

Supreme Court of India

Motilal Pesticides (I.) Pvt. Ltd. vs Commissioner Of Income-Tax on 15 February, 2000

Equivalent citations: 2000 243 ITR 26 SC, (2000) 9 SCC 63

Bench: D Wadhwa, N S Hegde

ORDER

1. The judgment of the Delhi High Court in *Motilal Pesticides (I) Pvt. Ltd. v. CIT*, is assailed before us. It concerns interpretation of Section 80HH of the Income-tax Act, 1961 (for short the "Act"), and pertains to the assessment years 1979-80 and 1980-81. The question of law which the High Court answered in the affirmative and in favour of the Revenue and against the appellant is as under (page 638) :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to deduction under Section 80HH of the Income-tax Act, 1961, on the gross profit of Rs. 34,30,035 (liquid section) but on the net income therefrom, for the assessment year 1979-80 ?

2. The appellant had claimed relief under Section 80HH in respect of its liquid section which had been newly set up in a backward area. It was the contention of the appellant that relief should be allowed on the gross income and not on the net income. Section 80HH in relevant part is as under :

80HH. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof.

3. In support of its submission in the High Court the appellant placed reliance on a decision of this court in *Cloth Traders (P.) Ltd. v. Addl. CIT*. This judgment was delivered on an interpretation of Section 80M of the Act. The relevant part of Section 80M is as under :

80M. (1) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to,...

4. Both sections 80HH and 80M fall in Chapter VI-A relating to deductions to be made in computing total income. It will be seen that the language of sections 80HH and 80M is the same. It was held in *Cloth Traders (P.) Ltd.*'s case that deduction is to be allowed on the gross total income and not on the net income. But then the decision in *Cloth Traders (P.) Ltd.*'s case was overruled in *Distributors (Baroda) P. Ltd. v. Union of India*. After the decision in *Cloth Traders (P.) Ltd.*'s case, two sections 80AA and 80AB were introduced by the Finance (No. 2) Act, 1980. While Section 80AA was to have retrospective effect with effect from April 1, 1968, Section 80AB was to have operation with effect from April 1, 1981. Section 80AA had the effect of effacing the decision of this court in

Cloth Traders (P.) Ltd.'s case , which had interpreted Section 80M. Section 80AB was made applicable to all the sections in Chapter VI-A except Section 80M. In Distributors (Baroda) P. Ltd.'s case , however, this court specifically overturned its earlier decision in Cloth Traders (P.) Ltd.'s case and held that deduction is to be allowed only on the net income and not on the gross income. With reference to Section 80AB, this court said it was merely of a clarificatory nature and the decision of this court in Distributors (Baroda) P. Ltd.'s case is thus irrespective of Section 80AB of the Act. The High Court, therefore, relying on the decision of this court in Distributors (Baroda) P. Ltd.'s case answered the question in favour of the Revenue and against the "assessee.

5. Mr. Ramamurti, learned senior counsel, appearing for the appellant, submitted that even though Cloth Traders (P.) Ltd.'s case , was overruled in Distributors (Baroda) P. Ltd.'s case , both the cases pertained to Section 80M only and this court had no occasion to consider the application of Section 80AB with reference to Section 80HH of the Act. He said Section 80AB was specifically introduced with effect from April 1, 1981, and it would have no application to the assessment years 1979-80 and 1980-81 which were involved in the present case. The effect of Section 80AB was now that deduction would have to be made from the net income and not from the gross income. But then, in all fairness, Mr. Ramamurti also referred to another decision of this court in H. H. Sir Rama Varma v. CIT , where this court observed that on a parity of reasoning with Section 80AA as given in Distributors (Baroda) P. Ltd.'s case , it must be held that Section 80AB was enacted to declare the law as it always stood in relation to the deductions to be made in respect of the income specified under the head "C" of Chapter VI-A of the Act. Mr. Ramamurti also referred to a circular dated May 10, 1982, issued by the Central Board of Direct Taxes in support of his submission but then this circular has since been withdrawn.

6. That being the position we affirm the judgment of the High Court. There is no merit in these appeals and they are dismissed.