IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY ,THE EIGHTEENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE AND THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

INCOME TAX TRIBUNAL APPEAL NO: 136 OF 2008

Appeal filed under Section 260A of the Income Tax Act, 1961 against the Order dated 28.02.2007 passed in ITA No. 142/HYD/03 for the Assessment year 1999-2000 on the file of the Income Tax Appellate Tribunal Hyderabad Bench 'B' Hyderabad preferred against the Order dated 02.12.2002 passed in Appeal No. 065/DC-3(4)/CIT(A)-IV/02-03 on the file of the Commissioner of Income Tax (Appeals) – IV, Hyderabad preferred against the Order dated 26.03.2002 passed in PAN/GIR No. U-32 on the file of the Assistant Commissioner of Income Tax Circle – 3(4), Hyderabad.

Between:

M/s. Ushodaya Enterprises Ltd., Rep. by its Managing Director, 6-3-570, Eenadu Compound, Somajiguda, Hyderabad - 500 082.

...Appellant

AND

The Asst. Commissioner of Income Tax, Circle 3 (4) Hyderabad.

...Respondent

Counsel for the Appellant : Mr. M. Sridhar representing M/s. CKR Associates

Counsel for the Respondent : Mr. J.V. Prasad, Sr. SC for Income Tax

The Court delivered the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

I.T.T.A.No.136 of 2008

JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. M.Sridhar, learned counsel represents M/s. CKR Associates for the appellant.

Mr. J.V.Prasad, learned Senior Standing Counsel for Income Tax Department appears for the respondent.

2. This appeal under Section 260A of the Income Tax Act, 1961 (for short the 'Act') has been filed against order dated 28.02.2007, passed by the Income Tax Appellate Tribunal, Bench 'B', Hyderabad (for short 'the Tribunal') in I.T.A.No.142/Hyd/03.

3. The subject matter of the appeal pertains to the assessment year 1999-2000.

4. The appeal was admitted on the following substantial question of law:

"Whether the ITAT is correct in law in interpreting and applying the provisions of clauses (baa) of explanation U/s.80HHC of IT Act only to interest income of Rs.7,92,836/- ignoring the other receipt of Rs.552.60 lakhs comprising of as many as about 40 items of income?"

5. Facts giving rise to filing of this appeal in a nutshell are that the assessee company filed the return of income on 31.12.1999 for the assessment year 1999-2000. In the return of income, the assessee had declared the income of Rs.47,94,40,392/- before claiming deductions under Section 80HHC and Section 80G of the Act. The assessee claimed deduction of Rs.1,12,37,088/- under Section 80HHC of the Act, which was computed by treating various heads of income amounting to Rs.552.60 lakhs as profits of business. The return of income was processed under Section 143(1) of the Act. The case of the assessee was selected for scrutiny and notices under Sections 143(2) and 142(1) of the Act were issued. In response to the aforesaid notices, the representative of the

assessee appeared and furnished the information. The assessing officer, by order dated 26.03.2002, did not treat the amount of Rs.552.60 lakhs as profits of business and treated them as miscellaneous receipts under Explanation (baa) of Section 80HHC of the Act. The assessing officer, therefore, reduced 90% of Rs.552.60 lakhs, while computing the profits of business. The aforesaid deduction claimed by the assessee under Section 80HHC was reduced to Rs.1,05,55,308/-

6. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)'), who by order dated 02.12.2002, *inter alia* held that miscellaneous receipts ought to be reduced by 90% as per Explanation (baa) of Section 80HHC of the Act. Accordingly, the appeal was dismissed. The assessee thereupon filed an appeal before the Tribunal. The Tribunal, by the impugned order dated 28.02.2007, affirmed the order passed by the CIT(A) and dismissed the appeal. Hence, this appeal.

7. Learned counsel for the assessee has submitted that the Tribunal as well as CIT(A) have mechanically treated the amount as receipts on the bare nomenclature of the receipts without enquiring whether the same forms part of the business profits of the assessee. It is further submitted that the assessee at no point of time was given any opportunity to submit any evidence as to whether the amount in question related to export business. In support of aforesaid submission, reliance has been placed on a decision of the Bombay High Court in **Commissioner of Income Tax, Mumbai v. M/s. Bangalore Clothing Co., Mumbai**[1] and a decision of the Division Bench of this Court in **Aurobinda Pharma Ltd. v. Commissioner of Income Tax**[2].

8. On the other hand, learned Standing Counsel for the Revenue has supported the order passed by the authorities under the Act and submitted that the assessee has failed to establish that the amount of Rs.5,52,60,467/- was received from the

[1] (2003) 260 ITR 371
[2] (2015) 370 ITR 216

export business. It is also urged that the matter stands concluded by findings of fact against the assessee.

9. We have considered the rival submissions made by both sides and have perused the record.

10. The assessee was claiming deduction under Section 80HHC of the Act. Therefore, burden was on the assessee to prove its eligibility to claim such deduction. In the instant case, the assessee had received a sum of Rs.5,52,60,467/- from other sources. However, the assessee did not lead any evidence to show that the amount in question was received from the export business. Therefore, the Tribunal held that a sum of Rs.5,52,60,467/- cannot be treated as income from exports. Thus, it is evident that Section 80HHC of the Act, in the facts and circumstances of the case, did not apply. The authorities under the Act have, therefore, rightly treated the aforesaid amount as miscellaneous income and excluded 90% of the said

income in view of Explanation (baa) of Section 80HHC of the Act.

11. The finding recorded by the authorities under the Act neither suffers from any infirmity nor can the same be termed as perverse.

12. For the aforementioned reasons, the substantial question of law framed by this Court is answered in the negative and against the assessee.

13. In the result, the appeal fails and is, hereby, dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal Hyderabad Bench 'B' Hyderabad.
2. The Commissioner of Income Tax (Appeals) – IV, Hyderabad.
3. The Assistant Commissioner of Income Tax Circle – 3(4), Hyderabad.
4. One CC to M/s. CKR Associates, Advocate [OPUC]
5. One CC to Mr. J.V. Prasad, Sr. SC for Income Tax, Advocate [OPUC]
6. Two CD Copies

Njb/gh

HIGH COURT

DATED:18/12/2024

JUDGMENT

ITTA.No.136 of 2008

DISMISSING THE ITTA
WITHOUT COSTS

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