IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Tax Case (Appeal) No.810 of 2008

M/s.Rane Brake Linings Ltd.,
'Maithri',
32, Cathedral Road,
Chennai-600 086. ... Appellant/Appellant

-vs-

The Deputy Commissioner
of Income-tax,
Company Circle V(3),
Chennai-600 034. ... Respondent/Respondent

Tax Case (Appeal) filed under Section 260A of the Income-tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, "B" Bench, Chennai dated 12.01.2007 in I.T.A.Nos.1953 for the assessment years 1994-95 & 1998-99 preferred against the order dated 21.10.2002 made in I.T.A. 90/2002-2003 by the Commissioner of Income Tax(Appeals)V, Chennai against the assessment order of Deputy Commissioner of Income Tax, Company Circle, V(3) Chennai 34 made in PAN/GIR/53036-R, dated 21.03.2002 for the assessment year 1994-1995.

For Appellant : Mr.R.Venkatanarayanan

For Respondent : Mr.T.Ravikumar

J U D G M E N T
(Delivered by T.S.Sivagnanam, J.)

Heard Mr.R.Venkatanarayanan, learned counsel for the assessee and Mr.T.Ravikumar, learned counsel for the Revenue.

2. This appeal, by the assessee, is directed against the common order passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai dated 12.01.2007, in I.T.A.Nos.1953 & 1954/Mds/2002 for the assessment years 1994-95 & 1998-99.

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3. The above appeal has been admitted on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction under Section 80HH of the Act in respect of Hyderabad unit?"

4. The facts, which are necessary, could be culled out from the assessment order dated 21.03.2002, which reads as follows:-

> "In the return of income, the assessee company claimed deduction under Section 80HH for Rs.12,34,430/- in respect of Hyderabad division which was acquired by the assessee company on amalgamation of M/s.Sri Auto Parts on 01.04.1992. The profit of the unit for the assessment year 1994-95 has been worked out at Rs.61,72,149/- and 20% thereof is claimed as deduction under Section 80HH. Such deduction claimed is Rs.12,34,424/-. The income returned by the assessee is only after set off of earlier years unabsorbed losses of Rs.98,47,757/-. This represents only unabsorbed depreciation and unabsorbed investment allowance of Sri Auto Parts (as seen from the assessment order dated 22.02.1996 of assessment year 1993-94). Hence this has to be first set off against income of the Hyderabad division Sri Auto Parts and only the balance has to be adjusted against the income of the other division. The net amount after adjusting the unabsorbed losses of earlier years alone qualifies for deduction under Section 80HH. If this exercise is done, there would not be any income from Hyderabad Unit and the assessee is not eligible for deduction under Section 80HH. Apart from this, It is also pertinent to mention that it is a unit of the assessee only with effect from 01.04.1992 due to amalgamation. The benefit under Section 72A is applicable only for unabsorbed losses, depreciation and investment allowance. For the other deduction, it is only the transfer of the existing unit and it has stated after 01.04.1992 only. On this account also, deduction under Section 80HH is not admissible. The assessee in his reply has stated that it has claimed deduction under Section 80HH in line with the judgment in the case of Hindustan Electro Graphics Ltd (41 ITD 223

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Ind), Beta Napthol Pvt Ltd (59 TTJ 375 Ind), HMT (199 ITR 235 Kar) and CIT vs. Tarun Udyog (191 ITR 688 OR). Facts of the assessee company are not identical with that of the case laws mentioned by the assessee company. Further, facts of the assessee company are identical to that of the case laws viz., VIT vs. Kerala Solvent Exclusions. According to this case law, the assessee is not eligible for deduction under Section 80HH. In view of the above, the explanation offered by the assessee company is not satisfactory and hence stands rejected following the decision in the case of CIT vs. Kerala Solvent Exclusions. The deduction claimed by the assessee under Section 80HH of Rs.12,34,429/- is disallowed and added."

5. The said assessment order was confirmed by the Commissioner of Income Tax (Appeals)-V by order dated 21.10.2002, as against which, the assessee preferred appeal before the Tribunal, which has been dismissed. Hence, the assessee is before us by way of this appeal under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

6. The learned counsel for the assessee vehemently contended that deduction under Section 80HH has to be computed after setting off of the unabsorbed loss of earlier years. Further, the Tribunal ought to have appreciated that the loss was set off against the income of the business and there is no loss to be carried forward notionally for setting off against the income of the undertaking. Thus, it is submitted that the assessee is entitled to the deduction under Section 80HH of the Act in respect of the Hyderabad unit.

7. The learned counsel appearing for the Revenue contended that the issue has been settled by this Court in several decisions and the issue is squarely covered against the assessee and in favour of the Revenue. In this regard, it is relevant to refer to the decision in the case of Commissioner of Income Tax vs. Sundaravel Match Industries (P) Ltd. reported in (2000) 245 ITR 0605. One of the questions, which was framed for consideration in the said appeal was whether the Tribunal was right in law in holding that the assessee was entitled to the deduction under Section 80HH in respect of the profit earned by three profit-making units without setting off the losses sustained by the other three units? The Division Bench, in the said appeal, held as follows:-

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"2............... Recently in the assessee's own case for an earlier assessment year in an unreported judgment in T.C.Nos.498 of 1983 and 444 of 1986, by our judgment dt. 25th Feb., 1998, [reported as CIT vs. Macmillan Co. of India Ltd. (1999) 151 CTR (Mad) 175] we have held that the losses should be set off against the profits of the industrial undertaking before granting the deduction under Section 80HH of the Act, in view of the specific provision found in s. 80AB of the Act. In view of the said decision, the Tribunal was not correct in holding that the losses should not set off and accordingly we answer the first question of law referred to us in the negative and in favour of the Revenue."

8. In the case of Commissioner of Income Tax vs. Shirke Construction Equipment Ltd. reported in (2007) 291 ITR 0380, one of the questions, which was framed for consideration was whether, in determination of business profit under Section 80HHC, the unabsorbed business losses of the earlier years under Section 72 of the Act should be set off? The Court answered the said question in favour of the Revenue and the appeal was allowed.

9. Thus, the substantial question of law, framed for consideration, is necessarily to be answered against the assessee and in favour of the Revenue. Accordingly, the appeal stands dismissed. No costs.

-s/d-
Assistant Registrar(CS-II)

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Sub-Assistant Registrar

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To

1.The Deputy Commissioner of Income-tax,
Company Circle V(3), Chennai-600 034.

2.The Income Tax Appellate Tribunal,
"B" Bench, Chennai.

3.The Commissioner of Income Tax (Appeals-V),
121, Mahatma Gandhi Road, Chennai-600 034.

+1 CC to Mr.J. Ravikumar, Advocate sr 41131.
+1 CC to Mr.Subbaraya Aiyar Padmanabhan , Advocate sr 41810 (02/08/2018)

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