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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 7TH DAY OF JULY 2021 / 16TH ASHADHA, 1943

ITA NO. 203 OF 2012

AGAINST THE ORDER/JUDGMENT IN ITA 1204/2005 OF

I.T.A.TRIBUNAL,COCHIN BENCH, ERNAKULAM

APPELLANT/S:

THE COMMISSIONER OF INCOME TAX-I,
KOCHI.

BY ADVS.
SRI.P.K.RAVINDRANATHA MENON (SR)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX
SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

RESPONDENT/S:

M/S.BHAGEERATHA ENGINEERING LTD.,
VAZHAKKALA, KAKKANAD P.O., KOCHI-682030.

BY ADVS.
SMT.P.ANITHA
SMT.P.ANITHA
SMT.R.S.GEETHA
SRI.T.M.SREEDHARAN SR.
SRI.V.B.UNNIRAJ

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 07.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J U D G M E N T

S.V. Bhatti, J.

The Commissioner of Income Tax-I, Cochin, is the appellant (for short 'the Revenue'). The I.T.A. is directed against the order of the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No.1204/Coch/2005 & C.O. No.11/Coch/2006 dated 27.04.2012. In the subject Tax Appeal the issue relates to Assessment Year 1996-97. The appeal examines an issue arising under Section 80HHB of the Income Tax Act (for short 'the Act'). The Assessing Officer and the Commissioner of Income Tax (Appeals) (for short 'CIT (Appeals) disallowed the claim of assessee of revaluation of government bonds and the loss in sale of government bonds. M/s. Bhageeratha Engineering

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Ltd/respondent (for short 'the Assessee') aggrieved thereby filed I.T.A No. 47/Coch/2000 before the Income Tax Appellate Tribunal.

2. The Appellate Tribunal through order dated 17.06.2003 allowed the appeal of the assessee, deleted the addition of revaluation of government bonds and set aside the dis-allowance made by the Assessing Officer and CIT (Appeals). The Revenue filed I.T.A. No.301/2009 and this Court by order dated 05.07.2021 dismissed the appeal filed by the Revenue. The narrative has bearing on the consideration of the question of law taken up for consideration by us in the Tax Appeal. The circumstances are that *vide* order dated 11.03.1999 made under Section 143(3) of the Act, the Assessing Officer determined the total income of assessee at Rs.21,56,52,890/-. The Assessing Officer for determining income of assessee dis-allowed the claim of loss on revaluation of bonds amounting to

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Rs.6,04,75,000/-, loss amounting to Rs.43,30,000/- towards sale of government Bonds and declined deduction claimed under Section 80HHB amounting to Rs.10,06,26,590/-. While making a few more additions to the income of the assessee, net income of the assessee from the business for the Assessment Year 1996-97 was determined at Rs.21,42,08,607/-.

2.1 In the appeal filed by the assessee, the learned CIT (Appeals) set aside the addition made under Section 80HHB, remanded the case to Assessing Officer to re-examine the issue of entitlement of assessee under Section 80HHB, judge the quantum as well as its admissibility under the Act. The Assessing Officer determined the claim of assessee under Section 80HHB and through order dated 15.02.2002 (Annexure-B) accepted the total claim of assessee under Section 80HHB amounting to Rs.10,06,26,590/-. For clarity, it is desirable to furnish the details of determination by the Assessing Officer.

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"Income fixed originally as per order dated 7.7.99	: Rs.21,38,66,220/-
Less: Deduction u/s 80HHB	: Rs.10,06,26,590/-

	Rs.11,32,39,830/-

Revised total income	: Rs.11,32,39,830/-
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2.2 Finally, the tax demanded was Rs.4,65,55,414/-. It noted that the re-computation of income through Annexure B dated 15.02.2002 was prior to the decision of Income Tax Appellate Tribunal in I.T.A. No.47/Coch/2000. On 17.06.2003 the appeal filed by the assessee was allowed, substantial relief granted and the Tribunal accepted the case of assessee that receipt of government bond as against deferred payment is a substitute to receivables, the assessee is entitled to actual loss on sale of government bond and notional loss on revaluation of government bonds, treating them as current assets is permissible. Thus, the addition made by the Assessing Officer

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amounting to Rs.6,04,75,000/- and Rs.43,30,000/- is deleted and an effect order has to be made. The Assistant Commissioner, through order in Annexure-C issued the effect order, firstly recomputed the gross total income of the assessee; on the recomputed gross total income, 50% was been granted as eligible deduction under Section 80HHB. Assessed, as noted herein, the Assessing Officer granted deduction under Section 80HHB amounting to Rs.7,50,85,650/- to the assessee for the assessment year 1996-97. The assessee filed appeal before the CIT (Appeals) in I.T.A. No.39/R-I/E/CIT-II/03-04. The operative portion of the order of CIT (Appeals) reads as follows:

> "Computation of profit from foreign project under Section 80HHB is exactly on the same lines as compared to the profit of a new industrial undertaking under Section 80I i.e., a unit or a project itself has to be treated as business as a whole and the profit are to be computed on which the deduction is allowable. There is no provision in Chapter VIA anywhere to restrict the

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deduction available under Section 80HHB on the grounds that the assessee's business as a whole comprising of profit from Indian undertaking and the foreign project is a profit or a loss. In the assessee's own case while examining the claim in respect of reduction in value of the bonds to be allowed as a trading loss, the ITAT has also not set forth any such restriction. Courts have consistently held their view ig. 161 ITR 320, 201 ITR 968 (Ker), 215 ITR 249 (Cal), 251 ITR 471 (Andh) and 249 ITR 793. I, therefore, direct the AO to allow the deduction under Section 80HHB in full i.e., as it was allowed by the AO's order dated 15.02.2002 giving effect to the CIT (As)'s order i.e., at Rs.10,06,26,590/- instead of Rs.7,46,50,647/-."

2.3 The Revenue and the assessee filed appeals before the Income Tax Appellate Tribunal to the extent of relief granted under Section 80HHB, which was confirmed by the Appellate Tribunal as well. Hence, the Tax Appeal under Section 260A of the Income Tax Act at the instance of the Revenue.

3. The appeal was admitted on the following substantial questions of law:

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"1. Whether, on the facts and in the circumstances of the case and also in view of the loss arising out of the reduction in the value of the bonds allowed by the Tribunal in its earlier order dated 17.06.2003:

i) is not the Assessing Officer right in law in reducing the deduction under Section 80HHB in the rectified order?

ii) is not the consequential order and the rectification of the same valid and in accordance with law?"

3.1 After appreciating the admitted circumstances leading to the filing of the appeal and the controversy that arises for decision of this Court, the following substantial questions of law has been formulated by the Court and the arguments of learned Counsel have been heard on the substantial question of law formulated as follows:

(i) Whether the order of the CIT (Appeals) the quantifying deduction under Section 80HHB with reference to the revised order made by the Assessing Officer pursuant to the remand of issue under Section

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80HHB by the C I T (appeal) ?, and

(ii) Whether the deduction accepted in favour of the assessee of bond revaluation and sale loss will have to be taken into account for arriving at the gross income of assessee and allow deduction under Section 80HHB to the extent of 50%?

4. Learned Standing Counsel Mr.Christopher Abraham prefaces his submissions by arguing that the Revenue is not questioning the eligibility of assessee for deduction under Section 80HHB of the Act. The Department questions the arbitrary quantification of deduction by the CIT (Appeals) in order dated 01.09.2005. The illegality, according to him, in the order of CIT (Appeals) in Annexure-I is that the Commissioner accepted deduction under Section 80HHB arrived at by the Assessing Officer in the revised Assessment Order dated 15.02.2002. The said order was made prior to the decision of the Tribunal dated 17.06.2003. In other words, upon the decision

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rendered by the Tribunal, the assessee is entitled to claim loss on revaluation of current assets and corresponding thereto the gross total income determined as Rs.21,38,66,220/- stands reduced by deducting loss on revaluation of assets, loss on sale of bonds, then the gross total income is not Rs.21,38,66,220/- but Rs.14,93,01,293/-. Therefore, the eligibility since is not questioned by the Revenue, the quantum of granting Rs.10,06,26,590/- is illegal and unavailable in the facts and circumstances of the case. He argues that the effect order dated 28.07.2003 of the Deputy Commissioner of Income Tax reflects the adjudication of issues between the Revenue and the assessee. But the CIT (Appeals) without any basis granted unavailable additional deduction amounting to Rs.2,59,75,943/- under section 80HHB to the assessee. The quantification of deduction under Section 80HHB by the Commissioner, as confirmed by the Tribunal, is illegal and he prays for setting

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aside the order of the Commissioner in Annexure-I and to the extent confirmed by the Tribunal and restore the effect order of Assessing Officer in Annexure-H dated 28.07.2003. According to him, the error in quantification is not an error relatable to finding of fact or re-verification of details by this Court. The CIT (Appeals) exceeded the jurisdiction in incorporating unavailable details, there is loss of Revenue and the unsustainable and illegal quantification constitutes a substantial question of law for the decision of the Court.

5. Senior Advocate Mr. Sreedharan, after taking note of the chronology of dates, events and effect of the orders made by the authorities under Act from time to time, stated that the Revenue, since is not questioning the eligibility of assessee for deduction under Section 80HHB, the quantification should be according to the concluded figures determined in the effect order. To wit, we quote his words: "*I find it difficult to justify the*

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source and reason for the Commissioner to assume the existence of Rs.10,06,26,590/- as 50% of gross total income of the assessee". The assessee since is successful in its claim on loss of sale and revaluation of bonds, which are one of the items added by the Assessing Officer in the effect order, this loss will have to be correspondingly given effect to, thereafter the gross total income is determined and thereon quantification undertaken. From the perspective of admitted circumstances, he could not convince us on the errors in the order of CIT (Appeals) and the Tribunal.

6. We appreciated the submissions and perused the record.

<u>Question Nos.1 and 2</u>

7. The CIT (Appeals) in the order dated 27.12.1999 set aside the addition under Section 80HHB and directed re-examination of assessee's entitlement to deduction under

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Section 80HHB. The Assessing Officer accepted the eligibility of assessee for deduction under Section 80HHB *vide* order dated 15.02.2002, granted 50% on gross total income as quantified deduction under Section 80HHB. There is no mistake if the gross total income amounting to Rs.21,38,66,220/- remains undisturbed in further adjudication. But, in the case on hand, by virtue of the decision of the Tribunal in I.T.A. No.47/Coch/2000 dated 17.06.2003, the claim of assessee on loss of revaluation and sale of government bonds has been accepted. In account parlance, these items are to be deleted from the gross total income of the assessee, then the quantification under Section 80HHB should have been done correspondingly. We notice from the order of Commissioner dated 01.09.2005 (Annexure-I) that a different reasoning is adopted in analyzing the controversy and the conclusion reached therefrom could not be supported from the record. The CIT (Appeals) erred in

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appreciating the effect order and consequential deduction and quantification under Section 80HHB . The Revenue has made out a case and we answer the questions of law in favour of the Revenue and against the assessee. This Court records that the deduction under Section 80HHB quantifying order dated 28.07.2003 is correct and ought not to have been reversed by the CIT (Appeals). The questions of law are answered infavour of the revenue and against the assessee.

The appeal allowed as indicated above.

Sd/-
S.V.BHATTI
JUDGE

Sd/-
BECHU KURIAN THOMAS
JUDGE

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APPENDIX OF ITA 203/2012

PETITIONER ANNEXURE

ANNEXURE A	TRUE COPY OF THE ASSESSMENT ORDER DATED 11/03/1999.
ANNEXURE B	TRUE COPY OF THE PROCEEDINGS OF THE ASSESSING OFFICER DATED 15/02/2002.
ANNEXURE C	COPY OF THE ORDER U/S. 154 DATED 18/05/2004.
ANNEXURE D	TRUE COPY OF THE ORDER OF TWO MEMBERS OF THE TRIBUNAL DATED 31/08/2010.
ANNEXURE E	TRUE COPY OF THE ORDER OF THE THIRD NUMBER OF THE TRIBUNAL DATED 23/04/2012.
ANNEXURE F	TRUE COPY OF THE ORDER OF THE TRIBUNAL BASED ON THE ORDER OF THE THIRD MEMBER DATED 27/04/2012.
ANNEXURE G	PROCEEDINGS OF THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 1(1), ERNAKULAM GIVEN EFFECT TO CIT(A)'S ORDER
ANNEXURE H	PROCEEDINGS OF THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 1(1), ERNAKULAM GIVING EFFECT TO ITAT'S ORDER
ANNEXURE I	APPELLATE ORDER OF THE CIT(A) IN ITA 39/R-1/E/CIT-11/03-04