

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI C.M.GARG, JUDICIAL MEMBER**

**ITA No. 733/Del/2011
AY: 2002-03**

Liberty Shoes Ltd.
Railway Road, Karnal

vs. DCIT, Central Circle
Karnal

PAN: AAACL 3146 K
(Appellant)

(Respondent)

Appellant by : Sh. Satish K Goel, Adv.
Respondent by : Sh.Ashis Mohanty, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, A.M.

This is an appeal filed by the Assessee directed against the order of Ld.CIT(A), Karnal dated 3.12.2010 pertaining to the A.Y. 2002-03.

2. Facts in brief:- The facts are brought out at para 2.01 of the Ld.CIT(A)'s order which is extracted for ready reference.

"The brief history of the case is that the assessment in this case was completed u/s 143(3) of the Income Tax Act, 1961 which was computed after effect to the appellate orders at Rs. 3, 80, 50, 490/ -. While calculation the deduction u/ s 80HHC on premium on Import License and DEPB amounting to Rs.7,09,741/- and Rs.1,48,43,127/- respectively was allowed as deduction along with other export profits of the firm. The premium of import license and DEPB are to be considered as per amended provisions of the law. "

"The assessee has received DEPB amounting to Rs.1,48,43, 127/ - and sale of import license amounting to Rs. 7,09, 741/ - and claimed deduction u/ s 80HHC on this amount. The case was re-opened for re-computation of income as well as the allow-ability of deduction u/ s 80HHC. From the Profit and Loss account of the assessee it is found that the assessee has received

income from the premium on the sale of import license, duty refund, building rent and DEPB import license. As the assessee has increased the 90% of these amount while calculating the profits of the business of the assessee, whereas these were not to be increased as per the provisions of explanation (baa) to the section 80HHC(4A). It will be appropriate if the provisions of section 80HHC (4A), Explanation (baa) is re-produced as under:-

(baa) "Profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by (1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;

The assessee was asked vide this office letter dated 19.9.2007 to attend the office and furnish the reply on merits and furnish the stay order, if obtained any, of the Hon'ble Court as the stated that writ petition of the assessee is pending. In reply to this, the assessee furnished reply vide letter dated 22.9.2007, which is reproduced as under:

"Please refer to assessee's letter dated 10.9.2007 (copy attached), which has not been looked into. The assessee wrote the relevant lines in that letter as under:

You are requested to kindly deal objections of the assessee before resorting to the process of reassessment. This matter requires our approach to the Hon'ble jurisdictional High Court where other exporters have already filed writs challenging Taxation Law Amendment Act, 2005 on the issue of discrimination between exporters falling within 10 crores Turnover & more than 10 crores Turnover.

The presumption that the assessee has already approached the Hon'ble High Court is not correct as will be clear from the letter and above mentioned lines. Kindly do the needful as requested i.e. proceedings can't be kept pending etc.

Vide letter dated 17-10-2007 the assessee was again asked to furnish reply that as to why the deduction u/s 80HHC may not be calculated after taking into consideration the amendment in Taxation Laws and Amendment Act, 2005 and judicial pronouncements made by the different courts till date.

The assessee could not file any reply against the letter issued on 17.10.2007 and also not attended on 25.10.2007 for which date the case was fixed for hearing.”

3. The assessee before us has challenged the reopening on the ground that, the reasons for reopening was the amended provisions of S.28(iii d)/80 HHC of the Act as per Taxation Law of Amendment Act, 2005 and that such reopening is bad in law. He relied on the decision of Hon’ble Gujarat High Court as well as the decision of Hon’ble P&H High Court.

3.1. The Hon’ble P&H High Court in the case of Gurunanak Exports vs. ACIT judgement dt. 3rd October, 2012 has held as follows.

“In all these petitions, insertion of conditions in the third and forth provisos to Section 80 HHC (3) of the Act by amendment of Taxation Laws (Second Amendment) Act, 2005 with retrospective effect have been challenged. It is a matter of record that similar writ petitions were filed in various High Courts. Transfer petition was filed in the Supreme Court and the Supreme Court had directed transfer of all those writ petitions to the High Court of Gujarat. The High Court of Gujarat vide judgment dated July 02, 2012 decided the said bunch of writ petitions and quashed the impugned amendment only to the extent that the operation of the said section could be given effect from the date of the amendment and not in respect of earlier assessment years. The Bombay High Court following the aforesaid judgment of the Gujarat High Court, disposed of all the writ petitions before it in the following manner:-

“It is admitted that the present writ petitions are identical to the Writ Petitions which were the subject matter of the Transfer Petitions before the Supreme Court and the judgment of the Gujarat High Court.

Only the first four writ petitions listed above were the subject matter of the Transfer Petitions. In other words, the first four matters stood transferred to the Gujarat High Court pursuant to the above orders of the Supreme Court. The other petitions, therefore, did not stand transferred to the Gujarat High Court.

Keeping in mind that the Supreme Court had transferred all the matters to the Gujarat High Court in order to avoid confusion and difficulties in enforcement of conflicting judgments of different High Courts, we are of the view that it would be appropriate in these writ petitions to follow the judgment of the Gujarat High Court.

In the circumstances, for the above reasons, the Writ Petitions, other than the first four Writ Petitions, are disposed of in the terms of the order and judgment of the Gujarat High Court. The first four writ petitions, in any event, stand disposed of by the order and judgment of the Gujarat High Court. No order as to costs".

All the writ petitions are disposed of in a similar manner, in same terms."

3.2. Respectfully following the same we hold that the reopening is bad in law.

4. In the result the assessee's appeal is allowed.

Order pronounced in the Open Court on 30th November, 2015.

Sd/-
(C.M.GARG)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 30th November, 2015

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar