

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 5117/Mum/2004
(निर्धारण वर्ष / Assessment Year: 2000-01)

Man Industries (I) Ltd. 102 Man House, SV Road, Opp. Pawan House Vile Parle(W), Mumbai-400056.	बनाम/ Vs.	ACIT(LTU) 29 th Floor Centre I World Trade Centre Cuffe Parade, Mumbai-400005.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM2675G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Nirav Mehta (AR)
Revenue by:	Shri Bharat Andhle (Sr.AR)

सुनवाई की तारीख / Date of Hearing: 24/06/2021
घोषणा की तारीख /Date of Pronouncement: 27/07/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 22.04.2004 passed by the Commissioner of Income Tax (Appeals) -VIII, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2000-01.

2. The assessee has raised the following grounds: -

“1. The Ld. CIT(A) erred in confirming the disallowance of deduction of Rs.25,70,293/- claimed u/s 80-HHC of the Income-tax Act, 1961 and in dismissing the appeal.

2. The Ld. CIT(A) erred in holding that the deduction allowable u/s 80-HHC is nil and not Rs.25,70,293/-.



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3. The Ld. CIT(A) erred in holding that the income as computed u/s 115JA is not the basis for computing deduction u/s 80-HHC.”

3. The brief facts of the case are that the assessee filed its return of income on 29.11.2000 declaring total income to the tune of Rs.28,08,765/- u/s 115JA. The return was processed u/s 143(1) of the I. T. Act, 1961. The assessee company was engaged in the business of manufacturing of aluminium extrusion, Saw pipes and Spiral. The case of the assessee was reopened u/s 147/148 of the Act. The necessary notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee declared loss of Rs.4,11,71,357/- and book profit at Rs.28,08,765/- u/s 115JA of the Act. The assessee claimed the deduction u/s 80-HHC at Rs.25,70,293/-. According to book profit and loss account, the profit was of Rs.12,122 lakhs. Accordingly, 30% of the book profit works out to Rs.36.36 lakhs. The income u/s 115JA comes to Rs.36.36 lakhs. The assessee computed at Rs.28.08 lakhs. The assessee declared the profit short of Rs.8.28 lakhs computation of MAT, the assessee while computing the MAT wrongly reduced Rs.1,21 lakhs on account of profit on sale of shares and deduction u/s 80-HHC of Rs.25.7 lakhs. Notice was issued and after the reply of the assessee, the income of the assessee u/s 115JA was assessed to the tune of Rs.36,16,177/-. The total income as per the return of income was to the tune of Rs. Nil. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

ISSUE NOs. 1 to 3

4. Under these issues the assessee has challenged the disallowance of deduction of Rs.25,70,293/- claimed u/s 80-HHC of the I. T. Act, 1961. At



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the very outset, the Ld. Representative of the assessee has argued that the issue has squarely covered by the decision of Hon'ble ITAT in the assessee's own case bearing ITA. No.6971/Mum/2006 for the A.Y 2003-04 dated 07.07.2008. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT in the assessee's own case (supra). The relevant finding is hereby reproduced as under.:-

“ 3. The assessee is a company engaged in the business of manufacture of saw pipes, spiral pipes and alluminium extrusion. The income of the assessee for assessment year 2003-04 was computed under the minimum alternate tax (MAT) provisions laid down u/s 115JB of the Act. The assessee while computing the book profits for the purpose of section 115JB of the Act was entitled to deduction the book profits the deduction u/s 80HHC of the Act. The assessee claimed such deduction at Rs.5,62,14,037/-. While 'working out this deduction the assessee also considered export incentives in the form of DEPB and other income of Rs.20,74,23,292. According to the assessing officer DEPI3 incentive should not be considered as business income and if not so considered the assessee. could not be entitled to any deduction u/s 80HHC of the Act and therefore nothing would be deductible from the book specifics while computing income u/s 115JB of the Act. The stand of the assessing officer was confirmed by the CIT(A). The case of the assessee, on the other hand, is that for the purpose of computing deduction u/s 80HHC it is only the adjusted book profits that is relevant and not the profit computed under the head Profits and gains of business or profession and therefore the deduction as claimed by the assessee should be allowed.

The Special Bench of the ITAT. Mumbai Bench had an occasion to deal with the aforesaid issue in the case of DCIT vs Syncome formulations India Ltd 106 ITD 193 (Mum)(SB) and the Tribunal held as follows:



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“The deduction under section 80HHC in a MAT scheme is from the taxable income which is otherwise the adjusted book profit. If no deduction is available to an assessee, the gross total income itself is the taxable income of the assessee. MAT scheme does not provide for deductions. Therefore, the interpretation is that the adjusted book profit of a company itself is the gross total income of that assessee-company. The deduction under section 80HHC is in that way given out of gross total income in a case falling under MAT, which means that section 80HHC should be computed on the adjusted book profit- Sections 115J, 115JS and 115JB come into operation, as the regular profit has been substituted by the book profit. Once the substitution is over, there is no way to go back to the normal computation process of statutory profit, which has already been overwhelmed by sections 115J, 115JA and 115JB. The same would reconcile the alleged incompatibility pointed out by the revenue that the deduction available to an assessee under Chapter VI(A) is subject to section 80AB. Therefore, the deduction under section 80HHC in a case of MAT assessment is to be worked out on the basis of the adjusted book profit and not on the basis of the profit computed under the regular provisions of law applicable to the computation of profits and gains of business or profession.”

5. In view of the above, the claim made by the assessee has to be accepted. The assessing officer is directed to accept the claim. The first three grounds of the assessee are allowed.”

5. Since the issue has duly been covered by the decision of Hon'ble ITAT in the assessee's own case bearing ITA. No. 6971/Mum/2006 dated 07.07.2008, therefore, by honoring the decision of the Hon'ble ITAT in the assessee's own case (supra) we decide these issues in favour of the assessee against the revenue.



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6. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 27/07/2021

Sd/-
(PRAMOD KUMAR)
उपाध्यक्ष / VICE PRESIDENT
मुंबई Mumbai; दिनांक Dated : 27/07/2021
Vijay Pal Singh/Sr. P.S.

Sd/-
(AMARJIT SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai