IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. No.438 of 2010

Commissioner of Income Tax,
Chennai. ... Appellant/Appellant

Vs.

M/s.Ayshwarya Sea Food Pvt. Ltd.,
4/364, Anna Rd., Palavakkam,
Chennai – 600 041. ... Respondent/Respondent

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 06.11.2009 in I.T.A.No.47/Mds/2009, Assessment Year 2002-2003 against the order of the Commissioner of Income Tax Appeals III, Chennai-34. Dated 10/09/2008 in I.T.A.No.214/2007-2008/AIII in the Assessment year 2002-2003.

Against the order of the Assistant Commissioner of Income Tax Company Circle 1(1), Chennai, dated 26/10/2007 PA/GIR No.AADCA0634L/A6-485 in the Assessment year 2002-2003.

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel

For Respondent : Mr.M.P.Senthil Kumar

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

This appeal by the Revenue, filed under Section 260-A of the Income Tax Act, 1961 ("the Act"), is directed against the order passed by the Income Tax Appellate Tribunal, Chennai, "A" Bench, in I.T.A.No.47/Mds/2009, for the Assessment Year 2002-03.

2.The appeal was admitted on 14.06.2010 on the following substantial questions of law :

"1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction under Section 80 HHC where separate books of account are maintained with respect to export and other units?

2.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction under Section 80 HHC by reckoning with the profit of the export unit alone and ignoring the losses of the other units without considering the decision of the Apex Court in the case of Ipca Laboratories 266 ITR 521.

3.Whether on the facts and circumstances of the case, the Tribunal was right in holding that disallowance under Section 40-A(3) cannot be made on the assessee with respect to the cash payments made towards the purchase of shrimp feed?"

3.We have elaborately heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue and Mr.M.P.Senthil Kumar, learned counsel appearing for the respondent/assessee.

4.The assessee filed its return of income for the Assessment Year under consideration, AY 2002-03, disclosing a total income of Rs.10,17,233/-. The assessee is engaged in the business of processing seafood and trading in shrimp food. The assessee claimed deduction under Section 80HHC and the claim was negatived by the Assessing Officer on the ground that the assessee had ignored the losses made by it in its trading division and started its computation with the figure of profits made by the manufacturing division. Thus, the Assessing Officer held that, in terms of Section 80HHC(1), the deduction is to be given in computing the total income of the assessee, and in doing so, the total income of the assessee, both profits as well as losses, will have to be taken into consideration. The other issue which arose for consideration was whether the payments made by the assessee in cash to the account of M/s.C.P.Aquaculture (India) Pvt. Ltd. should be hit by the provisions of Section 40A(3) of the Act. An explanation was offered by the assessee, which did not find favour with the Assessing Officer. Accordingly, assessment was completed by rejecting the claim of deduction under Section 80HHC of the Act and disallowance of 20% was made with regard to the cash payments.

5.Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-III, Chennai. The appeal was allowed by order dated 10.09.2008 on both grounds. Aggrieved by the same, the Revenue preferred an appeal before the Tribunal, which has been dismissed by the impugned order.

6.Though three substantial questions of law have been framed, substantial questions of law 1 and 2 are interconnected. The case of the Revenue rests upon the decision of the Hon'ble Apex Court in the case of Ipca Laboratories Ltd. v. Deputy Commissioner of Income Tax, Mumbai reported in (2004) 12 SCC 742, wherein, it was held that, in case of export of both types of goods, namely, self manufactured goods as well as trading goods, the loss from export of trading goods exceeded the profit of the total exports, then, disclaimer by the exporter-assessee in favour of supporting manufacturer in terms of the proviso to Section 80-HHC(1) would not have such effect as to entitle the exporter to deduction. The case of the assessee is by placing reliance on the decision of the Hon'ble Division Bench of this Court in Chamundi Textiles (Silk Mills) Ltd. v. Commissioner of Income Tax reported in (2012) 20 taxmann.com 514 (Madras). Thus, we are required to consider as to whether the decision in the case of Ipca Laboratories Ltd. relied on by the Revenue would be applicable to the facts and circumstances of the case on hand. In fact, the Hon'ble Division Bench in the case of Chamundi Textiles (Silk Mills) Ltd. has taken note of the facts in Ipca Laboratories Ltd. and considered as to whether it could be made applicable to the said case.

7.At this juncture, it will be relevant to take note of the distinguishing features between the facts in Ipca Laboratories Ltd. and that of Chamundi Textiles (Silk Mills) Ltd. and the relevant paragraphs of the judgment in Chamundi Textiles (Silk Mills) Ltd. are extracted hereunder:

> "16. Thus, the consistent view of this court is that even in cases where the assessee had different units of business, so long as there is no intermingling of expenditure or interlacing of funds of any kind whatsoever and that the assessee had maintained accounts separately which revealed the export business and that the claim was supported by a chartered accountant certificate in compliance with the statutory provisions, the claim of the assessee under section 80HHC to have deductions at 100 per cent. on the export made by the unit, engaged 100 per cent. in exports, could not be denied merely on the score that the assessee had various units, some of which had export and some had export as well as local sales.
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> 17. As far as the decision of the apex court IPCA Laboratory Ltd.'s case (supra) is concerned, we do

not find that the statement of law declared by the apex court could, in any way stand, in the way of this court accepting the plea of the assessee herein that the claim in respect of 100 per cent. export unit merited to be considered, independent of other units in terms of section 80HHC(3). Before considering the decision herein, the provisions of section 80HHC(3) merit to be seen, which read as follows :

...

18. Referring to the provisions, the apex court pointed out that sub-section (3)(a) deals with the case where the export is only of self-manufactured goods, sub-section (3)(b) deals with the case where the export is only of trading goods, and sub-section (3)(c) deals with the cases where the export is of both self-manufactured goods as well as trading goods. The only condition that governs the grant of relief under section 80HHC is that the assessee having positive profit alone would be entitled to have the deduction under section 80HHC. In other words, if there is a loss then no deductions could be claimed under the provisions of section 80HHC in arriving at the positive profit. The apex court held that profits and loss of the business have to be considered in arriving at the gross total income, and income from various units have to be calculated and if one of the units indicated a loss, then going by the said provisions available, the gross total income will have to be arrived at and ultimately if the net figure is also a loss, the claim of the assessee for deductions would be rejected. The apex court further pointed out that section 80HHC(3) provides for working out the computation of total income and for the purpose of such computation, both profits and loss have to be taken into account. Thus, section 80HHC, both in sub-section (1) and in sub-section (3), means a positive profit worked out after taking into consideration the losses, if any. Dealing with the meaning of gross total income, in the decisions Synco Industries Ltd.'s case (supra), the apex court pointed out that gross total income would be arrived after making the computation as follows (headnote) :

i. making deductions under the appropriate computation provisions ;

ii. including the incomes, if any, under sections 60 to 64 in the total income of the individual ;

iii. adjusting intra-head and/or inter-head losses ; and

iv. setting off brought forward unabsorbed losses and unabsorbed depreciation, etc. Only if the gross total income so determined is positive the question of allowing the deductions under Chapter VI-A would arise, not otherwise."

19. The apex court pointed out that in arriving at a figure of positive profit, both the profits and loss have to be considered. If the net figure is a positive profit, then the assessee would be entitled to a deduction, but if the net figure is a loss, then the assessee would not be entitled to a deduction. A reading of the judgment of the apex court reported in Synco Industries Ltd.'s case (supra) shows that the assessee therein had more than one unit. The claim of the assessee is that each unit should be treated separately and the losses suffered in the earlier years were not adjustable against the profits of the other unit. But since the gross total income was nil, the Assessing Officer rejected the plea of the assessee for the benefit of deductions under Chapter VI-A. The Appellate Tribunal and the High Court affirmed the view of the officer. On further appeal, the apex court held that in determining the gross total income, the assessee has to compute the income from each one of the units. When one unit suffered loss and other unit earned profit, after setting off loss, if the gross total income worked out shows profit, the assessee would be entitled to deduction under Chapter VI-A. On the other hand, if the gross total income is a negative income, then the claim of the assessee could not be considered for any benefit under Chapter VI-A. In the light of the law thus laid down by the apex court, it is clear that only in the case of gross total income being a profit, the claim of the assessee for deduction merited to be considered.

20. Coming to the facts herein, it is not disputed by the Revenue that both the units of the assessee are profit-making units and the gross total income was computed in the manner as given under the Act and that there was a positive income of profit. Going by the decisions referred to above and the same when applied to the facts of the case herein, the assessee would be entitled to deduction under Chapter VI-A. In the light of this fact, we do not find any

justification in the view of the Tribunal, rejecting the plea of the assessee for deduction under Chapter VI-A.

21. A reading of the order of the Tribunal shows that it misconstrued the decision of the apex court reported in IPCA Laboratory Ltd. case (supra), to reject the case of the assessee. Applying the said decision and the decision Synco Industries Ltd.'s case (supra), to the facts herein that the assessee had profit and the decisions of this court cited supra, viz., Macmillan India Ltd.'s (supra), Rathore Brothers (supra), Suresh B. Mehta (supra) and M. Gani and Co.'s case (supra), as regards the grant of 100 per cent. relief to the unit engaged in export activity and the books of account maintained by the assessee for the export unit to other units are independent, we have no hesitation in holding that the assessee's unit at Bangalore, being 100 per cent. export unit, is entitled to have the deduction in terms of section 80HHC(3). Quite apart from that, following the decisions of this court on the aspect of grant of relief, it is relevant to note here that section 80HHC contemplates three situations, viz., sub-section (3)(a) dealing with the case where the export is only of self-manufactured goods, sub-section (3)(b) dealing with the case where the export is only of trading goods, and sub-section (3)(c) dealing with the cases where the export is of both self-manufactured goods as well as trading goods. Apart from this, the section nowhere deals with the situation of an assessee having more than one unit of business and one of the units being purely 100 per cent. export oriented unit and the other unit, a partially export unit. Even though the Act does not provide for dealing with such a situation, yet, being a beneficial provision, we feel that, in fitness of things, the assessee is entitled to the relief in respect of 100 per cent. export oriented unit. Consequently, even in respect of the computation as given in Explanation (baa) to section 80HHC, the consideration for grant of relief must follow the decisions of the apex court L.M. Chhabda and Sons as well as Waterfall Estates Ltd. case (supra). The case of each of the units have to be considered independently for the purpose of working out the relief under section 80HHC. This would depend upon the facts to show that each of the unit had maintained their accounts independently and there was no interdependency or interlacing of funds to treat them

as one consolidated unit. Going by the facts recorded therein, we have no hesitation in accepting the plea of the assessee that the income earned from the export goods from the Bangalore unit merited to be considered for 100 per cent. relief, as one falling under section 80HHC(3)(a) of the Act."

8.As pointed out in the above decision, the facts of the case in Ipca Laboratories Ltd. were entirely different and couched in a different manner and there was no separate account maintained as in the case on hand. This factual position has been clearly brought out by the Commissioner of Income Tax (Appeals) in the order dated 10.09.2008 and the fact that the assessee was maintaining separate Books of Accounts for the export unit and the trading division, has not been disputed by the Assessing Officer. In such circumstances, the decision in the case of Chamundi Textiles (Silk Mills) Ltd. would clearly apply to the facts and circumstances of the case on hand. Therefore, the substantial questions of law 1 and 2 are to be answered against the Revenue.

9.With regard to the third substantial question of law, on facts, the Commissioner of Income Tax (Appeals) and the Tribunal held that the assessee had purchased shrimp products from a supplier at Nellore and the explanation given by them at the first instance before the Assessing Officer is that they are doing shrimp feed trading business and they have purchased shrimp feed from a company at Chennai and the invoice is directly raised locally at Chennai and they have sold the shrimp feed at Nellore and Ongole Districts of Andhra Pradesh and they have sold the feed to the shrimps farmers and deposited the cash directly to M/s.C.P.Aquaculture (India) Pvt. Ltd.'s Bank account. Further, it is stated that it is an usual procedure that all the dealers/farmers use to deposit the amount into the Bank account of M/s.C.P.Aquaculture (India) Pvt. Ltd. and fax the deposit slip to the said company as proof of deposit and based on the deposit slip, the said company will dispatch the shrimp feed and it also offers cash discount if payment is made in advance. Due to such compelling reasons, they had to deposit cash directly into the Bank account of M/s.C.P.Aquaculture (India) Pvt. Ltd. Further, they stated that there is a risk of carrying cash to various places and by issuance of cheque, there will be a time delay and the assessee will be prejudiced. The explanation offered was not found to be false but not accepted by the Assessing Officer on the ground that the said company M/s.C.P.Aquaculture (India) Pvt. Ltd. had a huge turnover and they have been importing shrimp food from abroad and there was no necessity for the assessee to make payments in cash to the said company. The question would be as to whether such a presumption or adverse inference could be drawn.

10.Be that as it may, the Commissioner of Income Tax (Appeals) considered the legal issue and found that, what was purchased was undoubtedly a fish or fish product, which will fall within the scope of Rule 6DD(f)(iii) and if it is so, no disallowance under Clause (a) of Sub-Section (3) of Section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under Clause (b) of Sub-Section (3) of Section 40A. This aspect has been factually brought out by the Commissioner of Income Tax (Appeals) as well as the Tribunal.

11.Mrs.R.Hemalatha, learned Standing Counsel for the appellant/Revenue would place reliance on the decision of the Division Bench of this Court in the case of Vaduganathan Talkies v. Income Tax Officer, Non-Corporate Ward 20(5), Chennai-34 reported in [2020] 428 ITR 224 (Madras). The facts in the said case were entirely different, where the assessee company made cash payment for the purpose of acquiring rights to screen movies in theatres to various parties and their case was decided against the assessee on the ground that the assessee had miserably failed to bring their cases within any one of the exceptions covered under Rule 6DD. Thus, the said decision cannot be applied to the facts and circumstances of the case on hand.

12.For all the above reasons, the substantial questions of law framed for consideration are decided against the Revenue and the appeal filed by the Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CJ-CONF)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Registrar
   Income Tax Appellate Tribunal,
   Rajaji Bhavan, Besant Nagar,
   Chennai.

2. The Commissioner of Income Tax,
   Appeals III,
   Chennai-34.

3. The Assistant Commissioner of Income Tax,
   Company Circle 1(1),
   Chennai.

4. The Income Tax Appellate Tribunal,
   A Bench, Chennai.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.37565
+1cc to Mr.G.Baskar, Advocate, S.R.No.37494

MG(CO)
HS(26/08/2021)