

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Pawan Singh (JM)

I.T.A. No. 5409/Mum/2011 (Assessment Year 2000-01)

M/s. Cannon Industries P. Ltd. 109, Churgate Chambers 5, New Marine Lines Mumbai-400 020. PAN : AAACC2189D (Appellant)	Vs.	ITO 1(1)(2) Mumbai. (Respondent)
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Assessee by	Shri V.K. Tulsian
Department by	Shri Rajat Mittal
Date of Hearing	31.8.2017
Date of Pronouncement	20.9.2017

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 31-03-2011 passed by Ld CIT(A)-1, Mumbai and it relates to the assessment year 2000-01. The assessee is aggrieved by the decision of Ld CIT(A) in upholding the validity of reassessment proceedings and in confirming the rejection of claim for deduction u/s 80HHC of the Act.

2. We heard the parties and perused the record. The AO initially completed the assessment by allowing deduction u/s 80HHC of the Act. Subsequently he noticed that the assessee has declared loss in trading exports and claimed deduction u/s 80HHC in respect of DEPB amount. The AO took the view that the assessee is not entitled for deduction u/s 80HHC, if it had incurred loss. In this regard, he placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of Rohan Dyes & Intermediaries Ltd (2004)(192 CTR (Bom) 45). Accordingly he reopened the assessment by issuing notice u/s 148 of the Act on 07-01-2005.

3. In the reopened the assessment, the AO noticed that the assessee is having turnover exceeding 10 crores and accordingly held that the assessee is not entitled to deduction u/s 80HHC of the Act, since it did not fulfill the third proviso. Accordingly he rejected the claim for deduction u/s 80HHC of the Act.

4. The Ld CIT(A) confirmed the reopening of assessment and also confirmed the rejection for claim for deduction u/s 80HHC of the Act.

5. With regard to the issue relating to validity of reopening of assessment, we notice that the assessing officer has reopened the assessment within four years from the end of the assessment year by recording proper reasons. Accordingly we are of the view that the Ld CIT(A) was justified in upholding the validity of reopening of assessment.

6. With regard to the claim for deduction u/s 80HHC of the Act, we notice that the Hon'ble Supreme Court has upheld the decision rendered by Hon'ble Gujarat High Court in the case of Avani Exports that the third proviso to sec. 80HHC of the Act inserted by Finance Act, 2005 w.r.e from 1.4.1998 cannot have retrospective operation. In view of the said decision, the AO was not justified in invoking the provisions of third proviso to sec. 80HHC in order to reject the claim for deduction u/s 80HHC of the Act, since the year under consideration would not be hit by the third proviso after the decision of Hon'ble Supreme Court. We notice that the Ld CIT(A) has followed the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Kalpataru Colours & Chemicals (2010)(233 CTR (Bom) 313), which has since been reversed by Hon'ble Supreme Court in the case of Topman Exports. In view of the same, we are of the view that this issue requires fresh examination at the end of the assessing officer. Accordingly we set aside the order passed by Ld CIT(A) on

this issue and restore the same to the file of the assessing officer with the direction to examine this issue afresh by duly considering the information and explanations that may be furnished by the assessee and also by applying the law laid down by Hon'ble Supreme Court in the case of Avani Exports and Topman Exports.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 20.9.2017.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 20/9/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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