act. But the Commissioner of Income Tax (Appeals) agreed with the assessee that the sum of Rs. 5,60,851 could also be taken into consideration while considering the claim of the assessee for deduction u/s 80HHC of the Act. But the Commissioner of Income Tax (Appeals) took the view that since the assessee had created only a reserve of a sum of Rs. 11,20,750 in the profit and loss account for the previous year, in terms of the proviso to Section 80HHC of the Act, the assessee was entitled to deduction u/s 80HHC of the Act only to the tune of Rs. 11,20,750.

2. Feeling aggrieved, the assessee appealed to the Tribunal. Before the Income Tax Appellate Tribunal, the only contention raised by the assessee was that the entire sum of Rs. 16,14,792 determined as business income u/s 41(1) of the Act, was eligible for deduction u/s 80HHC of the Act notwithstanding the fact that the assessee had only created a reserve of Rs. 11,20,750 in the profit and loss account of the previous year. According to the assessee, he had created a reserve in the account, the amount claimed as deduction u/s 80HHC of the Act and the amount eligible for deduction u/s 80HHC of the Act got enhanced only because of the order of assessment made by the Assessing Officer and in such a situation, the excess added or the addition to business income made by the Assessing Officer, was eligible for computation as deduction u/s 80HHC of the Act, even though the said amount had not been provided for as a reserve in the profit and loss account for the previous year. The Income Tax Appellate Tribunal accepted this contention of the assessee and setting aside the order of the Assessing Officer and that of the Commissioner of Income Tax (Appeals), remitted the question to the Assessing Officer directing him to consider the amount of Rs. 5,60,851 also for the purpose of deduction u/s 80HHC of the Act. The Revenue having felt aggrieved by the view adopted by the Income Tax Appellate Tribunal on the scope of deduction u/s 80HHC of the Act, sought a reference of the following questions to this court u/s 256(1) of the Act :

"(1) Whether, on the facts and in the circumstances of the case, the asses-see is eligible for full deduction u/s 80HHC without restricting it to the amount of reserve ?

(2) Whether, on the facts and in the circumstances of the case, the benefit of Section 80HHC is available to an amount (allowed in the assessment year 1978-79) assessed u/s 41(2) of the Income Tax Act ?"

3.The Income Tax Appellate Tribunal has consequently referred the above questions for our opinion.

4. We shall now read Section 80HHC of the Act in so far as it is relevant for our purpose :

"80HHC. Deduction in respect of profits retained for export business. --(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise

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 equal to the aggregate of-

(a) four per cent, of the net foreign exchange realisation ; and

(b) fifty per cent, of so much of the profits derived by the assessee from the export of such goods or merchandise as exceeds the amount referred to in Clause (a) :

Provided that the deduction under this sub-section shall not exceed the profits derived by the assessee from the export of such goods or merchandise:

Provided further that an amount equal to the amount of the deduction claimed under this sub-section is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee.

(2) (a) This section applies to all goods or merchandise, other than those specified in Clause (b), if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessee in convertible foreign exchange.

(b) This section does not apply to the following goods or merchandise, namely :--

(i) mineral oil; and (ii) minerals and ores.

(3) For the purposes of Sub-section (1), profits derived from the export of goods or merchandise out of India shall be,--

(a) in a case where the business carried on by the assesses consists exclusively of the export out of India of the goods or merchandise to which this section applies, the profits of the business as computed under the head ''Profits and gains of business or profession'' ;

(b) in a case where the business carried on by the assessee does not consist exclusively of the export out of India of the goods or merchandise to which this section applies, the amount which bears to the profits of the business (as computed under the head ''Profits and gains of business or profession'') the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee."

5. In terms of Sub-section (1) of Section 80HHC of the Act, a deduction equal to the aggregate of the amounts referred to in that sub-section, can be allowed in computing the total income of the assessee provided the conditions mentioned in the said sub-section are satisfied. The proviso that occurs first, imposes the condition that the deduction under the section shall not exceed the profits derived by the assessee from the export of goods or merchandise. The further proviso says that an amount equal to the amount of the deduction claimed under this sub-section should have been debited to the profit and loss account of the previous

year in respect of which the deduction was to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee. On a plain reading of Section 80HHC(1) of the Act, it appears to us that the eligibility for deduction u/s 80HHC(1) of the Act depends upon the conditions in the provisos being satisfied. We are concerned here with the further proviso which insists that the deduction can be granted, for an amount being equal to the amount debited to the profit and loss account of the previous year and credited to a reserve account to be utilised for the purposes of the business of the assessee.

6. According to learned counsel for the assessee, what the further proviso refers to is the deduction claimed by the assessee and if while claiming the deduction u/s 80HHC of the Act, the assessee had created a reserve fund as contemplated by the proviso, of an amount equal to the amount claimed as deduction by the assessee, the conditions of Section 80HHC are satisfied and the assessee would be entitled u/s 80HHC of the Act to the deduction of any amount determined by the Assessing Officer as export profit. On the facts of this case, according to learned counsel for the assessee, the assessee had claimed a deduction of Rs. 11,20,750 and had created a reserve and debited that amount to the profit and loss account of the previous year and hence the assessee had satisfied the condition imposed by the proviso. But when once the Assessing Officer found that the amount that can be eligible for deduction u/s 80HHC of the Act amounts to Rs. 16,14,792 by virtue of an addition to the profit, the assessee would be eligible for deduction of the whole amount notwithstanding the fact that for the difference, no reserve has been created by the assessee. According to learned counsel for the Revenue, on the other hand, the deduction u/s 80HHC of the Act is limited to the amount reserved by the assessee in the profit and loss account of the previous year and whatever be the actual export profit or business profit assessed by the Assessing Officer, the permissible deduction can only be equal to the amount that has been created as a reserve by debiting the same in the profit and loss account of the previous year. The golden rule of interpretation is that all the limbs of the section should be read harmoniously. It is no doubt true, as observed by the Supreme Court in Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd., , that a provision for deduction should be construed reasonably and in favour of the assessee if two views are possible. When we read Section 80HHC of the Act along with the relevant provisos, it is clear that the deduction u/s 80HHC is available only to the extent of the reserve created in terms of the further proviso to Section 80HHC(1) of the Act. In fact the further proviso limits the deduction that can be granted u/s 80HHC of the Act to the extent of the amount created as a reserve in terms of the further proviso. It appears to us that it may be open to an assessee, in spite of a larger export profit, to limit his claim u/s 80HHC of the Act by creating a reserve of a lesser amount in the profit and loss account of the previous year. In this case, what has happened is that the business profit of the assessee was assessed by the Assessing Officer at a higher figure but the assessee had only claimed deduction

u/s 80HHC of the Act of a lesser sum supported by creation of a reserve in the profit and loss account of the previous year in respect of the sum claimed as deduction. On a plain reading of the provision as a whole we find that in such a situation, the assessee would be entitled to deduction u/s 80HHC of the Act only to the extent of the amount covered by the reserve created in the profit and loss account of the previous year. We find that the interpretation adopted by the Commissioner of Income Tax (Appeals) is the proper interpretation of the relevant provision of the Act and the Income Tax Appellate Tribunal was in error in differing from the interpretation placed on the provision by the Commissioner of Income Tax (Appeals) and in proceeding to permit deduction of an additional sum not covered by a reserve in terms of the further proviso to Section 80HHC(1) of the Act.

7. For the reasons stated above, we answer the questions referred to us in this revision in favour of the Revenue and against the assessee.