

IN THE HIGH COURT OF KERALA AT ERNAKULAM

ITA.No. 930 of 2009()

THE COMMISSIONER OF INCOME TAX, ... Petitioner

Vs

PACKWORTH UDYOG LTD, ... Respondent

For Petitioner :SRI.JOSE JOSEPH, SC, FOR INCOME TAX

For Respondent :SRI.P.BALAKRISHNAN (E)

The Hon'ble MR. Justice C.N.RAMACHANDRAN NAIR

The Hon'ble MR. Justice B.P.RAY

The Hon'ble MR. Justice P.N.RAVINDRAN

Dated :30/11/2010

O R D E R

I.T.A. Nos. 930, 1525, 1638, 1668 & 1681 of 2009  
-----

Dated this the 30th day of November, 2010

JUDGMENT

Ramachandran Nair, J.

In these appeals filed by the revenue, the only question raised is whether the assessee is entitled to deduction under Section 80HHC in the computation of book profit under Section 115JB of the Income Tax Act. Even though in respect of one assessee, the provision involved is Section 115JA, there is no need to consider the issue separately because applicability of Section 80HHC in the computation of book profit is one and the same both under Section 115JA and 115JB of the Act.

2. When huge amount of carried forward business loss and unabsorbed depreciation were set off by the assessee, the gross profit became a negative figure. Therefore the assessee was not entitled to deduction under Section 80HHC of the Act by virtue of operation of Section 80AB and Section 80B(5) of the Act. However, the assessing officer proceeded to make assessment on book profit under Section 115JB of the Act. In the computation of book profit, the assessing officer declined deduction under Section 80HHC, though the assessee claimed it under Section 115JB (2)(iv) of the Act. When the matter was heard before the Division Bench, the assessee relied on the decision of the Division Bench of this Court in CIT V. G.T.N. TEXTILES LTD., 248 I.T.R. 372, which was in their favour. However, standing counsel appearing for the revenue contended that the Division Bench judgment of this Court requires reconsideration in view of subsequent decisions of the Supreme Court in IPCA LABORATORY LTD. V. DEPUTY COMMISSIONER OF INCOME TAX, (2004) 266 I.T.R. 521, A.M. MOOSA V. COMMISSIONER OF INCOME TAX, (2007) 294 I.T.R. 1 (SC) and C.I.T. v. SHIRKE CONSTRUCTION EQUIPMENTS LTD.,

(2007) 291 I.T.R. 380. In view of the contentions raised by the revenue, the matter was referred to Full Bench and hence these appeals are before us. We have heard senior standing counsel appearing for the revenue and senior counsel Sri. Joseph Markose, and Advocate, Sri. P. Balakrishnan, appearing for the respondents.

3. Counsel appearing for both sides brought to our notice the latest decision of the Supreme Court on Section 115JB in AJANTA PHARMA LTD. V. CIT, (2010) 327 I.T.R. 305 (SC) wherein the issue decided is assessee's eligibility for deduction under Section 80HHC of the Act in the computation of book profit under Section 115JB. While the case of the assessee is that issue is squarely covered by this judgment of the Supreme Court in their favour, standing counsel for the revenue contended all what the Supreme Court has said is that ceiling of deduction provided under Section 80HHC (1B) at 80% should not be applied in the computation of book profit and assessee is entitled to deduction of the entire eligible export profit computed under Section 80HHC of the Act. In other words, standing counsel contended that in the computation of book profit, deduction under Section 80HHC should be considered by applying the provisions of Section 80AB and Section 80B(5), etc., of the Act. Therefore according to him, if the total income computed before considering the claim of deduction under Chapter VIA-C is a negative figure then the assessee shall not be entitled to deduction under Section 80HHC at all. His contention is that in the case of all the assessee herein carried forward business loss and depreciation from previous years are such that gross profit, after setting off the same from the gross total income, is a negative figure which disentitles the assessee for deduction under any of the provisions of Chapter VIA-C of the Act. Therefore the contention of the revenue is that assessee is not entitled to deduction under Section 80HHC of the Act, even in the computation of book profit for assessment.

4. The short question arising for consideration therefore is whether the assessee whose gross total income after setting off business loss and depreciation carried forward from previous years is NIL are entitled to deduction under Section 80HHC in the computation of book profit under Section 115JB (2)(iv) of the Act.

For easy reference we extract hereunder the relevant portions of Section 115JB of the Act:

115JB. Special provision for payment of tax by certain companies:

(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2001, is less than seven and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income tax at the rate of seven and one-half per cent.

(2) Every assessee, being a company, shall for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):

Provided that while preparing the annual accounts including profit and loss account,--

(i) the accounting policies;

(ii) the accounting standards followed for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation,

.....

Explanation.-- For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by--

.....

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 or section 10A or section 10B or section 11 or section 12 apply, if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by--

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below second proviso to section 115JA, as the case may be; or

(ii) the amount of income to which any of the provisions of section 10 or section 10A or section 10B or Section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account,

Explanation.-- For the purposes of this clause,--

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation, is nil, or (iv) the amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A) as the case may be, of that section, and subject to the conditions specified in that section; or, (v) the amount of profits eligible for deduction under section 80HHE computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or (vi) the amount of profits eligible for deduction under section 80HHF computed under sub-section (3) of that section and subject to the conditions specified in that section;

or (vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial

Companies (Special provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.-- For the purposes of this clause "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).

.....

The contention raised by the revenue is that admissible deduction of export profit under clause (iv) in the computation of book profit is the same amount of deduction allowable to the assessee under Section 80HHC in the computation of total income, had the assessment been made in the normal course. Therefore according to him, if the assessee is not entitled to any deduction under Section 80HHC in the computation of total income under the other provisions of the Act, then no deduction is admissible under export profit under clause (iv) above in the computation of book profit as well.

Counsel appearing for the assesseees on the other hand relied on the decision of the Supreme Court in AJANTA PHARMA LTD.'s case wherein the Supreme Court has held that Section 115JB is a self-contained code in the computation of book profit. Assesseees' counsel has also relied on the decision of the Madras High Court in CIT V. MAGNA ELECTRO CASTINGS LTD., (2009) 184 Taxman 79 (Mad.) and the earlier decision of this Court in GTN TEXTILES's case referred above and submitted that restrictions in the computation of deduction under Chapter VIA-C which includes deduction of export profit under Section 80HHC cannot be subject to the provisions of Section 80AB or Section 80B(5) of the Act. The further contention canvassed by assesseees' counsel is that export profit has to be determined with reference to the profit available in the Profit and Loss Account prepared under the Companies Act, with reference to which book profit is determined under Section 115JB of the Act.

5. After hearing both sides and after going through the decisions above referred, particularly that of the Supreme Court, we feel that assesseees are entitled to deduction under Section 80HHC computed in accordance with sub-section (3) and (3A) of Section 80HHC of the Act because it is expressly so provided under clause (iv) of Section 115JB (2) of the Act. All what the Supreme Court has held is that the ceiling contained in Section 80HHC (1B) is not applicable for the purpose of granting deduction under clause (iv) above in the computation of book profit. However, there is nothing to indicate in the Supreme Court decision that eligible deduction of export profit under clause (iv) above in the computation of book profit can be computed in any other manner other than what is provided in sub-section (3) and (3A) of Section 80HHC of the Act. What is clearly stated in clause (iv) is that deduction of export profit in the computation of book profit is the same "amount of profit eligible for deduction under Section 80HHC" computed under clause (a) or clause (b) or clause ) of sub-section (3) or sub-section (3A) of the said section. So much so, computation of export profit has to be done only in accordance with the method provided under Section 80HHC which is in fact done in the computation of business profit if the assessment was on the total income computed under the other provisions of the Act. MAT assessment is only an alternative scheme of assessment and what is clear from clause (iv) above is that even in the alternative scheme of assessment under Section 115JB assessee is entitled to deduction of export profit under Section 80HHC. In other words, export profit eligible for deduction under Section 80HHC is allowable under both the scheme of assessment. So much so, assesseees are certainly entitled to deduction under Section 80HHC but it is only by following the method provided under sub-section (3) and (3A) of Section 80HHC. However, by virtue of the

decision of the Supreme Court above referred, we feel the restriction contained in Section 80AB or Section 80B(5) could not be applied inasmuch as carry forward of business loss or depreciation should not be first set-off leaving gross total income nil, which disentitles the assessee for deduction under other provisions of Chapter VIA-C which includes Section 80HHC also. But assessee's contention that export profit has to be computed with reference to the Profit and Loss Account prepared under the Companies Act is equally unacceptable because there is no such provision in Section 80HHC to determine export profit with reference to Profit and Loss Account maintained under the Companies Act. Consistent with the decision of the Supreme Court, we hold that assessee is entitled to deduction of export profit under Section 80HHC and the relief is to be granted in terms of sub-section (3) and (3A) of the said section.

We therefore dispose of the appeals by vacating the orders of the lower authorities with direction to the assessing officer to recompute the book profit by granting deduction under Section 80HHC in terms of above findings and the decision of the Supreme Court in AJANTA PHARMA LTD's case referred above.

Sd/- (C.N.RAMACHANDRAN NAIR) Judge.

Sd/- (BHABANI PRASAD RAY) Judge.

Sd/- (P.N. RAVINDRAN) Judge.