

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.349/Coch/2009
Assessment Year : 2003-04

The Income Tax Officer, Ward-1(4), Trivandrum.	Vs.	Prof. Gopinath Muthukad, Muthukad Magical Entertainers Poojappura, Trivandrum. [PAN:AEGPM 4230E]
(Revenue-Appellant)		(Assessee-Respondent)

C.O. No. 32/Coch/2009
I.T.A. No.349/Coch/2009
Assessment Year : 2003-04

Prof. Gopinath Muthukad, Muthukad Magical Entertainers Poojappura, Trivandrum. [PAN:AEGPM 4230E]	Vs.	The Income Tax Officer, Ward-1(4), Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Revenue by	Smt. A.S. Bindhu, Sr. DR
Assessee by	Shri T.M. Sreedharan, Sr. Adv.

Date of hearing	26/02/2019
Date of pronouncement	01/03/2019

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the Revenue is directed against the order of the CIT(A), Trivandrum dated and pertain to the assessment year 2003-04. The assessee has filed Cross Objection in C.O. No. 32/Coch/2009 against the Revenue appeal.

2. The assessee has raised the following grounds:

1. The learned Commissioner of Income-tax (Appeals) erred in deleting the disallowance of deduction u/s 80RR holding that the amount received in foreign currency and brought to India should qualify for deduction and Section 80AB says only about the nature of income that should be considered.

2. The learned Commissioner of Income-tax (Appeals) ought to have taken note of the fact that as per the provisions of Section 80AB deduction u/s 80RR can only be given at 30% of magic profession foreign income included in the gross total income.

3. The learned Commissioner of Income-tax (Appeals) failed to note that deduction under Chapter VIA can be given only in respect of the amount of income of that nature which is included under Gross Total Income.

2.1 The Ld. AR also raised the ground that the Revenue appeal is not maintainable in view of low tax effect.

3. The facts of the case are that the assessee had been carrying on his profession and earning income from India and abroad. The assessment was completed u/s 143(3) disallowing the claim for certain expenditure raised by the

assessee. Aggrieved by the said order the assessee already filed an appeal against the above order. Subsequently, the Commissioner of Income tax, Calicut by invoking the provisions of section 263 of the Income tax Act, set aside the assessment order stating that the order passed u/s 143(3) is erroneous and prejudicial to the interest of Revenue. The Assessing Officer passed the revised order restricting the claim u/s 80 RR of the Act. Aggrieved by the above order of the Assessing Officer, the assessee filed the appeal before the CIT(A).

4. Before the CIT(A), the Ld. AR submitted that u/s 80RR, deduction in respect of professional income from foreign sources is admissible to the extent of 30% of such income for the assessment year 2003-04. The deduction was allowed for 30% of the foreign income included in the gross total income for the relevant assessment year. The deduction was allowed with reference to the income brought into India by or on behalf of the assessee, in convertible foreign exchange within the period allowed under the section. He also submitted that in the case of the assessee, the professional income from foreign sources, which was brought into India in convertible foreign exchange for the assessment year 2003-04 was Rs. 14,98,589/- and this amount was included in the gross total income of the assessee for AY 2003-04. Therefore, in accordance with the provisions of section 80 RR, 30% of Rs. 14,98,589/- amounting to Rs. 4,49,577/- was admissible as deduction from the gross total income. He further submitted that according to the books of accounts maintained and the income and expenditure account, the total receipts including the foreign income amounts to

Rs. 52,53,803/- . The expenses incurred in India in connection with Indian Operations was Rs.46,85,207/-. Since the entire foreign earnings were net of expenses, the assessee was able to bring the entire income from abroad in convertible foreign exchange.

5. The CIT(A) considered the order of the Hon'ble ITAT, Mumbai Bench in the case of CIT Vs, Anup Jalota relied upon by the assessee. The CIT(A) observed that the issues involved in assessee's case and the decision by the ITAT, Mumbai Bench are identical as the assessee had not incurred any expenditure abroad. Hence, the CIT(A) held that deduction u/s 80 RR was allowable on the entire amount brought to India by the assessee in convertible foreign exchange. The CIT(A) observed that the Assessing Officer had passed the assessment order by giving reference to provisions of section 80 AB, as per the directions of the Commissioner of Income tax u/s 263 wherein it was stated that the deduction can only be allowed considering the restriction placed by section 80AB. Section 80 AB reads as under:

" Where any deduction is required to be made or allowed under any section included in this chapter under the heading " C - Deduction in respect of certain income" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provision of this Act (before making any deduction under this chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income. "

5.1 In view of the facts of the case, the CIT(A) held that deduction can be claimed on the gross receipts and expenditure need not be reduced from the foreign exchange brought into India. Though there is a direct nexus between the travel expenses and the earning of the income of the assessee, the CIT(A) observed that the same was not relevant for the purpose of section 80 RR since the intention of the Act is clear that the amount received in foreign currency and brought to India should qualify for deduction. According to the CIT(A), Section 80 AB only says about the nature of income that should be considered and not the quantum of income that is to be borne in mind to claim deduction under Chapter VIA of the Act..

6. Against this, the Revenue is in appeal before us. The Ld. DR submitted that in view of the direction of the Jurisdictional High Court in assessee's own case in ITA No.70/2014 dated 31/10/2017, the appeal of the assessee is to be decided on merit and the Revenue appeal cannot be dismissed on account of low tax effect.

7. The Ld. AR AR submitted that in terms of Sec.80RR,. the criteria fixed for working out the deduction is the income brought into India in convertible Foreign Exchange, which in the assesses case, is Rs.14,98,589/-. The Ld. AR submitted that there was one more aspect that had been omitted to be considered by the lower Authorities which is that the deduction is to be allowed under Chapter-VIA,

paragraph-c. which is titled as "Deductions in respect of certain income". Sec.

80RR falls within Chapter-VIA, paragraph-c and reads asunder:-

"Where the gross total income of an individual resident in India being an author etc., includes any income derived by him in the exercise of his profession etc.. deduction from such income shall be allowed in computing the total income of the individual".

7.1 It was submitted that a distinction has been made between gross total income and total income as per the above Section. The Ld. AR relied on the judgment of the Apex Court in the case of M/s Totgars Cooperative Sale Society Ltd. Vs. Income Tax Officer (2010) 322 ITR 283) wherein the distinction was recognized and in paragraph-10, it was held as under:-

"Deduction u/s 80P(2)(a)(i) of the Act is given in Chapter-VIA, which in turn deals with "deductions in respect of certain cases". Sec. 80P(1), inter-alia, states that where the gross total income of a Co-operative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assesses Society".

7.2 Further, the Apex Court found that *"An income which is attributable to any of the specified activities in Sec.80P(2) of the Act, would be eligible for deduction".* Going by the above interpretation, the Ld. AR submitted that deduction should be from the gross total income for the income brought into India at the first stage, in order to arrive at the total income and further deductions are to be made from the total income.

7.3 The same interpretation was given to the above provision for deduction in respect of certain income by the Apex Court in CIT & Anr. vs. Yokogawa India Ltd. (2017) 291 CTR 01 wherein vide para 18, it was held as under:

“ We answer the appeals and the questions arising therein as formulated at the outset of this order by holding that though section 10A as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter-IV of the Act, and not at the stage of computation of the total income under Chapter-VI”.

7.4 The Ld. AR submitted that a distinction was made between deduction from gross total income and deductions at the stage of computation of total income. It was submitted that if the above interpretation is considered, the foreign remittances should be first deducted from the gross total income and thereafter the total income is to be computed. On that basis, the claim of 30% of remittances made in Foreign Exchange, amounting to Rs.4,49,577/- is to be allowed and the order of the CIT(A) should be affirmed.

7.5 The Ld. AR also relied on the judgment of the Bombay High Court in the case of CIT vs. Tarun R. Tahiliani (2010) (328 ITR 629), specifically para 6 of the judgment.

8. We have heard the rival submissions and perused the record. There is no justification for treating the whole gross receipts of foreign income instead of gross total income earned from foreign sources so as to grant deduction u/s. 80

RR of the Act. The gross foreign receipts were accounted by the assessee and from that, net foreign income is to be ascertained and thereafter, deduction u/s. 80RR is to be granted at specified rate. The expenses considered by the Assessing Officer is to be deducted from the gross foreign receipts. The contention of the assessee that gross foreign receipts is to be considered so as to grant deduction u/s. 80RR of the Act is devoid of merit. In our opinion, the foreign income represented net income received and deposited into Bank account and it is not gross foreign receipts. Reliance is placed on the judgment of the Supreme Court in the case of CIT vs. P.K. Jhaveri (181 ITR 79) (SC) wherein it was held that deduction u/s. 80K of the Act was allowable to the assessee only on the amount after deduction of the interest paid on moneys borrowed specifically for investment in the shares and not on the gross amount received. Further, we place reliance on the judgment of the Bombay High Court in the case of Industrial Consulting Bureau Pvt. Ltd. vs. CIT (189 ITR 346) wherein it was held that relief u/s. 80M has to be allowed on net income and not on gross income. The same view was taken by the Rajasthan High Court in the case of Mahavir Kumar Jain vs. CIT (277 ITR 166) with regard to deduction u/s. 80TT. In view of this, we find that there is no force in the argument of the Ld. AR and the case law relied on by him and it cannot be applied to the assessee's case. Hence, this ground of appeal of the Revenue is allowed. The appeal of the Revenue is allowed.

9. Since we have decided the appeal of the Revenue, the Cross Objection filed by the assessee in C.O. No.32/Coch/2009 has become infructuous and is dismissed as infructuous.

10. In the result, the appeal of the Revenue is allowed and the Cross Objection filed by the assessee is dismissed.

Order pronounced in the open Court on this 1st March, 2019

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 1st March, 2019

GJ

Copy to:

1. Prof. Gopinath Muthukad, Muthukad Magical Entertainers, Poojappura, Trivandrum.
2. The Income Tax Officer, Ward-1(4), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

I.T.A. No.349/Coch/2009
& C.O. No.32/Coch/2009