

आयकर अपीलिय अधिकरण, मुंबई "ई" खंडपीठ
Income-tax Appellate Tribunal -"E"Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and C.N. Prasad,Judicial Member
आयकर अपील सं./ITA/3799/Mum/2012,निर्धारण वर्ष /Assessment Year: 1998-99

Smt. Sandhya V. Shetty M/s. Wellknown Apparel C-1/23, Textila Co-op. Housing Society Ltd., Bombay Dyeing Compund, Prabhadevi,Mumbai-400 025. PAN:ABEPS 6237 J	Vs.	Income tax Officer-18(1)(3) Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Shri R.K. Sahu-DR

Assessee by: Shri M. Subramanian

सुनवाई की तारीख / Date of Hearing: 25.07.2016

घोषणा की तारीख / Date of Pronouncement: 24.08.2016

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order of the CIT(A)-29,Mumbai,dated 03.02.2012,the Assessee has filed the above appeal.During the course of hearing the Authorised Representative(AR)stated that the assessee is not interested in pursuing the first two grounds of appeal.Hence,GOA 1-2 stand dismissed as not pressed.

Brief Facts:

2.Assessee an Individual,engaged in the business of manufacture and export of readymade garments,in the name and style of M/s. Wellknown Apparels,had filed her original return of income on 02.11.1998, declaring her income at Rs. NIL.The Assessing officer (AO) completed the assessment u/s.144 of the Act on 09.03.2001,assessing total income of the assessee at Rs.77,38,900/-.The assessee filed an appeal before the First Appellate Authority(FAA),who partly allowed the appeal.However,he enhanced the disallowance on account of interest paid.The assessee approached the Tribunal.Vide order 20/08/2007,the Tribunal remitted the matter to the file of the AO for fresh adjudication.

3. One of the issues to be decided, in pursuance of the order of the Tribunal, was to decide the issue of interest-free loans advanced by the assessee to her sister concerns. During the assessment proceedings, the AO asked the assessee to justify the advancing of loans to sister concern and friends and to show as to how it helped her in carrying out the business for the year under consideration. Vide her letter dated, 26.11.2008, the assessee stated that a declaration given by the sister concern during the course of hearing before the Tribunal gives the justification for advancing loan to the sister concern, that loans were advanced for execution of the orders of the assessee, that they had direct nexus with the her business. However, the AO held that assessee had not produced any satisfactory evidence less explanation to prove the loans given were actually for the purpose of her business. He upheld the addition that was made by his predecessor in the original assessment.

4. As per the First Appellate Authority (FAA), the assessee did not file the list of the loans. He held that she had failed to prove the case at the assessment and at the appellate stage. He dismissed the appeal filed by the assessee.

5. Before us, the Authorized Representative (AR) contended that a loan of Rs.25 lakhs was given to sister concern and of Rs.13 lakhs to friends by the assessee, that she had sundry debtors of Rs.1.63 crores, that her capital account showed the balance of Rs.35.53 lakhs, that loan was advanced because of the commercial expediency, that the arguments advanced by her were not considered by the FAA. He referred to the page number 87-89 of the paper book. The Departmental Representative (DR) supported the order of the FAA and stated that the assessee did not file any explanation before the AO/FAA.

6.After considering the rival submissions we find that the assessee had filed explanation about the loans, that her balance sheet was not considered by the AO or the FAA, that business expediency was not commented upon by the officers. Therefore, we are restoring that the matter to the file of the FAA for fresh adjudication. The assessee is directed to file all the relevant documents, whichever she wants relied upon, before him. We expect the FAA to dispose the appeal within a period of six months from the date of receipt of order, as the matter is quite old. Assessee is directed to extend full cooperation to the FAA in filing the details. Ground number three is decided in favour of the assessee, in part.

7.Next effective ground is about direction under section 80 HHC of the Act. While deciding the appeal, in the first round, the Tribunal had held that the issue of deduction under section 80HHC had to be decided in light of the amended provisions of the said section. As per the AO in the second ground the assessee informed the AO that the matter should be kept in abeyance till it provides relevant documents. As the assessee did not file any document in her support, the AO did not allow any deduction under section 80HHC of the Act.

8.Before the FAA, the assessee did not furnish any explanation for not filing the papers during the assessment proceedings. Therefore, he dismissed the appeal filed by her.

9.During the course of hearing before us, the AR refer to the earlier order of the Tribunal. The DR stated that AO and the FAA had given sufficient opportunity to the assessee to justify her claim, that even during the appellate proceedings she did not file any documentary evidence, that the matter was pending because of the non-cooperation of the assessee.

10.We have heard the rival submissions. We find that in its earlier order the Tribunal had held that the issue of deduction under section 80HHC was to be decided in light of the amended provisions, that till date the assessee has not proved as to how she was entitled to get the deduction claimed by her. In the circumstances, in our opinion, the order of the FAA does not suffer from any legal infirmity. Therefore upholding his order,we decide ground number four against the assessee.

As a result, appeal filed by the assessee stands partly allowed.
फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 24th August,2016.
आदेश की घोषणा खुले न्यायालय में दिनांक 24 अगस्त, 2016 को की गई ।

Sd/-

(सी. एन. प्रसाद / C.N. Prasad)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांकDated : 24.08.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "K " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.