

PART-HEARD ITEM NO.1

COURT NO.1 SECTION IIIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).33750/2009

(From the judgement and order dated 17/04/2009 in TCA No.1191/2008 of The HIGH COURT OF MADRAS)

C.I.T,CHENNAI Petitioner(s)

VERSUS

M/S BHARI INFORMATION TECH. SYS. P. LTD. Respondent(s)

(With appln(s) for permission to file additional documents and office report)

[For Final Disposal] Date: 20/10/2011

This Petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

HON'BLE MR. JUSTICE SWATANTER KUMAR

For Petitioner(s) Mr. Bishwajit Bhattacharya,ASG. Mr. Arijit Prasad,Adv. Mr. Vikas Malhotra,Adv. Mr. Ajay Singh,Adv. Mr. Judy James,Adv. Ms. N. Swarup,Adv. Mr. B.V. Balaram Das, Adv. For Respondent(s) Mr. Ramesh Singh,Adv. Mr. Pratap Venugopal,Adv. Ms. Namrata Sood,Adv. for M/s. K.J. John & Co.,Advs. UPON hearing counsel the Court made the following

O R D E R

Assessee filed its return of income for assessment year 2000-01. Assessee claimed deduction under Section 80HHE to the extent of Rs.1,56,33,719/- against net profit as per profit and loss account amounting to Rs.3,07,84,105/- to arrive at the book profit of Rs.1,51,50,386/- under Section 115JA of the Income-tax Act, 1961 [See: Vol.R/1 of I.A. paper book page 6]. This claim for deduction made by the assessee was rejected by the A.O. saying that since in normal computation there is no profit after carry-forward loss, deduction under Section 80HHE to the extent of Rs.1,56,33,719/- for computing book profit under Section 115JA was not admissible.

According to the A.O. since in the present case in normal computation no net profit was left after the brought-forward losses of the earlier years got adjusted against the current year's profit, the assessee was not entitled to deduction under Section 80HHE to the extent of Rs.1,56,33,719/-. In Appeal, the CIT (A) upheld the order of the A.O.

The assessee went in appeal, against the order of the CIT(A), before the Tribunal which, following the judgment of the Special Bench of the Tribunal in the case of Deputy Commissioner of Income Tax, Range 8(3) v. Syncome Formulations (I) Limited (2007) 106 ITD 193, took the view that the MAT scheme which includes Section 115JA did not take away the benefits given under Section 80HHE. The said judgment of the Special Bench was with regard to computation of deduction under Section 80HHC which, like Section 80HHE, falls under Chapter VI-A of the Income Tax Act, 1961.

In the said judgment of Special Bench, which squarely applies to the facts of the present case, the Tribunal held that the deduction under Section 80HHC (Section 80HHE also falls in Chapter VI-A) is to be worked out not on the basis of regular income tax profits but it has to be worked out on the basis of the adjusted book profits in a case where Section 115JA is applicable. In the said judgment the dichotomy between regular income tax profits and adjusted book profits under Section 115JA is clearly brought out. The Tribunal in the said judgment rightly held that in Section 115JA relief has to be computed under Section 80HHC(3)/(3A). According to the Tribunal, once the law itself declares that the adjusted book profit is amenable for further deductions on specified grounds, in a case where Section 80HHC (80HHE in the present case) is operational, it becomes clear that computation for the deduction under those sections needs to be worked out on the basis of the adjusted book profit [See: para 61 of the judgment of the Tribunal in Syncome Formulations (supra)]. In the present case we are concerned with Section 80HHE which is referred to in the Explanation to Section 115JA, clause (ix). In our view, the judgment of the Special Bench of the Tribunal in Syncome Formulations (supra) squarely applies to the present case. Following the view taken by the Special Bench in Syncome Formulations (supra), the Tribunal in the present case came to the conclusion that deduction claimed by the assessee under Section 80HHE has to be worked out on the basis of adjusted book profit under Section 115JA and not on the basis of the profits computed under regular provisions of law applicable to computation of profits and gains of business.

The judgment of the Tribunal has been upheld by the High Court. We see no reason to interfere with the impugned judgment. We agree with the view taken by the Special Bench of the Tribunal in the case of Syncome Formulations (supra) vide para 61 of the judgment.

Accordingly, the special leave petition filed by the Department stands dismissed with no order as to costs.

[Alka Dudeja] [Madhu Saxena]

A.R.-cum-P.S. Assistant Registrar