

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITR No. 171 of 1998
Date of decision: 15.1.2020

M/s Kakkar Complex Steels (P) Ltd., Jalandhar
.. Applicant

v.

The Commissioner of Income-Tax Jalandhar
.. Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Divya Suri, Advocate for the applicant.
Mr. Vivek Sethi, Senior Standing Counsel and
Mr. Varun Issar, Junior Standing Counsel for the respondent.

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AVNEESH JHINGAN, J.

In reference under Section 256(1) of the Income Tax Act, 1961
(for short, 'the Act'), following questions of law have been referred for
opinion of this Court:

“1. Whether on the facts and in the circumstances of the case
the order of the Appellate Tribunal, holding that Section 154
was correctly invoked since calculation of Section 80-HH
on various item was not properly worked out by the A.O.
whereas the appellant had challenged the applicability of
Section 154 on the ground that the A.O. was not justified in
passing order u/s 154 rectifying the mistakes on points which
were the subject matter of appeal decided by CIT (A) is not
perverse in law.

2. Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that unabsorbed brought forward loss are to be reduced from the profits of the current year for the purposes of computation of deduction u/s 80-HH.”

The facts of the case are that the assessment year involved is 1983-84. The assessment was finalised on 25.3.1986 and deduction under Section 80-HH of the Act of ₹1,18,346/- was allowed. Aggrieved of the assessment order, appeal was filed. Commissioner of Income Tax (Appeal), Jalandhar [for short, 'CIT (A)'] vide order dated 22.1.1987 allowed the appeal with regard to the issue of deduction under Section 80-HH of the Act. The matter was sent to the Assessing Officer to re-compute the deduction under Section 80-HH of the Act in respect of unit 'A' and unit 'B' of the assessee @ 20% of profits ultimately determined for the year. In pursuance to the remand, the Assessing Officer vide order dated 23.2.1987, allowed deduction under Section 80-HH of the Act.

On realising that there was a mistake apparent on the record as deduction of 20% was allowed even on the profits earned from non-industrial activities, a notice under Section 154 of the Act was issued on 8.10.1987. The applicant filed reply dated 27.10.1987. The Assessing Officer vide order dated 29.2.1988 re-calculated the deduction. The appeal filed before the 1st Appellate Authority against the said order was dismissed on 1.11.1991. Further appeal filed before the Tribunal was partly allowed.

Learned counsel for the assessee argued that the issue with regard to deduction under Section 80-HH of the Act was specifically decided by CIT (A) vide order dated 22.1.1987, hence the Assessing Officer

could not have passed order under Section 154 of the Act for rectifying the mistake on the point which was subject matter in appeal.

The contention raised is not well-founded. CIT (A) allowed the appeal holding that deduction under Section 80-HH of the Act should have been allowed @ 20% of the profit for the year without considering the actual amount allowable. To re-compute the deduction in respect of unit 'A' and unit 'B' @ 20% of the profit ultimately determined for the year, the matter was remitted back to the Assessing Officer. While re-computing the deduction, the Assessing Officer considered the profit earned from non-industrial activities and also did not deduct unabsorbed brought forward losses. It was to correct this mistake apparent on the record that Section 154 of the Act was invoked. Suffice to say that the issue dealt with by the 1st Appellate Authority was not subject-matter of proceedings under Section 154 of the Act, rather 20% of the profit earned from industrial activities was considered and deduction was allowed. There is no perversity in the order passed.

Question No. 1 is answered against the assessee.

So far as question No. 2 is concerned, the Tribunal relying upon the decision of the Supreme Court in **Distributors (Baroda) Pvt. Ltd. v. Union of India and others**, 1985(155) ITR 120 upheld the order of the Assessing Officer reducing the unabsorbed brought forward loss from the profit of the current year for the purpose of computing deduction under Section 80-HH of the Act. Learned counsel for the assessee has not been able to show that the decision of the Supreme Court is not applicable in the facts of the present case, hence the question is answered against the assessee.

The reference is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

15.1.2020
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No