

(2016) 286 CurTR 242 : (2016) 382 ITR 537

CALCUTTA HIGH COURT

Case No: ITA 360 of 2005

Singlo (India) Tea Ltd.

APPELLANT

Vs

Commissioner of
Income Tax and Others

RESPONDENT

Date of Decision: March 4, 2016

Acts Referred:

Income Tax Act, 1961 - Section 10, Section 10(1), Section 11, Section 14, Section 143 (3), Section 15, Section 260A, Section 28, Section 29, Section 30, Section 31, Section 32, Section 33, Section 33AB, Section 33-AB, Section 33AB(1), Section 34, Sect

Citation: (2016) 286 CurTR 242 : (2016) 382 ITR 537

Hon'ble Judges: G.C. Gupta and Asha Arora, JJ.

Bench: Division Bench

Advocate: J.P. Khaitan, Sr. Adv. and S. Mukherjee, Advocate, for the Appellant; S.B. Saraf, Advocate, for the Respondent

Final Decision: Allowed

Judgement

G.C. Gupta, J.

1. The assessee has come up in appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the

"Act") against an order of the Income Tax Appellate Tribunal, A- Bench, Kolkata dated 28th June, 2005 in ITA 1626/KOL/2004 for the

assessment year 2000-01.

2. By the order dated 17th November, 2005 a Division Bench of this Court admitted this appeal on the following substantial question of law:--

1) Whether on a true and proper interpretation of Section 33AB of the Act and Rule 8 of the Income Tax Rules the deduction under Section

33AB of the Act is to be allowed while computing the income derived from sale of tea grown and manufactured by the seller which forms the

composite income from sale of tea grown and manufactured by the seller and the apportionment in terms of Rule 8 of the Income Tax Rules

between agricultural income and non-agricultural income should be made after the said deduction is allowed in the computation of composite

income?

3. Briefly stated the facts and circumstances of the case are as follows:--

The assessee is a company engaged inter alia, in the business of growing, manufacturing and selling of tea in India and abroad. The assessee

claimed a deduction at the rate of 20% on the composite income of Rs. 25,54,855/-. But the assessing officer by his order dated 27th March,

2003 passed under Section 143 (3) of the Act held that any deduction under Section 33AB has to be allowed only from the non-agricultural

component of the composite income determined under Rule 8 of the Income Tax Rules, 1962. To be precise the assessing officer held as follows:-

-"The assessee has claimed deduction u/s. 33AB on the basis of composite income before apportionment under Rule 8. The apportionment of

agricultural income and non- agricultural income for taxation purposes is provided in Rule 8. Therefore, any deduction in computation of income

under the head ""Profits and gains of business or profession"" has to be allowed from the non-agricultural component as computed under Rule 8 the

deduction being allowed from agricultural income, which is not subjected to 1. Tax as provided u/s. 10(1). Hence, computation of deduction u/s.

33AB is made with respect to twenty percent of the profit from non-agricultural component as ascertained from Rule 8. So the deduction of Rs.

5,10,971/- is added back to the composite income of Rs. 20,43,884/- and is to be considered for allowance on determination of the non

agricultural component of composite income.

4. The assessee appealed against the order of the assessing officer before the Commissioner of Income Tax (Appeals) (hereinafter referred to as

the "CIT(A)"). The CIT(A) by an order dated 22nd June, 2004 allowed the appeal of the assessee and held as follows:--

I have examined the facts of the case and considered the appellant's submission. It is clearly laid down by the Hon'ble Supreme Court in a

number of decisions ending with the decision in the cases of Tata Tea Ltd. v. State of West Bengal and McLeod Russel (India) Ltd. v. State of

West Bengal reported in , 173 ITR 18 that in order to determine income derived from business under Rule 8(1), the deduction allowable under the

Act in respect of business income would have to allowed. Rule 8 of the IT Rules also states that the income derived from sale of tea grown and

manufactured by the seller in India shall be computed as if it were income from business. In the light of the aforesaid provision there can be no

ambiguity in the matter. As the deduction u/s. 33AB is specifically admissible to an assessee carrying on the business of growing and manufacturing

of tea in India, the deduction under this Section has to be allowed from the composite income itself. The Assessing Officer is directed to allow the

claim of deduction u/s. 33AB at 5,10,971/- only as per the Return of Income.

5. Aggrieved by the order of the CIT(A) the revenue appealed before the Tribunal. The Tribunal by its order dated 28th June, 2005 partly allowed

the appeal of the revenue. The Tribunal relied on an earlier order dated 28th February, 2005 in the case of M/s. Empire Plantation India Ltd. in

ITA No. 1600/KOL/2004 for the assessment year 2000-01 and held as follows:--

Now coming to ground No. 2 relating to allowance of deduction u/s. 33AB from the composite income, we find that this issue is also is squarely

covered by the said order of the Tribunal dated 28.2.2005. The Tribunal in that case after a detailed discussion on the issue and after analyzing

several case laws on the subject decided the issue in favour of the department. The relevant portion from that order is reproduced below:--

"25. Be that as it may, the correct and rationale meaning to later clause (b) of section 33AB is that the amount of deduction under section 33AB is

to be restricted to a sum equal to twenty per cent of the profits of business of growing and manufacturing tea in India as computed under the head

"Profits and Gains of Business or Profession" before making any deduction under section 33AB and before the loss, if any, brought forward, from

earlier year is set off under section 72 of the Act. In other words, the sum equal to twenty per cent is to be computed on the amount of 40% of

composite income before making any deduction under section 33AB of the Income Tax Act and set off any loss under section 72 of the Act is

made inasmuch as only 40% of composite income comes within the ambit of profit computed under the head "Profits and Gains of Business or

Profession" under the IT Act. The expression head "Profits and Gains of Business or Profession" in section 33AB refers the amount that falls under

that head under the I.T. Act. In this view of the matter, the order of CIT(A) is set aside and that of the A.O. is restored. This issue is decided in

favour of the Revenue.

26. Before parting with the issue, we may state that the decision of Hon"ble Kerala High Court in the case of CIT v. Mahabir Plantations Ltd. ,

(2005) 142 Taxman 538 where the view similar to the view taken by the Division Bench of that Court in CIT v. C.W.S. (India) Ltd. , (2000) 246

ITR 278 was taken, is also of no help to the present assessee as the Hon"ble jurisdictional Calcutta High Court in the case of Union of India and

Others Vs- Warren Tea Ltd. and Others , (2004) 266 ITR 227 has observed that ""we are unable to agree with the ratio decided in the decision in

CIT v. C. W.S. (India) Ltd. , [2000] 246 ITR 278 (Ker.) relied upon by Dr. Pal for the reasons we have already given hereinbefore. This decision

has also not taken into consideration the impact of various other provisions of the Act itself as discussed hereinbefore."""

Respectfully following the aforesaid order of the Tribunal, we allow this ground of appeal of the department. The order of the C.I.T.(A) on this

issue, therefore, is set aside and that of A.O. is restored.

6. The assessee has come up in appeal against the aforesaid order of the Tribunal. To appreciate the rival contentions advanced by the Advocates

for the parties it is necessary to set out the relevant provisions of the Act. The relevant portion of Section 33AB of the Act reads as follows:--

33-AB. Tea development account.--(1) Where an assessee carrying on business of growing and manufacturing tea in India has, before the expiry

of six months from the end of the previous year or before furnishing the return of his income 1[whichever is earlier,-

(a) deposited with the National Bank any amount or amounts in an account (hereafter in this section referred to as the special account) maintained

by the assessee with that Bank in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme)

approved in this behalf by the Tea Board; or

(b) deposited any amount in an account (hereafter in this section referred to as the Tea Deposit Account) opened by the assessee in accordance

with, and for the purposes specified in, a scheme framed by the Tea Board (hereafter in this section referred to as the deposit scheme) with the

previous approval of the Central Government,

the assessee shall, subject to the provisions of this section;] be allowed a deduction (such deduction being allowed before the loss, if any, brought

forward from earlier years is set off under Section 72) of-

(a) a sum equal to the amount or the aggregate of the amounts so deposited; or

(b) a sum equal to forty per cent of the profits of such business (computed under the head ""Profits and gains of business or profession"" before

making any deduction under this section),

whichever is less:

7. It is to be noted that in the instant case the allowable deduction u/s. 33-AB of the Act for the relevant assessment year would be a sum equal to

the amount or the aggregate of the amounts deposited in a special account or in a tea deposit account, or a sum equal to 20% of the profits of such

business whichever is lesser. The allowable deduction u/s. 33-AB was increased to 40% with effect from 1st April 2002 prior to that and in the

relevant year admissible deduction was 20%. The relevant portion of Rule 8 of the Income Tax Rules, 1962 reads as follows:--

Income from the manufacture of tea.

8. (1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from

business, and forty per cent of such income shall be deemed to be income liable to tax.

8. Mr. Saraf, learned Advocate appearing for the revenue, submitted that the benefit under section 33AB can only be granted after applying the

formula under rule 8, i.e. to say after working out the taxable income.

9. Mr. Khaitan, learned Senior Advocate appearing for the assessee-appellant, submitted that the benefit of section 33AB has to be given before

applying the formula under rule 8; in other words, before apportioning the income chargeable to tax. He, in support of his submission, relied upon

the judgment of this Court in the case of Goodricke Group Ltd. v. Commissioner of Income Tax II, Kolkata, [ITA No. 651 of 2004, vide order

dated 19th May 2011], wherein the following view was taken:--

We find that the Tribunal below erroneously held that the deduction under Section 33AB of the Act would be made after the taxable amount will

determine under Rule 8 of the Rules. The question of application of Rule 8 does not come so long the profit or loss from the business of growing

and manufacturing tea is determined after deduction of all permissible deductions under the Act. We, thus, answer the third question in the negative

and against the Revenue.

10. Mr. Saraf expressed doubts about the correctness of the aforesaid judgment relying on the judgment of the Supreme Court in the case of CIT

v. Williamson Financial Services & Ors., reported in , (2008) 297 ITR 17(SC). He drew our attention to paragraph Nos. 38 and 41 of the

judgment wherein the following views were expressed:--

38. Section 80HHC, inter alia, states that in computing the "total income" a deduction, to the extent of profits derived by the assessee from

exports has to be taken into account. The important words are profits derived from the export. The word "derived" would mean "derived from the

source". That source has to be in section 14. Income covered by section 10(1), i.e. agricultural income, which is not chargeable to tax, does not

fall in section 14 and, therefore, it will not fall under various computation sections commencing from section 15 to section 59. Section 14 classifies

all income" into five enumerated heads for the purpose of charge of income-tax and computation of total income. As stated hereinabove,

exempted income" is different from "tax-free income". In the present case, we are concerned with both these types of income. "Agricultural

income" falls in the category of exempted income. It is neither chargeable nor includible in the total income. On the other hand, deduction under

Chapter VI-A is for "income" which forms part of total income but which is tax-free. In the present case, we have to balance both these types of

income, namely, exempted income vis-à-vis tax-free income. Thus, it is clear that "income", covered under section 10 and section 11 which is

not chargeable to tax, does not fall under section 14 and under various computation sections from section 15 to section 59. However, on account

of legal fiction built into rule 8(1), which applies to composite income, a part of the composite income/integrated income is agricultural income and

the balance is business income. The object of rule 8(1) is to disintegrate the two. If the income from agriculture cannot be computed under the

1961 Act then the income from agriculture has to be arrived at in a normal commercial manner. There is no scope for computing such income by

complying with the computation section under the Income-tax Act. In other words, the real income has to be taken into account for the purpose of

considering the exemption under section 10(1). This position emerges in a case where we have to deal solely with agricultural income. However, as

stated above, in this case we are concerned with the composite income. Therefore, we have to interpret rule 8(1) of the 1962 Rules.

41. In this case, however, we are concerned with composite income which is partly agricultural and partly business. Therefore, Rule 8(1)

segregates agricultural income which is exempted income from business income which is chargeable to tax. For that purpose we need to apply the

ratio of 60:40. Therefore, to the extent of 40% only we have chargeability and computability. If this distinction is kept in mind we are of the view

that the assessee cannot claim Section 80-HHC(3)(a) deduction against the entire composite tea income. It can be claimed only against

proportionate income. Therefore, in the above example, Section 80-HHC deduction can be claimed not against the entire composite income of Rs.

50 lakhs but it can be claimed only against a part thereof which is Rs. 20 lakhs. Similarly, in the other example, Section 80-HHC deduction can be

claimed not against composite income of Rs. 16.05 crores, it can be claimed only against the composite income of Rs. 6.42 crores. For the above

reasons, we are of the view that Section 80-HHC deduction cannot be allowed against the entire tea income.

11. Mr. Khaitan submitted that the judgment in the case of CIT v. Williamson Financial Services (supra) has no manner of application in deciding

the issue which is before us. He submitted that the issue in Williamson Financial (supra) was with respect to deduction u/s. 80-HHC of the Act

which appears in Chapter VI-A of the Act and deals with deduction from gross total income.

12. We have heard the submissions advanced by the learned advocates for the parties and perused the record. In Williamson Financial (supra) the

assessee was engaged in growing, manufacturing and exporting of tea. The assessee claimed that deduction u/s. 80-HHC was to be allowed

against the entire tea income before applying Rule 8(1) of Income Tax Rules, 1962. The Supreme Court held that deduction u/s. 80-HHC was to

be allowed only from the taxable income which is determined after apportionment of the income from tea under rule 8(1). The Supreme Court

while holding that s.80-HHC was not part of the provisions of the Act which deals with computation under the head ""Profits and Gains from

Business"" observed as follows:--

In Section 80-HHC a part of the provisions of the 1961 Act which deals with computation under the head ""Profits and Gains from Business""?

42...As stated above, Rule 8(1) provides for the method in which composite income is to be computed. Rule 8(1) says that income shall be

computed as if it were income derived from business. Rule 8(1) uses the word ""income"" and not ""total income"". The 1961 Act contains provisions

for computation of income under the head ""Business"". The question is whether Section 80-HHC is part of the provisions in the 1961 Act which

deals with computation of income under the head ""Profits and gains from business""? If it is, then apportionment prescribed by Rule 8(1) can be

applied only after deducting the allowance under Section 80-HHC from the composite income as contended by the assesseees. However, in our

view computation in Rule 8(1) in respect of composite income, by reason of legal fiction inbuilt in Rule 8, cannot be read in entirety into

computation of income under the head ""Business"". If the contention of the assesseees is accepted, namely, that the entire computation of composite

income under Rule 8(1) is part of computation provisions under the head ""Business"" then it would amount to granting deduction under Section 80-

HHC even with reference to income which is exempt under Section 10(1) of the 1961 Act, namely, agricultural income. Such a result would be

opposed to the basic scheme of the 1961 Act. In this connection, it is also important to note that under Section 80-A which falls in Chapter VI-A,

deductions are allowed only from ""gross total income"". The object of making such provision is to limit the amount of Section 80-HHC deduction. It

is true that Section 80-HHC provides for deduction of a percentage of the export profits. The percentage is calculated with reference to the export

profits, but the deduction is only from ""gross total income"" as defined under Section 80-B(5) of the 1961 Act. Therefore, the very scheme of the

1961 Act is to treat the deductions under Chapter VI-A as deductions only from ""gross total income"" in order to arrive at the ""total income"". In

other cases falling under Section 28 where computation of income falls under the head ""Business"", allowances are deductible from the income but

not from ""gross total income"". It is, therefore, not possible to accept the contention that Section 80-HHC is part of the provisions for computation

of business income...

13. Chapter IV of the Act deals with ""computation of total income"". The subheading "D" under Chapter IV deals with computation of income

under the head of ""Profits and gains of business or profession"". Section 28 is the charging provision which identifies the income chargeable to

income tax under the head ""Profits and gains of business or profession"". Furthermore section 29 states that income referred to in section 28 shall

be computed in accordance with the provisions contained in sections 30 to 43D.

Therefore section 33AB is a part of the provisions under the Act

which deals with computation of income under the head ""Profits and gains of business or profession"". Hence according to Williamson Financial

(supra) apportionment prescribed by Rule 8(1) can be applied only after deducting the allowance under Section 33AB from the composite

income.

14. Sub-section (1) of section 33AB states as follows:--

Where an assessee carrying on business of growing and manufacturing tea...the assessee shall...be allowed a deduction...of-

(a)...

(b) a sum equal to twenty per cent of the profits of such business (computed under the head ""Profits and gains of business or profession"" before

making any deduction under this section)...

15. Hence the expression ""profits of such business"" in clause (b) as aforesaid relates to the expression ""business of growing and manufacturing tea

as appearing in the beginning of subsection (1) of section 33AB of the Act.

16. In CIT v. Mahavir Plantations Ltd. reported in , (2004) 269 ITR 552, the following issue arose for consideration:--

Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the tea development allowance under section

33AB of the Income-tax Act, 1961, must be in relation to the income of the business of growing and manufacturing tea, rather than to the taxable

portion of such income?

17. The Kerala High Court held as follows:--

Admittedly, the assessee had deposited a sum of Rs. 18 lakhs during the previous year relevant to the assessment year under the scheme referred

to in section 33AB(1) of the Act. It specifies the provisions of clause (a) of section 33AB(1) of the Act. Further, the deduction available under the

section can be ascertained only after ascertaining the amount provided under clause (b) of the said sub-section. Under clause (b), a deduction of a

sum equal to 20 per cent, of the profits of such business computed under the head ""Profits and gains of business or profession"" is profit before

making any deduction under this section. The profits of such business referred to in clause (b) must necessarily be the profits of the business

referred to in the main part of subsection (1), namely, ""business of growing and manufacturing of tea in India"". The assessing authority in the instant

case has worked out the profits of the business of growing and manufacturing tea in India at Rs. 1,06,05,455. If the deduction as provided under

section 33AB(1), clause (b), is computed, it will come to Rs. 21,21,090. However, the sub-section provides that the deduction permissible under

the sub-section is the lesser of the two amounts provided under clauses (a) and (b). In that view of the matter, since the assessee had deposited

only Rs. 18 lakhs under the scheme, the deduction must be confined to Rs. 18 lakhs only. The only further question to be considered is regarding

the scope of rule 8(1) of the Income-tax Rules extracted above. The rule clearly provides that the income derived from the sale of tea grown and

manufactured by the seller in India shall be computed as if it were income derived from business. But, for the purpose of liability to tax under the

Act, it is provided that only 40 per cent, of such income shall be deemed to be income liable to tax. According to us, this rule has nothing to do

with the deduction provided under section 33AB(1) of the Act, which in clear terms provides that the deduction must be geared to the profits of

the business of growing and manufacturing tea in India.

18. In Mahavir Plantations (supra) the Kerala High Court relied on an earlier judgment of the same court in CIT v. C.W.S. (India) Ltd., reported

in , [2000] 246 ITR 278. The issue in C.W.S. (India) (supra) was whether deduction u/s. 80-HHC was to be allowed before application of Rule

8(1). The Court in C.W.S. (India) answered the question in the affirmative and in favour of the assessee. However in view of the authoritative

pronouncement by the Apex Court in Williamson Financial (supra) the judgment in C.W.S. (India) (supra) stands overruled. Nevertheless Mahavir

Plantations (supra) remains unaffected as the Court came to the right conclusion on the issue which had arisen for determination.

19. The judgment of this court in Goodricke Group (supra) relied upon by Mr. Khaitan was also followed by a division bench of this court in a

recent judgment in M/s. Singlo (India) Tea Co. Ltd. v. CIT, Central-1, Kolkata, [ITA 338 of 2007, vide order dated 1st September 2015].

20. Therefore we hold that the deduction u/s. 33AB of the Act is to be allowed from the total composite income derived from growing and

manufacturing tea and only after such deduction is made, Rule 8(1) of the Income Tax Rules, 1962 shall be applied to apportion the resultant

income into 60% agricultural income, not taxable under the Act and balance 40% which is taxable under the Act. In that view of the matter the

question formulated above is answered in the affirmative and in favour of the assessee.

21. The appeal is thus allowed.

Asha Arora, J.

I agree.