
(2014) 08 AP CK 0011

Andhra Pradesh High Court

Case No: Income Tax Tribunal Appeal No. 3 of 2002

Commissioner of
Income Tax

APPELLANT

Vs

Sri Krishna Drugs Ltd.

RESPONDENT

Date of Decision: Aug. 7, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 2(24), 5, 6, 80AB, 80B

Citation: (2014) 369 ITR 365

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: J.V. Prasad, Standing Counsel, Advocate for the Appellant; A.V. Krishna Koundinya for A.V.A. Siva Karthikeya, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.

This appeal is filed by the Revenue feeling aggrieved by the order dated August 21, 2001, passed by the Hyderabad B Bench of the Income-tax Appellate Tribunal in I.T.A. No. 349/Hyd/97 for the assessment year 1993-94. The following substantial question of law has been framed.

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the deduction under section 80HHC of the Income-tax Act, 1961, be allowed on the gross total income and not on net total income?"

The respondent is an industry and is assessed to income-tax. It undertakes export of manufactured goods. In the returns submitted for the assessment year 1993-94, it claimed deduction under section 80HHC of the Income-tax Act, 1961 (for brevity the Act). The controversy was about the stage of deduction.

2. According to the respondent, the deduction of the amount covered under section 80HHC of the Act can be done at the threshold, i.e., before deduction of unabsorbed

losses or carried forward depreciation are effected. The assessing authority did not agree for the same and by placing reliance upon section 80HH of the Act directed the deduction under section 80HHC at a later stage. Aggrieved by that, the respondent filed an appeal before the Commissioner of Income-tax (Appeals) III, Hyderabad. The said appeal was dismissed through order dated December 27, 1996. Thereupon, the respondent filed an appeal in I.T.A. No. 349/Hyd/97 and the Income-tax Appellate Tribunal, Hyderabad "B" Bench allowed the said appeal by order dated August 21, 2001.

3. Sri J.V. Prasad, learned counsel for the appellant, submits that Chapter VI-A of the Act that provides for certain deductions, is almost a self-contained code on the subject and from section 80AB of the Act, it is clear that the deductions referable to heading "C" under the Chapter are to be effected from the corresponding gross total income and not otherwise. He submits that the Tribunal did not take into account the subtle distinction in this regard and allowed the appeal simply by referring to the judgment of the Supreme Court in [Commissioner of Income Tax, Pune Vs. Shirke Construction Equipment Ltd.,](#) . He further submits that the judgment of the Supreme Court in [Commissioner of Income Tax Vs. Williamson Financial Services and Others,](#) has no application to the facts of the case.

4. Sri A.V. Krishna Koundinya, learned counsel for the respondent-asses-see, on the other hand, submits that the Tribunal has taken the correct view of the matter, duly taking into account the scheme under Chapter VI-A of the Act. He submits that the deduction provided for under section 80HHC is of a separate category and it is to be effected from the corresponding "total income" in contra distinction to the "gross total income".

5. One of the important steps in processing the returns of an assessee, where it is an industry, is the identification of deductions that are allowed under Chapter VI-A of the Act. It can safely be observed that Chapter VI-A of the Act is one of the most oft amended part of the Act. Parliament has to take into account the deductions of different categories to be allowed for various classes of assessees. Even while permitting deductions, extreme care is to be taken to ensure that the assessees do not walk away with the uncovered amounts, by claiming them to be permissible deductions. Obviously, for that reason, the length of some sections exceeds the whole text of certain enactments.

6. While identification of the amount deductible is an important step, equally important, is the identification of stage at which the deduction is to be made. Deductions, by their very nature, are to be made from the income. However, under the Act, the connotation of the word "income" is not uniform. It is ascribed different meanings, depending on the purpose. For example, the definition of the word "income", under section 2(24) of the Act, is inclusive in nature. It takes in its fold, several components, like profits and gains, dividends, voluntary contributions, perquisites, special allowances, and the like; mentioned in clauses (i) to (xvi).

7. Under section 5 of the Act, the scope of the expression "total income" is explained. The said section reads as under:

"5. Scope of total income.--(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which--

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or

(c) accrues or arises to him outside India during such year:

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which--

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.--Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance-sheet prepared in India.

Explanation 2.--For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India."

8. Coming to the expression "gross total income", it is indicated in subsection (5) of section 80B of the Act as under:

"(5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter."

9. Section 80AB of the Act mandates that any deduction, that is required to be made or allowed under any provisions included in this Chapter under the heading "C.--Deductions in respect of certain incomes" in respect of any income, of the nature specified in that section, which is included in the gross total income of the assessee, shall be, from the

income of that nature. The provision reads:

"80AB. Deductions to be made with reference to the income included in the gross total income.--Where any deduction is required to be made or allowed under any section included in this Chapter under the heading "C. Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income."

10. The deductions in favour of an exporter of manufactured goods is provided under section 80HHC. It occurs under the heading "C". When the respondent sought deduction of the amount referable to that section, at the threshold itself, from the corresponding income, the assessing authority objected to it and insisted that it should be done only at the end. In a way, the question as to whether the deduction must be from the "total income" or "gross total income" becomes relevant.

11. From a perusal of the definitions of the expressions "gross total income" and "total income", it becomes clear that the gross total income is nothing but the total income, before any deductions under Chapter VI-A are made. If the Act provides for deduction of any amount from the gross total income, it is axiomatic that the deduction of that nature must take place at the first instance and, thereafter, the other deductions can be made.

12. From the point of view of the assessee, the stage, at which the deduction is to be made, would make substantial difference. If the deduction components, such as current or carried forward depreciation and whether fresh or unabsorbed losses are to be made at the threshold the assessee would stand to lose. If, on the other hand, the deduction of such amounts is made after the other deductions, he would stand to benefit. In a given case, he may be able to carry forward the unabsorbed loss or depreciation, if the deduction is made at a stage where the income gets down sized on account of deduction of other amounts.

13. A close scrutiny of Part C of Chapter VI-A of the Act itself discloses that Parliament was clear in its mind as to the stage of deductions to be made. For example, under section 80HHA deduction in respect of profits and gains from newly established small-scale industrial undertakings in certain areas is to be made while determining the total income which is part of the gross total income. The language employed in section 80HHB of the Act is somewhat different. No reference is made to the total income. All profits and gains from projects outside India are to be made from the gross total income. So is the case with the deductions under section 80HHBA. In contrast, the deductions made under section 80HHC, which are in respect of profits retained from export business,

the deduction is required to be made from the total income. This distinction is worth being taken note of.

14. Once the deductions under section 80HHC are to be made from total income, there may not be any justification to insist that it shall be the first of all the deductions. If that were to be so, Parliament would have employed the expression "gross total income" under section 80HHC also, instead of the expression "total income".

15. Even if one goes by the requirement under section 80AB of the Act, the emphasis is to ensure that the deduction, which is referable to a particular source of income, must not cut into the other incomes. The use of the expression "total income" in section 80HHC of the Act adds strength to that. When the law requires that the deduction of the amounts are required to be made from the corresponding total income, the inescapable conclusion is that the deduction must take place at the threshold before the left over total income referable to that activity merges in the other head, of the income of the assessee. It is, thereafter, that other deductions, such as depreciation and unabsorbed losses, are to be effected. We derive support to this conclusion from the judgment of the Supreme Court in Shirke Construction's case (supra) and Williamson Financial Services" case (supra).

16. Further, once the deduction is to be made from the total income, in contra distinction to "gross total income", the assessee must be given the facility, as to the stage of deduction. Law provides the assessee, the freedom to arrange his affairs in a manner, which is beneficial to him, as long as the same is not prohibited by or is contrary to any provision of an enactment.

17. For the aforesaid reasons, we find that this appeal is devoid of merits and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this appeal shall stand closed.