



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.11.2024

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

T.C.A.Nos.155, 156, 157 & 158 of 2011
and
T.C.A.Nos.196, 197 & 198 of 2012

TCA.No.155 of 2011

M/s. MRF Ltd.,
No.124, Greams Road,
Chennai - 600 006.

.... Appellant

Vs

The Deputy Commissioner of Income tax,
Large Tax Payer Unit, Chennai - 600 101.

... Respondent

PRAYER in TCA.No.155 of 2011: APPEAL filed under Section 260 A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, “A” Bench, Chennai dated 11.03.2011 in I.T.A.No.1374/Mds/2010.

(In all TCAs)

For Appellant

: Mr.R.Vijayaraghavan
for Mr.Subbaraya Aiyar Padmanabhan

(In all TCAs)

For Respondent

: Mr.Karthik Ranganathan
Senior Standing Counsel



COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

T.C.(A).Nos.196, 197 and 198 of 2012 relating to Assessment Years (AY) 2003-04, 2005-06 and 2008-09 in respect of the same assessee are not listed today and at joint request and consent expressed by the parties, the same are listed under a special list and disposed under this common order. These appeals arise out of a common order of the Tribunal dated 18.01.2012 and raise the following substantial questions of law and we have indicated alongside each question the AY to which that question relates:

'(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of assessment is valid? (TC(A) No.196 of 2012 (2003-04) and TC(A) No.197 of 2012 (2005-06))

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of assessment made under Section 143(3) beyond 4 years on same set of facts would not amount to change of opinion? (TC(A) No.196 of 2012 (2003-04))

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of assessment on the basis of retrospective amendment to Section 80HHC by Taxation Amendment Laws 2005 would constitute reason to believe that assessee had failed to disclose fully and truly all material facts? (TC(A) No.196 of 2012 (2003-04))

(iv) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that reopening of assessment to disallow deduction under Section 80IA in the ninth year is valid though deduction under Section 80IA was



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allowed in the scrutiny assessment from the assessment year 1995-96 onwards? (TC(A) No.196 of 2012 (2003-04))

(v) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the reopening of assessment based on the disallowance of expenditure towards MRF Pace Foundation in the assessment year 2006-07? (TC(A) No.196 of 2012 (2003-04) and TC(A) No.197 of 2012 (2005-06) and TC(A) No.198 of 2012 (2008-09))

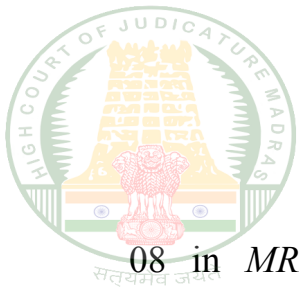
(vi) Whether on the facts and circumstances of the case, the Tribunal was right in holding that DEPB credit entitlement should be excluded while computing the deduction under Section 80HHC of the Act?(TC(A) No.196 of 2012 (2003-04))

(vii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that assessee is not entitled to deduction under Section 80IA in respect of its Unit II at Kottayam & Medak which is engaged in the business on manufacture of rubber tyre, tubes and other products?(TC(A) No.196 of 2012 (2003-04))

(viii) Whether incentive deduction which was granted from the assessment year 1995-96 onwards in the scrutiny assessments can be disallowed in the eighth year on a totally different interpretation of the provisions of the Act?(TC(A) No.196 of 2012 (2003-04))

(ix) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the expenditure incurred towards advertisement/business promotion in the form of MRF Pace Foundation is being charity in nature and hence, not an allowable deduction?' (TC(A) No.196 of 2012 (2003-04) and TC(A) No.197 of 2012 (2005-06) and TC(A) No.198 of 2012 (2008-09))

2. The issue arising for substantial question (ix) above has been decided in the assessee's own case in the appeals for AY 2006-07 and 2007-



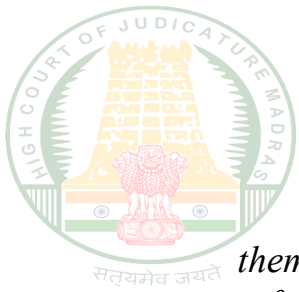
08 in *MRF Ltd. v. Deputy Commissioner of Income Tax*¹ where the

conclusion of the Division Bench is as follows:

'21.As already observed, the expenditure incurred by the assessee in the Pace Foundation cannot be regarded as a donation and it was never the case of the assessee, nor there was anything on record for the Assessing Officer to draw such a conclusion. Secondly, the assessee has been able to point out certain facts before the Assessing Officer as well as before the First Appellate Authority as to how the training of pace bowlers has helped them in a business activity. The contentions placed by the assessee have not been found to be false or baseless. In such circumstances, it is best for the Department to leave it to the assessee to take a decision as to what is best for them and for the health of the company. These aspects were rightly taken note of by the CIT(A) by observing that the assessee-company is able to get popularity because of its close association with the game of cricket and it is comparable to any other mode of advertisement establishing hoardings, publicity material and other conventional modes of advertisement.

22.Further, the CIT(A) rightly took note of the decision in Delhi Cloth and General Mills Co. Ltd. (supra) by observing that the power of the Revenue is confined only to examine the purpose of genuineness of the expenditure and not the expediency or the quantum. Nowhere there is any observation either made by the Assessing Officer or the Tribunal that the expenditure was not genuine. In fact, Mr.T.Ravikumar would fairly submit that all other expenditure, which have been claimed by the assessee towards sponsorship, advertisement, have been allowed in its entirety. The Tribunal fell in error in coming to a conclusion that donations were extended towards the Pace Foundation, when the fact remains that the assessee has established the foundation and it is part and parcel of the assessee

1(TCA.Nos.1024 and 1025 of 2019 decision dated 29.03.2021)



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themselves and not a separate entity to draw any such inference of donation.'

3. This question of law is hence answered in favour of the assessee.

4. T.C.(A) Nos.155 to 158 of 2011 arise out of a common order of the Income Tax Appellate Tribunal (ITAT/Tribunal) dated 11.03.2011 that dealt with cross appeals of the assessee and the respondent for the AY 2002-03, 2003-04, 2004-05, 2005-06 and 2008-09.

5. The substantial questions arising in these appeals are collectively set out below and we have indicated alongside each question the AY to which that question relates.

'1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of assessment is valid? (TC(A).No.155 of 2011 (AY 2002-03) and TC(A).No.156 of 2011 (AY 2004-05))

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of assessment to disallow deduction under Section 80 IA in the tenth year is valid through deduction under Section 80 IA was allowed in the scrutiny assessment from the Assessment Year 1995-96 onwards? (TC(A).No.155 of 2011 (AY 2002-03) and TC(A).No.156 of 2011 (AY 2004-05))

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding the reopening of assessment based on the disallowance of expenditure towards MRF Pace Foundation in the assessment year 2006-07? (TC(A).No.155 of 2011 (AY 2002-03) and TC(A).No.156 of 2011 (AY 2004-05))



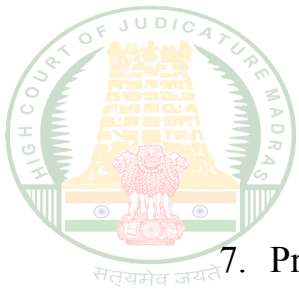
4. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that DEPB credit entitlement should be excluded while computing the deduction under Section 80 HHC of the Act? (TC(A).No.156 of 2011 (AY 2004-05))

5. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is not entitled to deduction under Section 80 IA in respect of its Unit II at Medak & Kottayam which is engaged in the business of manufacture of rubber tyre, tubes and other products in terms of entry 27 of the Eleventh Schedule of the Income tax Act? - (TC(A).No.155 of 2011 (AY 2002-03) and TC(A).No.156 of 2011 (AY 2004-05))

6. Whether incentive deduction which was granted from the assessment year 1995-96 onwards in the scrutiny assessments can be disallowed in the 10th year on a totally different interpretation of the provisions of the Act? (TC(A).No.155 of 2011 (AY 2002-03) and TC(A).No.156 of 2011 (AY 2004-05))

7. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of assessment made under Section 143(3) beyond 4 years on same set of facts would not amount to change of opinion? (TC(A) 155 of 2011 (AY2002-03))'

6. We now address the substantial questions relating to re-opening of assessment raised in respect of AYs 2002-03 and 2004-05. In respect of AY 2002-03, a return of income were filed in time and an assessment was completed on 29.12.2006, under scrutiny. In relation to AY 2004-05, the return of income filed within time was taken up for scrutiny and an order passed on 31.03.2005.

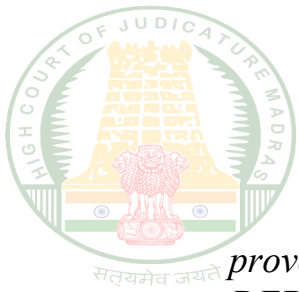


7. Prior thereto, the assessing authority had issued notices under Sections 143(2) & questionnaires under Section 142(1) of the Act for both years soliciting various particulars from the assessee. Those particulars included issues that had been identified for re-assessment as per the reasons for re-opening dated 03.06.2009 (both A.Ys.2002-03 and 2004-05) being claim of deduction claimed under Sections 88HHC and 80IA of the Act.

8. Proceedings for re-assessment for AY 2002-03 were initiated by issuance of notice under Section 148 on 17.03.2009 beyond a period of four (4) years from the end of the relevant assessment year. In respect of AY 2004-05, the notice under Section 148 was issued on 12.03.2009 within a period of four (4) years from the end of relevant assessment year. Thus, in dealing with the substantial questions relating to re-assessment, we are to take note of the specific stipulations of the law in each case.

9. We first deal with the validity of re-assessment for AY 2002-03. The two issues identified in the reasons for re-assessment dated 03.06.2009 are as follows:

'1.As per Taxation Law Amendment 2005, if the export turnover exceeds Rs.10 crores, the benefit of deduction on the DEPB receipts u/s 80 HHC shall be given subject to the fulfilment of conditions laid down as per the above amendment to the section 80HHC(3) of the act. Hence, the assessee has to



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prove that, it had opted to choose either duty drawback or the DEPB being the duty remission scheme and the rate of the duty drawback was higher than the DEPB during that period. The corresponding proviso is reproduced as under.

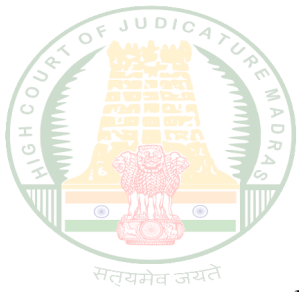
Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (e) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiid) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that:-

- (a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme, and*
- (b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme.*

It has been observed that, during the current year the assessee has export turnover of Rs.189,30,84,634/- and income by way of DEPB credit to the tune of Rs.32,07,04,678/-, but the assessee has not proved that, it had opted to choose either duty drawback or the DEPB during that period.

Hence, the above DEPB receipt of Rs.32,07,04,678/-, should be excluded for the purpose of computation of 80HHC deduction being the export incentives as per the proviso to Section 80HHC(3) otherwise means that the deduction u/s. 80HHC can not be further increased on the above receipt by way of DEPB credit.

Further, the above view has been confirmed by the Ld.CIT(A)-III vide the order No.730/2006-07/A-III dated 27.03.2007 in the case of M/s.Breaks India Ltd for the AY 2004-05 on similar disallowance made by the assessing officer.



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Based on the above facts, it is clear that assessee has not produced the material facts fully and truly before the tax authorities for the purpose of claim of deduction u/s.80 HHC of the Income tax act.

Hence, I have the reason to believe that, the income has escaped the assessment by way of excess claim of deduction u/s.80HHC for the current year.

2.Further, it is noticed from the details submitted by the assessee for the AY 2006-07 that the assessee has been engaged in importing training to the pace bowlers of cricket in India. The assessee has claimed that the above expenditure as the expenditure incurred wholly and exclusively for the purpose of business. But the same was disallowed and added to the total income of that year, since the above expenditure incurred by the assessee falls under the purview of charitable nature. The assessee has incurred similar expenditure for the current year also and the same has been claimed wrongly as business expenditure. Hence the income has escaped the assessment.

3.The assessee has claimed deduction u/s.80IA to the extent of Rs.15,16,64,360/- during the year stating that it is engaged in the business of manufacture and sale of automobile tyres and its related products, etc.

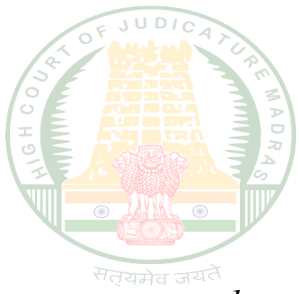
The above claim of the assessee u/s.80IA during the year shall not be allowed, since it is engaged in the business of manufacture and sale of rubber products, the items, which has been mentioned in the 11th Schedule of the Act.

As per the 11th Schedule Column Number 27 of the Income-Tax Act, it has been mentioned as under:

Crown corks, or other fittings of cork, rubber, polyethylene or any other material'

The manufacture of the above items is not eligible for claim of deduction u/s.80IA. Hence the assessee is not entitled for any benefit u/s.80IA.

Based on the above facts, it is clear that assessee has not produced the material facts fully and truly before the tax authorities for the purpose of claim of deduction u/s.80IA of the Income tax act.



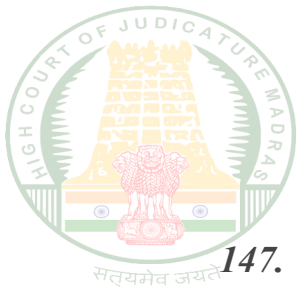
Therefore, I have the reason to believe that the income has escaped the assessment within the meaning of section 147 of the income tax act.'

10. In the order of assessment dated 31.03.2005 for AY 2002-03, there is detailed discussion in regard to the eligibility of the assessee as well as the methodology for the computation of relief under Section 80HHC. Hence, it cannot be said that the assessing authority has lost sight of the issue. In fact, the entirety of the discussion in the assessment order proceeds on the basis of the relevant forms and the material particulars that had been supplied by the assessee in the course of the original assessment.

11. As far as the relief under Section 80IA is concerned, that too has been subject matter of original assessment. It is relevant to note that deductions, both under Sections 80HHC as well as 80IA, require Auditor's Certificates as well as prescribed forms to accompany the original returns. In this case, it is admitted that the relevant forms did accompany the returns of income filed by the assessee and that the officer had engaged in detailed discussion with the assessee on both the above issues.

12. Section 147 and the proviso to the extent to which it is relevant, are extracted below:

Income escaping assessment.



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147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

***Provided** that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.*

13. The provisions of Section 147, particularly the proviso thereto, enable the assessing authority to take action under Section 147 only in a case where there has been no full and true disclosure on the part of the assessee at the first instance. In light of our unequivocal findings that the claims of deduction under Sections 80HHC and 80IA have been fully and truly disclosed as part of the original returns of income, duly noticed by the assessing authority, discussed with the assessee in the course of assessment and figure in detail in the original order of assessment, we are of the



considered view that the proceedings for re-assessment as far as AY 2002-03 are concerned are barred by limitation.

14. The substantial question of law in relation to this issue for AY 2002-03 is hence answered in favour of the assessee.

15. As far as AY 2004-05 is concerned, the reasons for re-assessment dated 03.06.2009 are as follows:

'1.The assessee claimed deduction u/s.80IB by the to the extent of Rs.14,63,05,667/- during the year stating that it is engaged in the business of manufacture and sale of automobile tyres and its related products, etc.

The above claim of the assessee u/s.80IB during the year shall not be allowed, since it is engaged in the business of manufacture and sale of rubber products, which has been mentioned in the 11th Schedule of the Act.

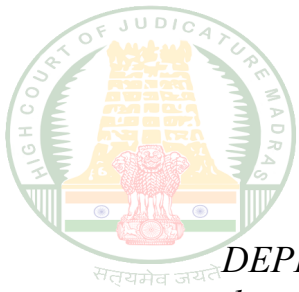
As per the 11th Schedule Column Number 27 of the Income-Tax Act, it has been mentioned as under:-

'Crown corks, or other fittings of cork, rubber, polyethylene or any other material'

The manufacture of the above items is not eligible for claim of deduction u/s.80IB. Hence the assessee is not entitled for any benefit u/s.80IB.

Based on the above facts, it is clear that assessee has not produced the material facts fully and truly before the tax authorities for the purpose of claim of deduction u/s.80IB of the Income tax act.

2.As per Taxation Law Amendment 2005, if the export turnover exceeds Rs.10 crores, the benefit of deduction on the DEPB receipts u/s 80 HHC shall be given subject to the fulfilment of conditions laid down as per the above amendment to the section 80HHC(3) of the act. Hence, the assessee has to prove that, it had opted to choose either duty drawback or the



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DEPB being the duty remission scheme and the rate of the duty drawback was higher than the DEPB during that period. The corresponding proviso is reproduced as under.

“Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (e) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iiid) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that:-

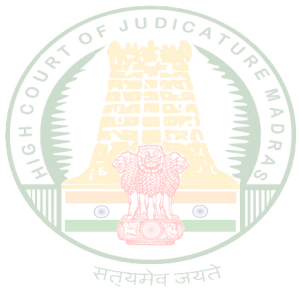
(a)he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme, and

(b)the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme.

It has been observed that, during the current year the assessee has export turnover of Rs.301,54,43,525/- and income by way of DEPB credit to the tune of Rs.46,02,02,128/-, but the assessee has not proved that, it had opted to chose either duty drawback or the DEPB during that period.

Hence, the above DEPB receipt of Rs.46,02,02,128/-, should be excluded for the purpose of computation of 80HHC deduction being the export incentives as per the proviso to Section 80HHC(3) otherwise means that the deduction u/s. 80HHC can not be further increased on the above receipt by way of DEPB credit.

Further, the above view has been confirmed by the Ld.CIT(A)-III vide the order No.730/2006-07/A-III dated 27.03.2007 in the case of M/s.Breaks India Ltd for the AY 2004-05 on similar disallowance made by the assessing officer.



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Hence, I have the reason to believe that, the income has escaped the assessment by way of excess claim of deduction u/s.80HHC for the current year.

3.It is noticed from the details submitted by the assessee for the AY 2006-07 that the assessee has been engaged in importing training to the pace bowlers of cricket in India. The assessee has claimed that the above expenditure as the expenditure incurred wholly and exclusively for the purpose of business. But the same was disallowed and added to the total income of that year, since the above expenditure incurred by the assessee falls under the purview of charitable nature. The assessee has also incurred similar expenditure for the current year and the same has been claimed wrongly as business expenditure. Hence the income has escaped the assessment.

Therefore, I have the reasons to believe that the income has escaped the assessment within the meaning of section 147 of the income tax act.'

16. The notice for re-assessment is dated 07.05.2009, and has been issued within a period of four years from the end of the relevant assessment year. Learned Senior Standing Counsel appearing for the Department has argued that there is thus no statutory embargo to initiate proceedings for re-assessment. We agree with him on this count.

17. Explanation 2 to Section 147, sets out specific situations where the assumption of jurisdiction to re-assess has specifically been enabled by way of a deeming fiction. The adumbrated situations are deemed to be cases where income chargeable to tax has escaped assessment. One of such situations is the excess grant of deductions. In the present case, the reason for

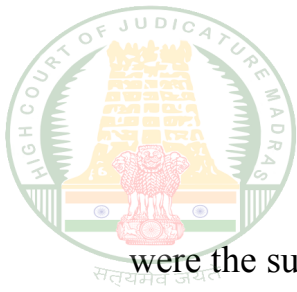


re-opening is that the grant of deduction under Sections 80HHC and 80IA by the assessing officer was in excess of what the appellant was entitled to.

18. Thus, while the veracity or otherwise of that allegation in regard to excess claim of deduction requires to be tested, as far as the assumption of jurisdiction under Section 147 is concerned, we do not find any cause to intervene. The re-opening has been made within the time limit provided and the invocation of Explanation 2 to justify the assumption of jurisdiction to re-assess is also in order, subject of course, to the process of re-assessment on merits.

19. The substantial question of law in relation to assumption of jurisdiction under Section 147 for AY 2004-05 is answered in favour of the revenue and against the assessee.

20. We now advert to the other substantial questions touching on re-assessments for AY 2003-04, 2004-05 and 2005-06. Though a substantial question has been raised and admitted in this regard for AY 2008-09 as well, we find that the assessment has been framed under Section 143(3) and hence the question of re-assessment does not arise. The first issue touches on the amendments made by way of the Taxation Laws Amendment Act, 2005 to Section 80HHC, with retrospective effect from 01.04.2000. The amendments



were the subject matter of challenge before the Hon'ble Supreme Court and in the case of *Commissioner of Income-tax v. Avani Exports*², the Supreme Court has upheld the amendments, though prospectively i.e., on and with effect from date of amendment being 01.04.2005, with respect to AY 2005-06 onwards.

21. Hence, the amendment cited as a reason for re-opening of the assessments, would have no application for AY 2003-04 & 2004-05. In this light of the matter, although we have upheld the assumption of jurisdiction for re-opening of assessment for AY 2004-05, the substantial question of law relating to deduction under Section 80HHC is, on merits, answered in favour of the assessee.

22. The next issue relates to the grant of deduction under Section 80IA of the Act. The assessee has been claiming Section 80IA in respect of the rubber manufacturing units at Kottayam in Kerala and Medak in Andhra Pradesh.

23. For the AYs 2002-03 and 2004-05, the deduction claimed was disallowed on the ground that the appellant was engaged in manufacture and sale of rubber products, that find mention in the XIth Schedule to the Act.

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Both Sections 80IA and 80IB contain a stipulation that deduction under those provisions shall not be allowed in cases where the assessee is engaged in the business of manufacture and sale of those products mentioned in the XIth Schedule.

24. The XIth Schedule contains reference to the following products:

'THE ELEVENTH SCHEDULE

[See section 32A, [section 32AB,] [section 80CC(3)(a)(i),
section 80-I(2)]*

[section 80J(4) and section 88A (3)(a)(i)]

LIST OF ARTICLES OR THINGS

1. *Beer, wine and other alcoholic spirits.*
2. *Tobacco and tobacco preparations, such as, cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff.*
3. *Cosmetics and toilet preparations.*
4. *Tooth paste, dental cream, tooth powder and soap.*
5. *Aerated waters in the manufacture of which blended flavouring concentrates in any form are used.*
[Explanation.- "Blended flavouring concentrates" shall include, and shall be deemed always to have included, synthetic essences in any form.]
6. *Confectionery and chocolates.*
7. *Gramophones, including record players, and gramophone records.*
8. *[***]*
9. *[Projectors.]*
10. *Photographic apparatus and goods.*
- 11-21. *[***]*
22. *Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters.*



Explanation.-

23. *Steel furniture, whether made partly or wholly of steel.*
24. *Safes, strong boxes, cash and deed boxes and strong room doors.*
25. *Latex foam sponge and polyurethane foam.*
26. *[***]*
27. *Crown corks, or other fittings of cork, rubber, polyethylene or any other material.*
28. *Pilfer-proof caps for packaging or other fittings of cork, rubber polyethylene or any other material.*
29. *[***]]*

25. According to the Department, the rubber tyres manufactured by the assessee would fall within the mischief of serial No.27 that reads '*crown corks, or other fittings of cork, rubber, polyethylene or any other material*'.

26. Mr.Vijayaraghavan would argue that the entry has to be read ejusdem generis, and as applicable to corks only. He would point out that if the interpretation canvassed by the revenue were to be accepted, it would lead to a distorted reading of the XIth Schedule, citing the decisions in

- (i)*Appollo Tyres Ltd. v. Commissioner of Income Tax*³
- (ii)*Commissioner of Income Tax v. Appollo Tyres Ltd*⁴
- (iii)*Commissioner of Income Tax v. Kalapna Lamp Components Pvt. Ltd.*⁵
- (iv)*Shree Products v. Commissioner of Income-tax*⁶
- (v)*Commissioner of Income-tax v. Hind Filters (P.) Ltd.*⁷

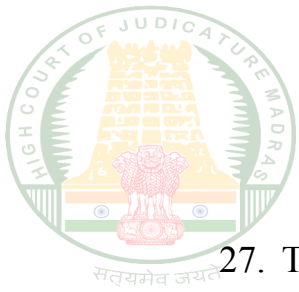
3 (2002) 255 ITR 0273

4 (1999) 237 ITR 0706

5 (1989) 178 ITR 0330

6 (1999) 237 ITR 367)

7 (1998) 234 ITR 207

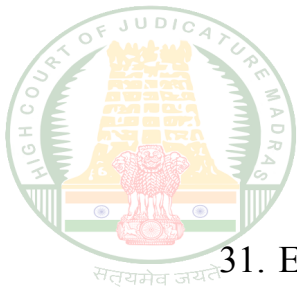


27. The Tribunal has accepted the case of the revenue, being of the view that the reference to 'rubber' in Serial No.27 would encompass all fittings of cork, rubber, polyethylene or any other material.

28. The revenue would also argue that the intendment of the XIth Schedule is to restrict the benefit under Sections 80IA and 80IB and other provisions that provide for accelerated and wide benefits to an assessee. Hence, a strict interpretation has to be given to the bar in regard to the XIth Schedule.

29. We have heard the rival contentions on this score. The XIth Schedule places an embargo on the grant of relief under various provisions of the Income Tax Act including Sections 80IA and 80IB. We note that each entry under the XIth Schedule is specific to a single product that may be made, utilising different materials, or different classes of one family of products.

30. Where the entry refers to more than one product, the specific products that are intended to be covered are mentioned separately. The only such instance is entry no.4 that mentions '*tooth paste, dental cream, tooth powder and soap*'.



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31. Entry 27 refers to '*Crown corks, or other fittings of cork, rubber, polyethylene or any other material*'. The argument of the revenue is that entry No.27 relates to all fittings or accessories of cork, rubber, polyethylene or any other material. This interpretation is too wide of acceptance as it would expose all products made of cork, rubber, polyethylene or any other material to the restriction.

32. There is yet another reason why the argument of the revenue does not appeal. Entry No.28 refers to *pilfer-proof caps for packaging or other fittings of cork, rubber polyethylene or any other material*. If all other fittings of cork, rubber, polyethylene or other material were covered under the ambit of entry No.27, as the revenue would argue, there would have been no necessity to refer to those products again in entry 28.

33. That apart, we do not find that the comma placed after the phrase 'crown corks', makes any difference to the interpretation that the fittings of cork, rubber, polyethylene or other material must relate to crown corks only. This argument is hence rejected and the substantial question of law in this regard is answered in favour of the assessee.

34. The decisions referred to by the assessee, would also support our conclusion as above.

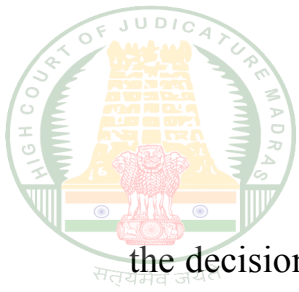


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35. We now address the substantial question relating to the rejection of deduction under Section 80IA in the last year of claim disregarding the grant of claim for the earlier year. The first year of claim under Section 80IA was AY 1995-96. Section 80IA was restructured in 1999 vide Finance Act, 1999 and bifurcated into two provisions i.e., Section 80IA and Section 80IB with effect from 01.04.2000. While Section 80IA continued to grant relief in respect of industrial undertakings or enterprises engaged in infrastructure development, Section 80IB provides for a deduction for industrial undertakings other than those engaged in infrastructure development.

36. The business of the petitioner thus continued to be entitled to the benefit of deduction, though under Section 80IB. The effect of bifurcation of Section 80IA into 80IA and 80IB is a seamless continuation of the deductions under the new provisions and what was available under erstwhile 80IA would continue to be available under Section 80IB subject to compliance with the statutory conditions.

37. Thus, the entitlement of an assessee that had claimed, and had been granted deduction under erstwhile Section 80IA was to be traced from the initial year when the claim had been successfully made, and would continue onward to the entire ten year period, straddling both pre and post 1999 (see



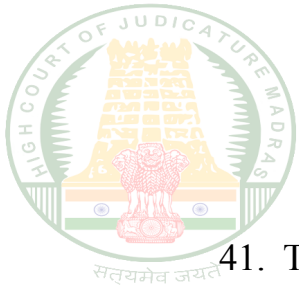
the decision of the Delhi High Court in the case of *Commissioner of Income-tax v. Natraj Stationery Products (P.) Ltd*⁸ on this point).

38. The petitioner had admittedly been granted relief under Section 80IA till 1999 and thereafter under Section 80IB till 2004-05. It is only in the instant re-assessment proceedings for AY 2002-03 and 2004-05 (AY 2004-05 being the last year of claim), that the claim has been questioned.

39. Thus, even on first principles, we do not accept that, on identical facts and legal position, the department could find an assessee ineligible for a claim of deduction for only two years out of the ten year period. We reiterate that no material difference, or for that matter, any difference at all, has been pointed out in the factual and legal positions both pre and post the years in question.

40. For the aforesaid reasons, we conclude that that the denial of deduction under Section 80IA and 80IB is misconceived. All the substantial questions of law in the context of re-assessment and merits barring on the question of assumption of jurisdiction under Section 147 for AY 2004-05, are answered in favour of the assessee.

8 [2009] 312 ITR 22



T.C.A.Nos.155 of 2011 etc. batch



41. These appeals are disposed in terms of this common order. No

costs.

(A.S.M.,J) (G.A.M.,J)
06.11.2024

Index: Yes
Speaking order
Neutral Citation: Yes
vs

To

The Deputy Commissioner of Income tax,
Large Tax Payer Unit, Chennai-600 101.



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T.C.A.Nos.155 of 2011 etc. batch



DR. ANITA SUMANTH,J.
and
G.ARUL MURUGAN,J.

VS

T.C.A.Nos.155, 156, 157 & 158 of 2011
and
T.C.A.Nos.196, 197 & 198 of 2012

06.11.2024