

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 47 of 2002

Date of decision: 20th May, 2020

Nahar Spinning Mills Ltd.

.. Appellant

v.

Commissioner of Income Tax (Central), Ludhiana

.. Respondent

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

Present: Mr. Sanjay Bansal, Senior Advocate with
Mr. Amit Prasad, Advocate for the appellant.

Mr. Rajesh Katoch, Senior Standing Counsel and
Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel for
the revenue.

...

AVNEESH JHINGAN, J.

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 5.9.2001 passed by the Income Tax Appellate Tribunal, Chandigarh (for short, 'the Tribunal'). Following substantial questions of law have been claimed:

“1. Whether on the facts and in the circumstances of the case the CIT has jurisdiction to revise an assessment made by the AO allowing the deduction from computation of taxation of profits of the Industrial Undertaking u/s 80-I of the Act in respect of the amounts of duty draw back received for the manufactured goods exported by it?

2. Whether on the facts and circumstances of the case and on

a true and correct construction of section 80-I of the I.T. Act and correct understanding on the Apex Court's decision in the matter of Sterling Foods as reported in 237 ITR 579 the Tribunal did not err in law in disallowing the exemption in respect of duty draw back while computing the tax free profit u/s 80-I of the I.T. Act ?

3. Whether the assessment order dated 25.8.92 made by the AO for the Asstt. Year 1989-90 was erroneous and prejudicial to the interest of the revenue so as to invite jurisdiction u/s 263 of the Act to revise it?"

With regard to question No. 2 claimed, learned counsel for the revenue relied upon the decision of this Court in ITA No.151 of 1999—**Commissioner of Income Tax v. M/s Nahar Spinning Mills Ltd.,** decided on 9.11.2010 in the case of the assessee itself deciding the following question in favour of the revenue:

“Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in law in upholding Orders of the Ld. CIT (A) that Deduction u/s 80-I is admissible even on the Export Incentive and Cash Compensatory Assistance on Export even though the receipt of which is not attributable to conduct of any Manufacturing Activities by the respondent.”

Learned counsel for the appellant is not in a position to dispute that question No. 2 as claimed is covered against the assessee.

Hence, question No. 2 dealing with merits of the controversy is decided against the assessee.

The only issue surviving and addressed is with regard to invoking jurisdiction under Section 263 of the Act.

The facts are that the assessment year involved is 1989-90. The return was filed on 1.1.1990 and processed under Section 143(1) of the Act on 26.2.1990. Notice under Sections 147/148 of the Act was issued on 28.9.1990 and in pursuance to the notice, return was filed on 9.11.1990. The assessment order was passed on 25.8.1992. The assessee was engaged in manufacture of garments and exported thereof, as also exporting of traded garments (i.e. purchased and exported). The Assessing Officer allowed the deduction under Section 80-I only qua the manufactured goods exported out of India. Appeal was filed claiming deduction under Section 80-I on the export of traded goods. Further contending that labelling and packing of the goods bought from market tantamounts to manufacture and therefore deduction under Section 80-I of the Act be allowed. The 1st Appellate Authority relying upon the decision of the previous year in the case of the assessee held that the assessee is entitled to deduction under Section 80-I on the goods manufactured and exported. Aggrieved of the order, the appeal was filed by the revenue before the Tribunal and the assessee filed cross objections. In the meantime, on 9.3.1995, notice under Section 263 of the Act was issued on the ground that the Assessing Officer erred in allowing deduction under Section 80-I on duty draw back received on manufactured goods. The contention of the assessee that the said issue was subject-matter of appeal before the 1st Appellate Authority was rejected vide order dated 23.3.1993. The assessment order was set aside directing the Assessing Officer to withdraw the relief allowed under Section 80-I on duty draw back on goods manufactured and exported out of India. The appeal filed

against the revisional order was dismissed by the Tribunal on 5.9.2001, hence the present appeal.

Learned counsel for the appellant argued that the revisional authority had no jurisdiction to revise the order of assessment as the issue of deduction under Section 80-I on duty draw back was subject-matter of appeal. He places reliance upon explanation to Section 251 of the Act, the same reads as under:

“Explanation.-- In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.”

Further Explanation 1(c) to Section 263(1) of the Act is relied upon. The same is also quoted:

“Explanation 1 (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.”

Learned counsel for the revenue defended the orders stating that the issue before the 1st Appellate Authority was not with regard to deduction under Section 80-I on duty draw back, rather it was seized of the issue “whether deduction under Section 80-I is available on the goods purchased from market and exported out of India?”

Learned counsel for the appellant contended that the issue with regard to deduction on incentive as a whole was before the 1st Appellate Authority and could not be taken up in revision. He places reliance upon the decision of Gujarat High Court in Commissioner of Income-tax v. Mehsana District Co-op. Milk Producers Union Ltd., (2003) 130 Taxman 235 (Guj.).

The contention raised by learned counsel for the appellant lacks merit. There is no dispute on the fact that the Assessing Officer had restricted deduction under Section 80-I only qua the goods manufactured and exported. It is a matter of record that the Assessing Officer while restricting the deduction under Section 80-I allowed deduction on duty draw back in respect of the goods manufactured and exported. The 1st Appellate Authority noted the contention of the assessee that the dispute was that the assessee claimed deduction under Section 80-I on the goods bought from market and exported. The Appellate Authority held that the assessee is entitled to deduction under Section 80-I proportionately on the goods manufactured and exported. The dis-allowance of deduction under Section 80-I on the goods purchased from market and exported was upheld.

The Tribunal rightly observed that the issue whether deduction under Section 80-I is available on duty draw back on manufactured goods was never specifically dealt in appeal. There was no occasion for raising the issue as the deduction was allowed by the Assessing Officer.

There is no quibble that the Commissioner (Appeals) as per the explanation to Section 251 of the Act can consider the matter arising out of the proceedings in which the appeal is filed irrespective of the fact that the said matter has not been raised by the appellant. There is also no dispute

that as per explanation 1(c) to Section 263(1), the revision cannot be done of the issue which has been considered and decided in appeal. In the present case, the issue whether the assessee was entitled to deduction under Section 80-I of the Act on duty draw back with regard to goods manufactured and exported was neither considered nor decided in appeal.

The reliance on certain part of the order by learned counsel for the appellant is not well founded. The said observations were vis-a-vis the proportionate deduction under Section 80-I qua the goods manufactured and exported. The reliance on the decision of Gujarat High Court in **Mehsana District Co-op. Milk Producers Union Ltd.'s case (supra)** does not enhance the case of the assessee, as already discussed, the issue taken up in revision was not subject matter of appeal.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

20th May, 2020
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No