(964)

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'I' NEW DELHI

BEFORE SHRI RAJPAL YADAV,JUDICIAL MEMBER
AND SHRI K.G. BANSAL, ACCOUNTANT MEMBER

I.T.A. No. 3544/Del./09
Assessment year 2003-04

Dy. Commissioner of Income Tax Circle-6 (1), New Delhi	Vs.	M/s. Maharashtra Seamless Ltd. 1/23-B, 1st Floor, Asaf Ali Road, New Delhi.
(Appellant)		(Respondent)

Appellant by by : Shri M.Mohsin Alam, DR
Respondent by : Shri Ved Jain, CA, Sh. V.Mohan, Advocate

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER

The revenue is in appeal before us against the order of Ld. CIT(A) dated 1st June, 2009 passed in asstt. Year 2003-04. The solitary grievance of the revenue is that Ld. CIT(A) has erred in deleting the penalty amounting to Rs. 2,20,48,312/- levied u/s 271(1)(c) of the Income Tax Act, 1961.

2. The brief facts of the case are that assessee at the relevant time was manufacturing pipes and tubes and wind power generation. It was trading in pipe and tubes also. It has two division namely Seamless Division and ERW pipes and tubes. It has also filed its return of income on 31.10.2003 declaring an income of Rs. 64,00,14,646/-. The assessee had claimed deduction u/s 80HHC for an amount of Rs. 5,99,71,358/-. In support of its claim it has filed report in form No. 10CCAC under Rule 18 BBA (3) of Income Tax rules. The AO

disallowed the claim of deduction on the ground that it has exported the goods through an export house namely M/s. Jaguar Overseas Ltd. In the case of M/s. Jaguar Overseas Ltd. profits are arising on account of DEPB incentives otherwise the export house has a loss and therefore it was not entitled for deduction u/s 80HHC. The assessee has been claiming the deduction on the basis of exports made by it through the export house and export house on such export has issued a disclaimer certificate to the assessee. Ld. AO putting reliance upon the judgment of Hon'ble Supreme Court in the case of M/s. IPCA Laboratories Ltd. reported in 266 ITR 521 disallowed the claim of assessee. This disallowance has been upheld up to the Tribunal.

3. The AO had issued notice u/s 271(1)(C) read with section 274 inviting the explanation of assessee as to why penalty for willful furnishing of inaccurate particulars should not be levied upon it u/s 271(1)(C) of the Act. In response to the show cause notice of the AO it was contended by the assessee that AO has miserably failed to apply the judgment of Hon'ble Supreme Court in the case of IPCA Laboratories upon the assessee. That was a case of an export house where the assessee is a supporting manufacturer. The assessee further contended that AO has erred in construing the assessee as an export house instead of treating it as a supporting manufacturer. Apart from pointing out these wrong appreciation of facts at the end of AO, the assessee has pointed out that it has submitted the complete details and in its understanding of law deduction u/s 80HHC was admissible to it. The reliance put upon by the AO on the judgment of

Hon'ble Supreme Court in the case of IPCA Laboratory has come on 11th March, 2004 i.e. much afterwards of the date of filing the return of income by the assessee. The claim of assessee is supported by the opinion of expert in the shape of certificate issued by the Chartered Accountant. It is not the case that assessee has furnished inaccurate particulars or concealed any particulars. The deduction has been disallowed to the assessee on the basis of interpretation of law. According to the assessee it has overall profit and it is eligible for deduction u/s 80HHC. The Ld. AO has rejected the contention of assessee and imposed a penalty of Rs. 2,22,48,312/-.

4. Aggrieved with the order of AO assessee carried the matter in appeal before the Ld. CIT(A) and reiterated its contention. The Ld. CIT (A) has considered the submission of assessee in detail and deleted the penalty. In the opinion of Ld. First Appellate Authority assessee cannot be charged with the charge of furnishing inaccurate particulars. It has submitted the complete details in support of its claim. It has not made any wrong statement of facts.

5. Ld. DR relied upon the order of AO and contended that assessee was aware about the facts that export house has a negative profit and it was not entitled for deduction u/s 80HHC by including the benefit of incentive in the shape of DEPB Thus assessee has furnished inaccurate particulars by making a wrong claim of deduction. The AO has rightly imposed the penalty. In support of

his contention Ld. DR relied upon the decision of Hon'ble Kerala High Court in the case of Kuttookaran Machine Tools vs. ACIT reported in 313 ITR 413.

6. Ld. Counsel for the assessee on the other hand submitted that though the disallowance of deduction claimed u/s 80HHC has been upheld upto the Tribunal but assessee does not deserve to be visited with penalty. While apprising us with the facts he pointed out that AO has considered mainly three issues while examining the facts regarding the admissibility of deduction u/s 80HHC. First issue raised by the AO is that assessee has made a claim admissible u/s 80HHC by working out the profit of two different divisions independently. According to the AO the claim has to be computed on the aggregate export sales and not on division wise. With regard to this observation of the AO it was the stand of the assessee that it has been maintaining separate books of accounts for the two units and the deduction is admissible on unit wise. The second issue raised by the AO is regarding total turn over for the purpose of computing deduction u/s 80HHC. In this issue AO was of the opinion that excise duty is to be included in the total turn over. The Hon'ble Bombay High Court in the CIT Vs. Sudershan Chemicals Industries Ltd. which has been approved by the Hon'ble Supreme Court in the case of Laxmi Machines Tools reported in 292 ITR 667, has held that excise duty will not form part of the total turn over. The third issue is regarding the income in the hands of export house M/s. Jaguar Overseas Ltd. through whom the assessee has exported the goods manufactured by it. The AO has construed Ms/ Jaguar Overseas as supporting manufacture whereas in fact the assessee is the supporting manufacturer. In this trading by the assessee

through export house it has over all profit and thus it was entitled to deduction u/s 80HHC. When the assessee has filed the return judgment of Hon'ble Supreme Court in the case of IPCA Laboratories was not available. There was no contrary opinion on the admissibility of deduction at the time of filing of the return, therefore, it cannot be said that assessee has made wrong claim intentionally. He further contended that the issue of computation of deduction admissible u/s 80HHC is always debatable issue and complicated one. While calculating deduction u/s 80HC, negative or positive figures are to be taken into account remained contentious and this resulted into an amendment to section 80HHC by the taxation amendment bill No. 2 of 2005 whereby negative as well as positive figures have to be taken into account to its logical conclusion to compute the deduction u/s 80HHC. He also referred to the circular No. 2 of 2006 wherein it has been observed that in pursuance of the computation made with regard to admissibility of deduction u/s 80HHC on the basis of amended provision which brought on the statute book vide Amendment Act 2005, no penalty shall be levied or interest shall be charged in respect of any fresh demand raised consequent to the enactment of Taxation Law Amendment Act 2005. According to the Ld. Counsel for the assessee this indicate the complexity of the provision. He further relied upon the order of the ITAT Delhi in the case of Oriental Rug Company wherein the deduction u/s 80IB was disallowed on DEPB receipt. The AO visited the assessee with penalty. The Tribunal has deleted the penalty. He placed on record a copy of the Tribunal order in ITA No. 3629/Del/2008 & 3630/Del/2008. With regard to the judgment relied upon by the

revenue reported in 313 ITR 413, he pointed out that in that case a bogus claim of investment allowance and depreciation was made. The facts are quite distinguishable from the facts of the assessee's case.

7. We have duly considered the rival contention and gone through the record carefully. There is no dispute on the facts that assessee has disclosed complete details of its claim in the return of income. It has made the claim on the basis of advice given by the expert on this subject. The audit report and the claim in necessary proforma were submitted alongwith the return. There is no malafide in this claim. The assessee was having a profit in its trading account. It is the export house who has a negative profit and on the basis of interpretation given by the Hon'ble Supreme Court in the case of M/s. IPCA Laboratories this disallowance has been made. The judgment of Hon'ble Supreme Court came much afterwards of the date of filing of the return of income. It indicate that issue was contentious one. The ITAT Jaipur in the case of Harashvardhan Chemicals & Minerals Ltd. Vs DCIT Reported in 58 Taxman 234 has held that if an assessee interprets the Law in a particulars way disclosing all the relevant facts in the return so that if the legal position taken by him is not accepted, full tax could be imposed, it could not be said that the assessee had filed a false return. The mere rejection of the explanation or claim of the assessee does not show that it was false. Deduction under section 80HHC could be arguable contestable or debatable. In such a situation, the claim could not be said to be false. If this was not so, it would become impossible for any assessee to raise any claim or claim

any deductions which are debatable. It is not certainly the intention of the Legislature to make such claim or deductions punishable under section 271 (1) (C) if they are not accepted.

8. The above view of the ITAT Jaipur has been upheld subsequently in a large number of cases and gainfully a reference can be made to the decision of Hon'ble P & H High Court in the case of CIT Vs. Budhewal Co-operative Sugar Mills Ltd. (2008) 6 DTR 31, CIT vs. Tek Ram (HUF) 300 ITR 354, ACIT Vs. Vijay Kiran Hotels (P) Ltd., ITAT Chandigarh 10 DTR 225. Apart from the above discussion we find that Ld. CIT (A) has considered the issue elaborately. The Hon'ble Supreme Court in the case of CIT vs. Max India has refused to upheld the action of Ld. CIT u/s 263 of the Act whereby Ld. Commissioner sought to take action u/s 263 on the basis of computation of deduction available u/s 80HHC. According to the Ld. Commissioner such computation made by the AO is not in accordance with the law and he has to held the order of the AO as erroneous and prejudicial to the interest of revenue. His view was not upheld by the ITAT and thereafter by the Hon'ble High Court. On appeal Hon'ble Supreme Court observed that computation of deduction admissible u/s 80HHC has become so complicated over the years and two views were inherently possible. Therefore, no action u/s 263 is advisable. Thus on perusal of the detailed order of Ld. CIT(A) as well as of the asstt. records we are of the opinion that assessee has not furnished any inaccurate particulars or has not made any wrong claim of deduction intentionally. Its claim was disallowed on the basis of interpretation of

section 80HHC which is based on the basis of decision of Hon'ble Supreme Court which came subsequent to the filing of the return. Ld. First appellate authority has appreciated the facts and circumstances in right perspective no interference is called for.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 18/12/09

[K.G. BANSAL]
ACCOUNTANT MEMBER

[RAJPAL YADAV]
JUDICIAL MEMBER

Veena
Dated : 18-12-09

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,
Asstt. Deputy Registrar,
आयकर अपीलीय अधिकरण
Income Tax Appellate Tribunal
दिल्ली पीठ, नई दिल्ली
Delhi Benches, New Delhi