IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 711 OF 2000

The Commissioner of Income Tax, Mumbai ..Appellant

Vs.

KEC International Ltd. ..Respondent

....

Mr. Nitesh Joshi, Advocate i/b Mr. Atul Jasani for Appellant.
Mr. Suresh Kumar, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 05 MARCH 2015

P.C.:

This appeal under Section 260A of the Income Tax Act, 1961 assails the order dated 26 August 1999 of the Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order relates to the Assessment Year 1983-84.

2. This appeal was admitted on 31 March 2000 only on the two following substantial question of law:

> *"(a) Whether assessee was right in computing deduction u/s 80HHB?*
> *(b) Whether assessee was entitle to deduction for Retention Money?"*

Re. Question (a):

3. The appellant was interalia engaged in the business of executing projects outside India as defined in Section 80HHB of the Act. The appellant was executing foreign projects i.e. two in Iran, six in Libya and one in Thailand. The appellant for the purpose of computing its deduction under Section 80HHB of the Act computed the same project wise and claimed deduction only in respect of individual projects on which profit was earned without setting of losses incurred in certain individual projects. This deduction was claimed under Section 80HHB of the Act at Rs.1 Crore keeping in view the cap of gross total income of Rs.3.16 Crores returned by the appellant. For the aforesaid purpose, the appellant has placed reliance upon the decision of the Supreme Court in ***CIT Vs. Canara Workshops Pvt. Ltd.*** reported in ***161 ITR 320***. However the Assessing Officer clubbed income/losses of all foreign projects and restricted the benefit of deduction available under Section 80HHB of the Act. Consequently, restricting the benefits of deduction under Section 80HHB of the Act to Rs.90.80 Lakhs as against Rs.1 Crore claimed by the respondent.

4. In appeal, the Commissioner of Income Tax (Appeals) (the 'CIT(A)') by an order dated 29 September 1987 allowed the appellant's appeal by holding that when each project is different and the deduction

is per project, then it would not be justified in clubbing the income of all projects for the purposes of working out the deduction available under Section 80HHB of the Act. Consequently, it directed the Assessing Officer to work out the deduction under Section 80HHB of the Act on the net profits of each profit making foreign project in respect of which deduction is claimed without taking into account losses from some of the other foreign projects.

5. The revenue being aggrieved by the same carried the matter in appeal to the Tribunal. By the impugned order, the Tribunal upheld the order of the CIT(A) interalia holding that the decision of the Supreme Court in Canara Workshops Pvt. Ltd. (supra) in principle is applicable to the present facts. It interalia held for the purposes of computing the gross total income, the entire result of all projects i.e. both profit making and loss making foreign projects are to be taken into account. However while computing the deduction under Section 80HHB of the Act, the same has to be worked out for each project separately without taking into account the losses suffered on other projects. However the overall deduction available would be restricted in terms of Section 80A(2) of the Act to the gross total income returned by the assessee.

6. The revenue being aggrieved is in appeal before us. We find that the issue arising in this question is no longer res integra. The question stands concluded by the decision of this Court in ***CIT Vs. Hindustan Construction Co. Ltd.*** reported in ***368 ITR 733***. In the above case, the following questions had been referred to this Court for its opinion:

> *"(1) Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal was right in law in holding that the assessee was entitled to deduction under Section 80HHB in respect of each project instead of netting up of profits from all the overseas projects and thus directing the Assessing Officer to allow the deduction as claimed by the assessee without setting off the loss suffered in other foreign projects?*
>
> *(2) Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal was right in law in holding that the decision of the Supreme Court in CIT Vs. Canara Workshops P. Ltd. [1986] 161 ITR 320 (SC) in connection with Section 80E is applicable with greater force in relation to the deduction under Section 80HHB of the Act although the above decision pertains to the assessment year 1966-67 and 1967-68 whereas Section 80AB has been inserted from April 1, 1981, due to which there was material change in the relevant legal provisions?*

(3) Whether, on the facts and in the circumstances of the case and in law, the Appellate Tribunal was right in law in holding that the provisions of Section 80AB do not in any way curtail the assessee's claim for deduction under Section 80HHB in respect of each unit and that the wordings of Section 80HHB are to entitle the assessee the benefits of Section 80HHB in respect of each unit?"

This Court in conclusion held as under:

"In such circumstances, and considering the provision in question and the order of the Tribunal, we do not think that the Appellate Tribunal was in error in holding that the assessee was entitled to the deduction under Section 80HHB in respect of each project instead of netting up of profits from all the overseas projects. In such circumstances, the Tribunal was in no error in directing the Assessing Officer to allow the deduction as claimed by the assesee without setting off all the losses suffered in other foreign projects. In such circumstances, the reference is answered in favour of the assessee and against the Revenue. The reference is, accordingly, disposed of. No costs."

8. It is not disputed by the revenue that the issue stands concluded by the decision in Hindustan Construction Co. Ltd. (supra). Accordingly, Question (A) is answered in the affirmative i.e. in the favour of the respondent-assessee and against the appellant-revenue.

Re. Question (b):

9. It is agreed by the Counsel that Question (B) stands concluded in favour of the respondent-assessee and against the appellant-revenue by the decision of this Court in ***CIT Vs. Associated Cables P. Ltd.*** reported in ***286 ITR 596***. Accordingly, Question (B) is answered affirmative i.e. in favour of the respondent-assessee and against the appellant-revenue.

10. In view of the above, appeal is dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**