



(26)

HIGH COURT OF DELHI : NEW DELHI

+ ITA No. 53/2004

Judgement reserved on: March 22, 2005

% Judgement delivered on: May 5, 2005

The Commissioner of the Income Tax-VI
 Central Revenue Building
 ITO New DelhiAppellant

! Through Mr. Sanjeev Sabharwal, Advocate

Versus

\$ M/s Unipatch Rubber Ltd.
 11-Community Centre
 Saket, New Delhi. ...Respondent

^ Through Mr. B.N. Goswamy, Adv.

Coram:

* HON'BLE MR. JUSTICE SWATANTER KUMAR
 HON'BLE MR. JUSTICE MADAN B. LOKUR


1. Whether the Reporters of local papers may
 be allowed to see the judgement? Yes



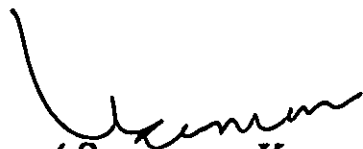
2. To be referred to Reporter or not? Not necessary
3. Whether the judgement should be reported in the Digest? Not necessary

* MADAN B. LOKUR, J.

For orders see ITA 557 of 2004.


(Madan B. Lokur)
Judge

May 5, 2005
rkr


(Swatanter Kumar)
Judge

Certified that the corrected copy of the judgment has been transmitted in the main Server.


PL
09.05



(27)

HIGH COURT OF DELHI : NEW DELHI

+ . ITA 557 of 2004

Judgement reserved on: March 22, 2005

% Judgement delivered on: May 5, 2005

The Commissioner of the Income Tax-III
Central Revenue Building
New DelhiAppellant

! Through Mr. Sanjeev Sabharwal, Advocate

Versus

\$ M/s S.K.G. Engineering Pvt. Ltd.
Central Revenue Building
New Delhi ...Respondent

^ Through Mr. B.N. Goswamy, Adv.

Coram:

* **HON'BLE MR. JUSTICE SWATANTER KUMAR**
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether the Reporters of local papers may
be allowed to see the judgement? Yes



2. To be referred to Reporter or not? Yes
3. Whether the judgement should be reported in the Digest? Yes

* **MADAN B. LOKUR, J.**

For the assessment year 1996-97, the Respondent Assessee claimed deduction under Section 80HHC and Section 80-I of the Income Tax Act, 1961 (the Act).

2. The Assessing Officer passed an order on 31st March, 1999 in which he held that a deduction is required to be first made under Section 80HHC of the Act and thereafter from the residual gross total income a deduction can be made under Section 80-I of the Act.

3. Feeling aggrieved, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) CIT(A).



4. By his order dated 28th September, 2000, the CIT (A) relied upon *J.P. Tobacco Products Pvt. Ltd. vs. Commissioner of Income-Tax (1998) 229 ITR 123* and allowed the appeal directing the Assessing Officer to allow deduction under Section 80-I of the Act from the gross total income without reducing it by the amount of deduction under Section 80HHC.

5. The Revenue then appealed to the Income Tax Appellate Tribunal but by an order dated 10th October, 2003 the Tribunal rejected the appeal following *J.P. Tobacco*.

6. The Revenue preferred the present appeal in which the following substantial question of law was framed on 3rd September, 2004:-

Whether the Assessee is entitled to deduction/benefit under Section 80-I on the gross total income without excluding/



reducing deduction allowed under section 80HH?

Obviously, the question as framed above has reference to Section 80HH and Section 80-I of the Income Tax Act, although it is not specifically stated.

7. Section 80HH(9) of the Act reads as follows:-

“80HH (1) to (8) xxx xxx xxx

(9) In a case where the assessee is entitled also to the deduction under [section 80-I or] section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this section.”

8. With the consent of learned counsel for the parties, the present appeal was taken up for hearing along with ITA No. 53/2004 wherein a similar question of law has been raised.



9. We have heard learned counsel for the parties and have also gone through the decision of the Madhya Pradesh High Court in *J.P. Tobacco*.

10. It is quite clear from a reading of the decision rendered by the Madhya Pradesh High Court that the substantial question of law under consideration in that case is similar to the question of law raised in the present case. The Madhya Pradesh High Court analyzed the provisions of Section 80HH (9) of the Act which was sought to be relied upon by the Revenue in that case. After considering the requirement of Section 80HH(9) of the Act, it was held that the legal position is quite clear that in so far as the benefit of Section 80-I is concerned, it has to be granted on the gross total income and not on the income reduced by the amount allowed under Section 80HH of the Act.



11. The Rajasthan High Court in *Commissioner of Income-Tax vs. Chokshi Contacts P. Ltd. (2001) 251 ITR 587* discussed the same question of law, though somewhat more elaborately.

12. It was held in *Chokshi Contacts* that Section 80HH(9) merely fixes the priority of order in which deduction is to be adjusted in the gross total income. A deduction is required to be first made under Section 80HH of the Act and only thereafter Section 80-I or Section 80J should be given effect to. By fixing the priority, Section 80HH(9) does not make any provision for recalculating the gross total profit after adjusting the deduction under Section 80HH for the purpose of computing deduction under Section 80-I or Section 80J. It was held that there is nothing in the language of the Section or in its context to take any other view. It was also held that the object of Section 80HH(9) is not to reduce



the limit of eligible deduction under Section 80-I or 80J in any manner whatsoever.

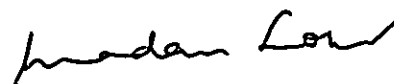
13. We do not find any reason to disagree with either of the decisions mentioned above. A plain reading of Section 80HH(9) makes it clear that only a priority is fixed by said sub-section and there is nothing to indicate that recalculation is required to be done in the manner suggested by the Revenue, that is, first granting a deduction under Section 80HH from the gross total income and thereafter granting a deduction under Section 80-I from the residual gross total income.

14. It has been brought to our notice that in the connected appeal being ITA 53/2004 the Assessing Officer has himself accepted this position of law in respect of the subsequent assessment years.



15. Under the circumstances, following the decisions of the Madhya Pradesh High Court as well as Rajasthan High Court, we answer the question in the affirmative and in favour of the assessee and against the Revenue.

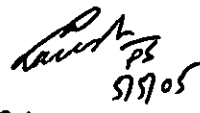
16. Learned counsel for the parties point out that ITA 38/2000 raises an identical question of law. The Registry is directed to list this matter separately for disposal being a covered matter after intimating learned counsel for both the parties.


(Madan B. Lokur)
Judge

May 5, 2005
rkr


(Swatanter Kumar)
Judge

Certified that the corrected copy of the judgment has been transmitted in the main Server.


ITA 557 of 2004

page 8 of 8