#24 & 25

%.26.08.2009

Present: Ms. P.L.Bansal, Ms. Anshul Sharma and Mr. Paras Chaudhary, Advocate for the appellant.
Mr. M.P.Rastogi, Advocate for the respondent.

+I.T.A.No.839/2005 & ITA 927/2007

1. Admit.

2. Following two questions of law are raised by the appellant in ITA 839/2005.

(a) Whether ITAT was correct in law in not reducing the depreciation of Rs.35,69,261/- from the profits of the business so as to arrive at an eligible income for exemption under section 10B or deduction under section 80HHC?

(b) Whether ITAT was correct in law in holding that the other income of Rs.1,21,09,940/- received by the assessee is an income derived from export of manufactured goods so as to allow exemption under section 10B thereon?

3. In so far as second question is concerned, it does not arise for

consideration. No doubt, the ITAT while deciding the appeal filed by the department has observed that the CIT(A) followed the earlier order in the assessee's own case for the Assessment Year 1994-1995 and noted that no appeal was filed thereagainst. This observation is wrong in as much as appeal was preferred by the Revenue which was decided in favour of the revenue . However, in view of the aforesaid facts noted by us, this wrong observation is of no consequence when claim to the tune of Rs.1,17,66,720/- itself was not preferred by the assessee as is clear from the order of CIT(A) as noted above. In fact it seems that under some misconception this question of law is proposed to be raised. It proceeds on the assumption that ITAT while confirming the order of CIT(A) has held that other income of Rs.1,21,09,940/- received by the assessee is an income derived from export of manufactured goods and the same was allowed as exemption under Section 10B of the Income Tax Act. However, we find from the order of the CIT(A) that breakup of the aforesaid amount was as under:

"i)	Interest income	1,51,977
ii)	Accrued premium on advance licence	1,17,66,720
iii)	Grant-in-aid	1,20,918
iv)	Insurance claim	70,325"

4. Out of this, the approved premium on advance licence which was in the sum of Rs.1,17,66,720/- was not claimed and allowed by the CIT(A). Once this amount is deducted from Rs.1,21,09,940/-, the balance amount is negligible and the tax effect would be less than Rs.4 lac and therefore, this question of law does not arises. Para 8 of the CIT(A) in this behalf records as under:-

> "8 Depreciation which was omitted to be claimed by the appellant in the revised computation of total income filed during the assessment proceedings is directed to be allowed as per law."

5. Therefore, this question does not fall for consideration at all.

6. We may note at this stage itself that the Revenue had filed application under Section 254(2) of the Income Tax Act which was also rejected by the Tribunal and against which ITA 927/2007 is preferred. Since the aforesaid order is consequential in nature, therefore, it does not even necessary to entertain ITA 927/2007 also.

7. In so far as first question relating to the depreciation of Rs.35,69,261/- from the profits of the business which is claimed as exemption under Section

80HHC is concerned, we find from the order of the Tribunal that this depreciation of Rs. 35,69,261/-, as provided in the books of account of the assessee, was taken into account in the computation and that depreciation as per the Income Tax Rules was not taken into account and the order of the Tribunal records that the department had not elaborated or explained in this regard from which it cannot be inferred that this was not pressed before the Tribunal.

8. Both the appeals are accordingly dismissed.

A.K.SIKRI, J

VALMIKI J.MEHTA, J

August 26, 2009
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