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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) No.59 of 2004

Commissioner of Income Tax-I
Chennai. .. Appellant
versus

M/s.Ashok Leyland Limited
Chennai-1. .. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order dated 18.6.2003 in ITA No.1403/Mds/1994 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench against the order of the Commissioner of Income Tax (AppealI) Madras 34, dated 29.3.94 in ITA No.109/93-94 against the order of The Assistant Commissioner Central Circle II (1) Madras 600 034, dated 31.12.93 in PA No.47-066-CX-2954/90-91.

For appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

For respondent : Mr.Venkatnarayanan
representing M/s.Subbaraya Iyer
& Padmanabhan

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This appeal is by the Revenue against the order of the Tribunal, raising the question as to whether the Tribunal was right in holding that the short-term capital loss should not be deducted from the profits for the purpose of computation of deduction under Section 80 HHC. The appeal relates to the assessment year 1990-91.

2. It is seen that while computing the business income for the purpose of Section 80 HHC, the Income Tax Officer deducted the short-term capital loss from the income from business. On appeal, the Commissioner of Income Tax (Appeals) agreed with the assessee and held that the income from business for the purpose of Section 80 HHC should be the one computed

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as per Section 28 and hence, the deduction need to be re-computed by taking the business income without making any deduction for capital loss.

3. The Revenue went on appeal before the Tribunal. The Tribunal followed the decision in the very same assessee's case in I.T.A.Nos.61 and 70 (Mds)/1994 and dismissed the Revenue's appeal. Aggrieved of the same, the present appeal is filed before this Court.

4. Learned senior standing counsel appearing for the Revenue submitted that the Tribunal committed an error in its view that the income from business for the purpose of Section 80 HHC should be computed as per Section 28 of the Income Tax Act and that the capital loss should be excluded from the business income for computing the deduction under Section 80 HHC. She also pointed out that the earlier order referred to in the Tribunal's order pertains to a different issue. It is a subject matter of Tax Case Nos.404 and 405 of 2004.

5. It may be noted that in the decision reported in 266 ITR 521 (IPCA LABORATORY LTD. Vs. DEPUTY C.I.T. (S.C.), the Apex Court held that the deduction under Section 80 HHC has to be worked out, keeping in mind the provisions of Section 80 AB. Section 80 AB deals with the deduction to be made with reference to the income included in the gross total income. Secion 80 B(5) defines 'gross total income" to mean "the total income computed in accordance with the provisions of this Act, before making any deductions under Chapter VI-A.

6. In the light of the decision of the Apex Court, computing the income in accordance with the provisions of the Act before going in for the deduction under Chapter VIA, on the interpretation given to the scheme of Section 80 HHC with reference to Section 80 AB, read with Section 80 B (5) that it has overriding effect over all other Sections in Chapter VI A and the computation of total income in accordance with the provisions of the Act, we reject the contentions of the revenue and thereby dismiss this appeal.

7. In the circumstances the questions raised are answered against the Revenue confirming the order of the Tribunal. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv

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To:

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   Bench"C" Rajaji Bhavan,
   III Floor Besant Nagar, Chennai.90.

2. The Commissioner of Income Tax,
   (Appeals I) Chennai.34.

3. The Assistant Commissioner,
   Central Circle II (1),
   Madras .34.

4. Commissioner of Income Tax-I
   Chennai.

+ 1 cc to Mrs.Pushya Sitaraman Adocate SR.NO 18000

TEJ(CO)
RD 5.9.07

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