IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 21 OF 2011

V. M. Salgaoncar & Brother Private Limited, Salgaocar House, Off Francisco Luis Gomes Road, Vasco-Da-Gama, Goa, 403 802. ... Appellant

Versus

Commissioner of Income Tax having office at Aayakar Bhavan, Patto Plaza, Panaji, Goa 403 001. ... Respondent

Mr. A. F. Diniz and Mr. Ryan Menezes, Advocates for the Appellant.

Ms. Amira Razaq, Standing Counsel for the Respondent.

Coram :- **M. S. SONAK &**
C. V. BHADANG, JJ.

Date : 22nd November, 2019.

JUDGMENT (Per M. S. Sonak, J.)

1. Heard Mr. A. F. Diniz, learned Counsel for the appellant and Ms. Amira Razaq, learned Standing Counsel for the Department.

2. This appeal was admitted on 26.09.2011 on the following substantial questions of law :

> i) *Whether on the facts and in law, the Tribunal was right in upholding the exercise of jurisdiction by the Assessing Officer under Section 147 of the Act ?*
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> *ii) Whether on the facts and in law, the Tribunal was right in upholding the action of the Assessing officer of deducting 90% of the income from truck hire charges, barge hire charges, ore processing receipts, trans-shipper loader charges, machinery hire charges and launch hire charges while computing the "profits of the business" in accordance with Clause (baa) of the Explanation below Section 80HHC ?*
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> *iii) Whether on the facts and in law, the Tribunal was right in not following its earlier Order dated February 26, 2010 in the Appellant's own case for the earlier Assessment year i.e. 1997-1998, where the Tribunal had upheld the Appellant's claim that no part of the income from truck hire charges, barge hire charges, ore processing receipts, trans-shipper loader charges and machinery hire charges was to be reduced while*

computing the profits of the business for the purpose of deduction under Section 80HHC of the Act ?

iv) Whether the Tribunal was right in law in holding that Clause (baa) of the Explanation below Section 80HHC, requires 90 % of the gross receipts instead of net receipts when the only controversy before it was the manner of computation of net receipts?

v) *Whether the Tribunal was right in law in holding that Clause (baa) of the Explanation below Section 80HHC, requires 90% of the gross receipts instead of net receipts, which resulted into enhancing the income of the Appellant ?*

vi) Whether on the facts and in law, the Tribunal was right in not permitting adding losses from export of trading goods in respect of disclaimed turnover to the profit eligible for deduction under Section 80HHC of the Act?

3. Mr. Diniz, learned Counsel for the appellant, at the very outset states that he has instructions not to press the substantial question at (i) above. He also states that the question at (iii) above really does not arise in this matter and, therefore, he has instructions not to press the same as well. Accordingly, there is no necessity to advert the questions at (i) and (iii) above.

4. Mr. Diniz, learned Counsel submits that the substantial question of law at (ii), (iv) and (v) can be taken up for consideration together. He points out that the issues which arise from these questions are no longer *res integra*. He refers to the decision of the Hon'ble Apex Court in *ACG Associated Capsules (P) Ltd. vs. Commissioner of Income Tax, 2012 18 Taxman.com 137(SC)*. He submits that in this case, the Hon'ble Apex Court has held that the deductions had to be made not on gross rent or gross basis but only on net rent, net interest or net basis. He submits that cognisance was taken on this position in *CIT vs. Sesa Goa Ltd. Tax Appeal No.81 of 2006 decided on 07.05.2015.* On this basis, Mr. Diniz submits that though this Court may have to hold that deduction as referred to in substantial question of law at (ii) above, may be permissible, the same will have to be made on net basis and not on gross basis.

5. Mr. Diniz, learned Counsel for the appellant, then submits that the substantial question of at law at (vi) above stands fully answered in favour of the appellant and against the revenue by the decision of this Court dated 27.03.2012 in the case of *The Commissioner of Income Tax vs. V. M. Salgaonkar & Brothers Ltd. & anr. in Income Tax Appeal Nos.5, 6 and 7 of 2002.*

6. Ms. Razaq, the learned Standing Counsel for the respondent defends the impugned order in the present case on the basis of the reasoning reflecting therein and submits that this appeal may be dismissed.

7. Having perused the record, we find that the substantial question of law at (ii), (iv) and (v) above relate to one and the same issue namely, whether the Tribunal in the present case, was right in upholding the action of the Assessing Officer deducting 90% of the income from truck hire charges, barge hire charges, ore processing receipts, trans-shipper loader charges, machinery hire charges and launch hire charges while computing the profits of the business in accordance with Clause (baa) of the Explanation below Section 80HHC of the Income Tax Act (IT, Act). Further, if at all, the Tribunal was so justified, then whether the deductions ought to have been made on the basis of gross receipts and not net receipts.

8. In *ACG Associated Capsules (P) Ltd.* (supra), the Hon'ble Supreme Court, has clearly held that deductions of the nature as are referred to in the substantial question of law at (ii) above, are permissible, such deductions are required to be made not on the gross receipts but on the net receipts. This is clear from the observations in paragraph 12 which read as follows :

> *"12. If we now apply Explanation (baa) as interpreted by us in this judgment to the facts of the case before us, if the rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax under Section 28 of the Act, and if any quantum of the rent or interest of the assessee is allowable as an expense in accordance with Sections 30 to 44D of the Act and is not to*

be included in the profits of the business of the assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt of rent or interest will not be deducted under clause (1) of Explanation (baa) to Section 80HHC. In other words, ninety percent of not the gross rent or gross interest but only the net interest or net rent, which has been included in the profits of business of the assessee as computed under the head "Profits and Gains of Business or Profession", is to be deducted under clause (1) of Explanation (baa) to Section 80HHC for determining the profits of the business." (Emphasis supplied).

9. From the aforesaid, it is quite clear that the substantial questions of law at (ii), (iv) and (v) will have to be answered by holding that the revenue was quite right in making the deductions referred to in the substantial question of law at (ii). However, such deductions ought to have been made on the basis of net receipts and not gross receipts. The substantial questions of law at (ii), (iv) and (v) are answered accordingly. The revenue will therefore have to rework the assessment on such basis and extend the necessary benefits, if any, to the appellant within a reasonable period. The impugned orders are modified accordingly.

10. Insofar as the substantial question of law at (vi) is concerned, the same stands answered entirely in favour of the assessee and against the revenue in terms of our decision dated 27.03.2012 in the *Income Tax Appeal Nos.5, 6 and 7 of 2002.* Incidentally, all these appeals were in the case of the present assessee and the ITAT had in fact held in favour of the present assessee. The appeals instituted by the revenue were accordingly dismissed. The substantial question of law at (vi) is consequently answered in favour of the assessee-appellant and against the revenue-respondent. The impugned orders are modified accordingly.

11. The present appeal is disposed off in the aforesaid terms. There shall be no order as to costs.

C. V. BHADANG, J. M. S. SONAK, J.

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