Income Tax Appellate Tribunal - Bangalore
Arco Spun Silk (P) Ltd. vs Income Tax Officer on 4 September, 1997
Equivalent citations: (1998) 61 TTJ Bang 74
ORDER S. Bandyopadhyay, A.M.

Since the issue involved in both these appeals filed by the assessee for the two successive years is the same, the appeals have been consolidated and a common order is being passed for the sake of convenience.

2. For both the years, the assessee filed its returns of income in which the computation of total income was done firstly by making deduction under section 80HHC (hereinafter referred to as the Act) from the gross total income arrived at after setting off current year's depreciation and thereafter unabsorbed depreciation of assessment year 1986-87 onward were adjusted against the resulting amount. Thus, nil income was declared in the returns for both the years and certain amounts of unabsorbed depreciation were still claimed to be carried forward. The returns were originally accepted during the course of processing under section 143(1)(a) of the Act. Later on, however, the assessing officer passed a rectificatory orders under section 154 of the Act in which he first of all set off the entire amount of unabsorbed depreciation of earlier years against the gross total income (as mentioned above) for assessment year 1994-95. Out of the resultant amount the assessing officer allowed deduction under section 80HHC of the Actby resorting to the formulae as prescribed in the relevant section. Finally, he arrived at the figure of total income of Rs. 6,04,226 for assessment year 1994-95, an Rs. 4,14,567 for assessment year 1995-96. Additional tax under section 143(1A) of the Act was also levied on the amounts represented by the differences between the total income so arrived at and the amounts of unabsorbed depreciation as claimed in the returns.

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3. In the first appeals filed by the assessee against the abovementioned rectificatory orders, the Commissioner (Appeals) held that the rectifications clearly came under the ambit of section 154 of the Act. Accordingly, he upheld the rectification.

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4. The assessee has come in further appeals against the aforesaid orders of the Commissioner (Appeals) before us. The learned counsel for the assessee has strongly contended firstly that in the processing under section 143(1)(a), there is no scope for changing the computation of deduction under section 80HHC of the Act. It is also argued that it is for the assessee to claim the unabsorbed depreciation or not to do so and hence, as per the provisions of the Act, it will be correct to allow deduction under section 80HHC of the Act first and only thereafter to make allowance for the unabsorbed depreciation. It is finally argued that in any case, since the matter is of debatable nature such an adjustment as resorted to by the assessing officer in the impugned rectificatory orders would not come within the purview of prima facie disallowances as envisaged in section 143(1)(a) of the Act, and furthermore, the provisions of section 154 of the Act would also not be applicable, to such debatable issues. In support of his contention, the learned counsel for the assessee has placed reliance on a number of decisions as below :

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Firstly, the decision of Karnataka High Court in the case of God Granites v. Under Secretary, CBDT & Ors. (1996) 218 ITR 298 (Kan) has been referred to. In that case, it was held by the Karnataka High Court that the inadmissibility of the claim of the assessee in regard to the deduction under section 80HHC of the Act was not so clear and self-evident from the return and the annexed document and hence, the assessing officer did not have the power to take recourse to adjustment by disallowance under section 143(1)(a) of the Act. The issue in that case was whether the assessee was at all entitled to the deduction under section 80HHC of the Act, from the angle as to whether granite exported by the assessee was of the nature of cut and polished ones.

Reliance has thereafter been placed on the judgment of the Bombay High Court in the case of Tanna Exports & Ors. M.G. Kamath & Anr. (1993) 202 ITR 219 (Bom). In that case, although it was held that recalculation of adjustment under section 80HHC of the Act was not permissible under section 143(1)(a) of the Act that was however, in the background of the fact that as against the income returned being Rs. 4,38,480, the assessee had recalculated the deduction claimed by the assessee

under section 80HHC of the Act and the total income thus came to Rs. 51,54,470. The basis of the recalculation itself was stated to be not very clear.

Finally, the learned counsel for the assessee has also relied on a judgment of the Karnataka High Court in the case of CIT v. HMT Ltd. (1993) 199 ITR 235 (Karn) In that case, it was held that when the assessee was having a number of undertakings, the depreciation allowable under section 32 of the Act and investment allowance under section 32A of the Act could be adjusted against the profits from any of the undertakings and the new industrial undertaking for the purpose of allowing deduction under section 80J of the Act should be treated as a separate entity and the profits and gains therefrom could be computed by referring to commercial expediency and practice alone.

5. In this connection, it will be necessary for us to look into the relevant provisions of the Act. In accordance with the first proviso to section 143(1)(a) of the Act, adjustment shall have to be made in the income or loss declared in the return in respect of any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of information available in such return, accounts or documents, is prima facie inadmissible. In accordance with sub-section. (1) of section 80-HHC where an assessee, being an Indian company ..... is engaged in the business of export out of India of any goods or merchandise to which this section applies there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of the profits derived by the assessee from the export of such goods of merchandise. Sub-section (3) of section 80HHC of the Act formulates the method for calculation of the amount of deduction of the profits to be made by referring to the proportion of the export turnover to the total turnover of the business and prescribing the same to be applied to profits of the business. "Profits of the business" have again been defined in clause (baa) of the Explanation to the entire section to mean profits of the business as computed under the head "profits and gains of business or profession" as reduced by certain amounts. It is thus clear that first of all, the profits and gains of the business or profession are required to be arrived at. From that only, "profits of the business" are to be arrived at by applying the provisions of clause (baa) to the aforesaid Explanation. In this connection, it would be necessary to refer to the sub-section (1) of section 80A of the Act which states as below :

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mean profits of the business as computed under the head "profits and gains of business or profession" as reduced by certain amounts. It is thus clear that first of all, the profits and gains of the business or profession are required to be arrived at. From that only, "profits of the business" are to be arrived at by applying the provisions of clause (baa) to the aforesaid Explanation. In this connection, it would be necessary to refer to the sub-section (1) of section 80A of the Act which states as below :

"In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with the subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U of the Act "

Again, sub-section (5) of section 80B defines "gross total income" as below :

"gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter."

It is thus clear from above that first of all, the gross total income of the business of the assessee is required to be arrived at which means the total income to be computed in accordance with all the provisions of the Act before making any deduction under Chapter VI-A. It would, therefore, be necessary to adjust not only the current year's depreciation but also all the brought forward losses and unabsorbed depreciation inasmuch as without such adjustment, full effect would not be given to the definition of `gross total income' as in section 80B(5) of the Act. The Supreme Court has also held so in the case of CIT v. Kotagiri Industrial Co- operative Tea Factory Ltd. (1997) 224 ITR 604 (SC) as below :

"In view of the express provisions defining the expression `gross total income' in clause (5) of section 80B of the Act, for the purpose of Chapter VI-A of the Act, it is necessary, for the purpose of making deduction under section 80P of the Act, to determine the gross total income in accordance with the other provisions of the Act. This means that the gross total income must be determined by setting off against the income the business losses of the earlier years as required under section 72 of the Act, before allowing deduction under section 80P."

Although this judgment has been delivered by the Supreme Court with regard to computation of deduction under section 80P, the same may be considered to be applicable to the deductions under all the sections of Chapter VI-A, unless something otherwise is indicated in any of the particular section. So far as sections 80HHC is concerned, we have already discussed above that the sections clearly speaks of the total income being determined in accordance with the different provisions relating to computation of income under the head "profits and gains of business or profession". Although the learned counsel for the assessee has tried to argue in this connection that the judgment of the Supreme Court in this particular case applies to brought forward losses only and not to unabsorbed depreciation, we are unable to agree with his contention. Since the judgment clearly speaks of the gross total income being determined in accordance with the other provisions of the Act, this would include not only the applicability of the provisions of section 72 relating to absorption of earlier years' losses, but even necessarily the adjustment of unabsorbed depreciation

which is even a step essential for arriving at business income inasmuch as the said step is envisaged in part D of Chapter IV relating to computation of profits and gains of business of profession. The learned counsel for the assessee has also tried to argue that the assessee is not compelled to claim depreciation in any particular year and the same may be claimed to be carried forward to the next year. This argument would also not hold good inasmuch as not only the assessee has claimed current depreciation but even unabsorbed depreciation has also been claimed to be adjusted to some extent in the computation of income. It is not the assessee's case that the entire amount of unabsorbed depreciation has been left outside the purview of this year's return. Again, the assessee has got a single composite business and not a number of undertakings and, therefore, the question of adjusting the unabsorbed depreciation against other income of the assessee cannot arise in this case at all. Hence, the judgment of the Karnataka High Court in the case of HMT Ltd. (supra) would not be applicable to the present case.

Finally, therefore, we feel that in the impugned rectificatory orders under section 154 of the Act, the assessing officer has clearly followed all the steps and laid down in the different sub- sections and clauses of section 80HHC of the Act to compute the total income of the assessee. We are also of the view that in accordance with the abovementioned judgment of the Supreme Court, in the case of Kotagiri Industrial Co-operative Tea Factory (supra), it is required to adjust the unabsorbed depreciation first and only thereafter to allow deductions under Chapter VI-A. Hence, the computation of income as done by the assessing officer in the impugned rectificatory orders have got to be treated as perfectly valid, correct and also in accordance with law. Since the assessee had claimed deduction under section 80HHC of the Act in a wrong manner in the return filed by it, disallowance of the same to the extent necessary so as to bring the required deduction within the parameters of legal allowability, was required to be done even in the adjustment process as envisaged under section 143(1)(a) of the Act. Therefore, we are of the opinion that the judgment of the Karnataka High Court in the case of God Granites (supra) and of the Bombay High Court in the case of M.G. Kamath & Anr. (supra) would not apply to the present case and the disallowances of portions of deductions under section 80HHC of the Act as claimed by the assessee in the returns are perfectly in order. Furthermore, since originally the entire claim of the assessee was allowed wrongly and against the clear provisions of law, the rectificatory proceedings under section 154 of the Act of the Act would clearly lie. The rectifications actually carried on by the assessing officer being strictly in accordance with the procedures as laid down in the relevant section, no debatable issue can be considered to have cropped up. Hence, we are of the opinion that even the rectificatory orders under section 154 are also valid. The appellate grounds taken up by the assessee in this regard are hence being dismissed.

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7. Lastly, levies of interest under section 234B have also been challenged by relying on the judgment of the Patna High Court in the case of Ranchi Club Ltd. v. CIT & Ors. (1996) 217 ITR 72 (Pat). In a later decision, the Patna High Court itself has considered its earlier order in the case of Ranchi Club Ltd. (supra) to be not correct and has referred the matter to a larger Bench. Hence, we do not find much reason to follow the above decision of the Patna High Court. This ground relating to levy of interest under section 234B is also, therefore, being dismissed.

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