IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.208 of 2016 (O&M)
Date of decision: 14.02.2023

Principal Commissioner of Income Tax, Karnal

…Appellant

Vs.

M/s K.T.M. India

…Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Gauri Neo Rampal, Standing Counsel,
for the appellant.

Mr. Pankaj Jain, Senior Advocate,
with Mr. Shakti Singh, Advocate,
and Mr. Sachin Bhardwaj, Advocate,
for the respondent.

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Ritu Bahri, J. (oral)

The ACIT, Panipat-revenue has come up in appeal against the order dated 04.12.2015 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhi, whereby appeal filed by the respondent-assessee against the order dated 16.11.2007 passed by the Commissioner of Income Tax (Appeals), Karnal, has been allowed.

Vide order dated 16.11.2007, for the assessment year 2004-2005, the Commissioner of Income Tax (Appeals), Karnal, had directed the Assessing Authority to allow deduction under Section 80HHC to the assessee, who was a supporting manufacturer, in the same manner, as in the case of direct exporter. The respondent-assessee is a partnership firm engaged in the business of manufacturing of home furnishing items. The assessee filed return of income declaring net income of Rs.58,11,012/- on

30.10.2004 and claimed deduction under Section 80HHC of the Income Tax Act, 1961 amounting to Rs.38,74,008/- and deduction under Section 80IB of the Act amounting to Rs.32,28,340/-. Assessment under Section 143 (3) of the Act determining the total income of of the assessee at Rs.1,76,63,960/- was completed on 26.12.2006 by making following additions:-

> "(i) Difference of Rs.44,13,423/- between the value of stock as on 31.03.2004 as per books of accounts and stock statement submitted to the PNB as on 25.03.2004 was treated as deemed income under Section 69 of the Income Tax Act.
> (ii) Disallowance of personal expenses of Rs.1,00,683/- on account of conveyance expenses @1/5th as against added by the respondent assessee @1/8th.
> (iii) Disallowance of Rs.62,662/- on account of mobile phone expenses @1/6th.
> (iv) Disallowance of Rs.1,47,827/- on account of foreign travelling expenses.
> (v) Disallowance of Rs.25,000/- on account of professional charges and
> (vi) Holding that the assessee does not qualify for deduction under Section 80HHC of the Income Tax Act, 1961 and deduction under Section 80IB of the Income Tax Act, 1961 amounting to Rs.38,74,008/- and Rs.32,28,340/- respectively."

Against the order dated 26.12.2006 (Annexure A-1), the assessee-respondent filed an appeal before the Commissioner of Income Tax (Appeals), Karnal. Vide order dated 16.11.2007 (Annexure A-2), the said appeal was allowed with regard to the deduction under Section 80HHC on the DEPB receipts, difference in closing stock, conveyance expenses and part relief in mobile phone expenses. However, it was dismissed qua deduction under Section 80IB on the DEPB receipts and foreign travelling expenses. This order was challenged by the revenue by filing an appeal before the Income Tax Appellate Tribunal, New Delhi. The Tribunal dismissed the appeal of the revenue, vide order dated 31.07.2009 and upheld the order dated 16.11.2007 (Annexure A-2). Against the rejection of appeal on account of deduction under Section 80IB of the Act and expenses on account of foreign travelling, the assessee-respondent had also filed an appeal before the Tribunal. Vide order dated 04.12.2015, the appeal of the assessee was accepted by the Tribunal qua the deduction under Section 80IB of the Act. Reference has been made to the decision given by Hon'ble the Supreme Court in ***CIT vs. Sterling Foods,*** (1999), 237 ITR 579, whereby it has been held that the import entitlements cannot constitute a profit and gain derived from industrial undertaking. In this backdrop, the present appeal has been filed against the order dated 04.12.2015 (Annexure A-4), whereby the appeal filed by the assessee has been allowed by the Tribunal.

Before the Tribunal, learned counsel for the assessee had relied upon the decision given by Hon'ble the Supreme Court in ***Commissioner of Income Tax, Thiruvanantapuram vs. Baby Marine Exports,*** (2007) 290 ITR 323 (SC), whereby it has been held that the supporting manufacturer can claim deduction under Section 80HHC(1A) at par with the direct exporter.

The issue, whether the supporting manufacturer can be treated at par with the direct exporter for the purpose of deduction of export incentives under Section 80HHC of the Act, came up before Hon'ble the Supreme Court in ***Commissioner of Income Tax, Karnal (Haryana) vs. M/s Carpet India, Panipat (Haryana),*** 2019 AIR (Supreme Court) 5032, where the larger Bench has clarified that the judgment in the case of ***Baby Marine Exports***' case (supra) was based on separate set of facts. It was observed that the supporting manufacturer cannot be treated at part with direct exporter for the purpose of deduction of export incentives under Section 80HHC of the Income Tax Act, 1961.

In the facts of the present case, learned counsel for the respondent is not disputing the fact that respondent-assessee is a supporting manufacturer. Hence, keeping in view the judgment passed in ***M/s Carpet India, Panipat's*** case (supra), the present appeal is allowed and the impugned order dated 04.12.2015 (Annexure A-4) passed by the Income Tax Appellate Tribunal, Delhi Bench 'D', New Delhil, is set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

14.02.2023
ajp

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