

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.05.2013

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ITA 1732/2006

COMMISSIONER OF INCOME TAX

....Appellant

versus

M/S DELHI PRESS PATRA PRAKASHAN

....Respondent

ITA 1733/2006

COMMISSIONER OF INCOME TAX

..... Appellant

versus

M/S DELHI PRESS PATRA PRAKASHAN

..... Respondent

ITA 1734/2006

COMMISSIONER OF INCOME TAX

..... Appellant

versus

M/S DELHI PRESS PATRA PRAKASHAN

..... Respondent

ITA 451/2010

COMMISSIONER OF INCOME TAX-IV

..... Appellant

versus

M/S DELHI PRESS PATRA PRAKASHAN LTD

..... Respondent

ITA 779/2010

COMMISSIONER OF INCOME TAX-IV

..... Appellant

versus

M/S DELHI PRESS PATRA PRAKASHAN LTD

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr N.P. Sahni.

For the Respondent : Mr O.P. Dua, Sr. Adv. with Ms Babita

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These are appeals which have been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). Appeal Nos. ITA 1732/2006, 1733/2006 & 1734/2006, are against a common order dated 24.03.2006 passed by the Income Tax Appellate Tribunal with respect to the deduction available to the assessee under section 80-IA of the Act in relation to assessment years 1998-99, 1997-98, & 1999-2000 respectively. Appeal Nos. ITA 451/2010 & 779/2010 are with respect to deduction available to the assessee under section 80-IB of the Act in relation to the assessment years 2004-05 & 2003-04 respectively.

2. The controversy involved in all the five appeals is regarding computation of profits derived from an industrial undertaking owned by the assessee, which are eligible for deduction under section 80-IA or 80-IB of the Act as the case may be and thus, all the appeals have been heard together.

3. The assessee is engaged in the business of publication and printing of newspapers and periodicals. The assessee company was established in 1973 and carried on its publication business. Subsequently, the assessee established two other undertakings at Sahibabad (Uttar Pradesh), namely Unit Nos. 2 & 3. Unit Nos. 2 & 3 were involved exclusively in printing. In the year 1994, the assessee established another undertaking at Faridabad, namely Unit no. 4. Unit no. 4 was established by importing plant and machinery from United States of America and Germany and the ancillary equipment was procured in India. The plant, machinery and equipment used for setting up Unit no. 4 were new and were not

used for any other purpose prior to their use in unit no. 4. No part of the machinery or equipment of Unit No. 4 was acquired by transfer from any of the other units of the assessee.

4. During the previous year, relevant to the assessment year 1997-98, the assessee carried on printing work on job work basis for Unit no. 1 as well as for other entities. The assessee charged 77 paise per sheet as printing charges for printing work done for Indian Express Newspapers Ltd. and 70 paise per sheet for printing done for Unit no. 1. It is not in dispute that Indian Express Newspapers Ltd. is an independent entity unconnected with the assessee and the transactions entered into between the assessee and Indian Express Newspapers Ltd. was on arms length basis. The assessee maintained separate books of accounts for Unit no. 4. Unit no. 4 did not purchase any paper but was supplied paper by Unit no. 1 or other entities for whom the Unit carried on printing activity. Unit no. 4 only purchased ink and certain other consumables which were utilized for carrying on the printing activity.

5. The assessee claimed deduction under Section 80-IA of the Act with respect to the profits and gains derived from Unit no. 4 as the same qualified as a new industrial undertaking for the purpose of Section 80-IA of the Act. The Assessing Officer examined the profit and loss account of the assessee as a whole as well as the statement of profits for Unit no. 4. It was found that whereas assessee had earned a profit margin of 62.31% in respect of Unit no. 4, the overall margin of the assessee was only 9.92%. The Assessing Officer concluded that this represented a serious inconsistency in drawing up the accounts. On further examination, the Assessing Officer found that the profit and loss accounts for Unit no. 4 neither disclosed any expense on account of paper consumed nor revenues from advertisements, which were received by the assessee. The

Assessing Officer relied on the provisions of Section 80-IA(8) of the Act and 80-IA(10) of the Act to conclude that the profit and loss account relating to Unit no. 4 was required to be recast and the profits to be recomputed. The Assessing Officer applied the gross profit margin as disclosed by the assessee's consolidated profit and loss account, (i.e., 10%) to the job work done by Unit no. 4 for Unit no. 1. Since the printing charges for work done by unit no. 4 on job work basis for unit no. 1 was ₹ 6,49,55,985/-, the profit on the same was computed by the Assessing Officer at ₹ 64,95,598/-. The profit margin, as disclosed by the assessee, in the stand alone profit and loss account of Unit no. 4, with respect to job work done by Unit no. 4 for persons other than Unit no. 1 was accepted. The assessee had claimed profit of ₹ 5,00,57,879 as profits eligible for deduction under Section 80-IA of the Act in its return and the deduction available under Section 80-IA of the Act was calculated @ 30% of the eligible profits at ₹ 1,50,17,363/-. Against the deduction of ₹ 1,50,17,363/- as claimed by the assessee, the Assessing Officer calculated the deduction available under Section 80-IA of the Act at Rs.49,93,661/-.

6. The assessee preferred an appeal before the CIT (Appeals) against the assessment order dated 15.03.2000. It was contended by the assessee that in the facts of the case, there was no occasion for the Assessing Officer to apply the provisions of Section 80-IA(8) of the Act. Section 80-IA(8) of the Act would be applicable only where goods were transferred from an eligible business to any other business of the assessee and the consideration recorded was not at market values. In the present case, admittedly Unit no. 4 was charging higher rate for printing from third parties than what was being charged from Unit no. 1. In these circumstances, there would be no plausible reason to further reduce the profit margin. The reduction in the eligible profits from unit no. 4, by the Assessing Officer, was contested by the assessee as being without any basis.

7. The CIT (Appeals) allowed the appeal of the assessee vide its order dated 31.01.2001 while noticing that the assessee had explained the reasons for unit no. 4 having a higher profit margin. The assessee justified a higher rate of profit by unit no. 4 on account of the following reasons:-

- a) the speed of the machineries installed in unit no. 4 were 100 times faster than the machines installed in unit no. 1;
- b) the rate of wages payable by unit no. 4 were also lower as the workers were new appointees.
- c) minimum consumption of power, ink and other consumable items.

8. The CIT (Appeals) held that the Assessing Officer had not pointed out any instance of the assessee inflating the profits either by charging higher rates or suppressing expenditure and in absence of any such instance of manipulation, the Assessing Officer was not correct in re-computing the profits on the basis of estimation.

9. In respect of the subsequent assessment year 1998-99, the assessee filed its return of income showing profit of ₹ 6,56,09,074/- claiming a deduction of ₹ 1,96,82,772/- @ 30% of the eligible profits in terms of Section 80-IA of the Act. The Assessing Officer held that the Unit no. 4 of the assessee was engaged in printing on job work basis and deduction under Section 80-IA of the Act was not available with respect to industrial undertaking carrying on its business on job work basis as the conditions under Section 80-IA(2) of the Act were not fulfilled by Unit no. 4. The Assessing Officer further held that even assuming that the profits of unit no. 4 were eligible for deduction under Section 80-IA of the Act, the same were inflated. The Assessing Officer held that the business of unit no. 1

and unit no. 4 were intermixed and, therefore, all expenses of the assessee were required to be taken into account while determining the profits of Unit no. 4. The Assessing Officer rejected the contention of the assessee that Unit no. 4 was carrying on job work for Unit no. 1 for which, it was paid charges at rates which were comparable to the market rate for such job work. It was contended by the assessee that since revenue earned by unit no. 4 was only job work charges, the cost of raw material or other expenses could not be deducted from the revenue earned by Unit no. 4 as such expenses were not incurred by Unit no. 4. The Assessing Officer rejected this contention by holding that in the event Unit no. 4 was treated as carrying on job work then the benefit of Section 80-IA of the Act was not available to the unit and if the benefit of Section 80-IA of the Act was to be allowed then the same could only be on recomputed profits after taking into account expenses incurred by Unit No. 4. The Assessing Officer re-computed the profits derived from Unit no. 4 by reallocating the expenditure incurred by the assessee. The Assessing Officer computed the eligible profits from unit no. 4 at ₹ 4,61,15,101/- and allowed a deduction @ 30% on the said profits which was computed at ₹ 1,38,34,530/- and passed the assessment order dated 28.02.2001.

10. The assessee challenged the assessment order dated 28.02.2001 before the CIT (Appeals). The CIT (Appeals) allowed the appeal of the assessee vide its order dated 23.08.2001. The CIT (Appeals) held that the issues raised were similar to those that were considered in his order dated 13.01.2001 in respect of the earlier assessment year-A.Y. 1997-98 and following the earlier decision, CIT (Appeals) allowed the appeal of the assessee.

11. The facts in relation to the subsequent assessment year 1999-00 are also similar. The profits declared by the assessee with respect to unit no. 4 were re-computed by the Assessing Officer by reallocating the expenses incurred by the

assessee. The assessment order dated 20.03.2002 was carried in appeal by the assessee and the same was allowed by CIT (Appeals) by its order dated 28.06.2002.

12. Appeals were before the Tribunal in respect of the order passed by the CIT (Appeals) in respect of the assessment years 1997-98, 1998-99 & 1999-00, which were disposed of by the Tribunal by its order dated 24.03.2006. The only ground urged by the revenue while contesting the orders passed by CIT (Appeals) was with regard to allowing the deduction under Section 80-IA of the Act to the assessee on the basis of the book results of Unit no. 4. The Tribunal held that the nature of business of Unit no. 1 & Unit no. 4 of the assessee were entirely different and there was no justifiable reason for the Assessing Officer to compare the profit margin of the two units. The Tribunal further noted that the assessee had maintained separate books in respect of unit no. 4 and no material or specific defects had been pointed out by the Assessing Officer in the said books which were produced before him for verification during the course of the assessment proceedings. The Tribunal accepted the view of the assessee that the expenditure on marketing and distribution of the publications was required to be done by the publishing house i.e. Unit no. 1 only and the printing business of unit no. 4 was entitled to receive job work charges only. The profit margin shown by the assessee with respect to Unit no. 4 was much higher than the profit margin shown in respect of other units. The Tribunal held that profits could not be re-computed merely on the basis that the profit margin of Unit no. 4 was higher and specially where no defects had been pointed out in the accounts produced by the assessee. The Tribunal, thus, dismissed the appeal filed on behalf of the revenue.

13. Similar issues have arisen with respect to the assessment year 2003-04. The Assessing Officer passed an assessment order dated 24.03.2006. The profit

and loss account prepared by the assessee with respect to Unit no. 4 was rejected by the Assessing Officer on the ground that the assessee had shown huge profits. The Assessing Officer thus reallocated the expenses and re-computed the profits of Unit no. 4 which were eligible for deduction under Section 80-IB of the Act. The assessee had claimed a deduction of ₹ 1,70,95,714/- under section 80-IB of the Act. The Assessing Officer held that no deduction under section 80-IB of the Act would be available to the assessee, as there would be no profits in Unit No. 4, if the cost of paper and packaging and forwarding charges were also included in the costs incurred by Unit no. 4. The Assessing Officer relied on the provision of section 80-IB(5), 80-IB(8) and 80-IB(10) of the Act to hold that the accounts relating to Unit no. 4 were required to be drawn up as if the income from the eligible business was the only business and thus expenses incurred by the assessee in packaging and forwarding as well as for purchase of paper were required to be allocated to Unit No. 4.

14. The assessee preferred an appeal before the CIT (Appeals) which was allowed by CIT (Appeals) vide its order dated 27.06.2006. The Department preferred an appeal before the Tribunal, *inter alia*, challenging the order of the CIT (Appeals) in directing the Assessing Officer to allow the deduction under Section 80-I of the Act. The Tribunal found that the issues raised in the appeal with regard to deduction under Section 80-IB of the Act were settled in favour of the assessee by its earlier decisions and rejected the appeal.

15. The facts in relation to assessment year 2004-05 are also almost identical. The Assessing officer passed the assessment order dated 15.12.2006 wherein the Assessing officer reallocated the expenses and re-computed the profits of Unit no. 4 and rejected the profit and loss account prepared by the assessee with respect to Unit no. 4 on the ground that the assessee had shown huge profits. The

Assessing officer disallowed the deduction of ₹ 2,35,58,698/-, claimed by the assessee under Section 80-IB of the Act, on the ground that the cost of the raw material and forwarding charges were not considered while calculating the profits of Unit no. 4. The assessee preferred an appeal before the CIT (Appeals) which was allowed by CIT (Appeals) by his order dated 31.10.2007. The appeal preferred by the Revenue, before the Tribunal, *inter alia*, challenging the order of the CIT (Appeals) was dismissed on the ground that the issues raised in the appeal with regard to deduction under Section 80-IB of the Act were settled in favour of the assessee by his earlier decisions.

16. This Court admitted the following questions for consideration in respect of ITA Nos.1732/2006, 1733/2006 and 1734/2006 in relation to the assessment years 1998-1999, 1997-98 and 1999-2000 respectively.

1. Whether ITAT was correct in directing the Assessing Officer to allow deduction under Section 80-IA of the Act to the assessee only on the book results of Unit No.4 i.e. the printing house?
2. Whether ITAT was correct in law in allowing deduction under Section 80-IA of the Act to the assessee on the profits of printing house without considering the expenditure incurred by the publishing house on raw material as well as marketing and distribution incurred by the publishing house?

17. In ITA No.779/2010, the following question of law was framed:-

Whether the ITAT was correct in law and on facts in holding that the assessee was entitled to deduction under Section 80-IB of the Act relying on the orders of earlier years?

18. In ITA No.451/2010, the following two questions of law were framed:-

1. Whether the ITAT was correct in law and on facts in holding that the assessee was entitled under Section 80-IB of the Act of the Income Tax Act relying on the order of earlier years?
2. Whether the order of the Income Tax Appellate Tribunal, which is a final fact finding authority, is not vitiated in law as it has not gone through the facts properly and just reproduced and relied upon the order of the CIT(A) without appreciating the material on record for making additions?

19. Before proceeding to address the controversy raised in the present appeals, it would be necessary to examine the manner in which the assessee has structured its business. The assessee was established in 1973 and is engaged in the business of printing and publishing various magazines, namely, Alive, Women's Era, Sarita, Greh Shobha, Champak etc. The assessee has its office situated at New Delhi which is engaged exclusively in publishing business. This undertaking has been referred to as Unit no.1. Unit no.1 is a publishing house where blue prints and the content of various magazines in the portfolio of the assessee are prepared or arranged. Unit no.1 is described as a publishing house as it is engaged in the business of publishing. The publishing house arranges for articles to be published in the magazines from various authors, artists and photographers and incurs expenses for procuring such material. Unit No.1 also incurs expenditure for advertisement and publicity of magazines and other periodicals in its portfolio. The assessee has claimed that all such expenses relate directly to the publishing house as they are exclusively for the business of publishing. Receipts from sale of magazines and income from advertisements published in the magazines relate to the publishing business and are accounted for as income of Unit no.1. The assessee has also been allotted a quota for paper by Government

of India and on the basis of such allocation Unit no.1 imports paper. The paper imported by the assessee cannot be sold and is for exclusive use of the assessee. The assessee has also established three other undertakings, which carry on printing activity through highly sophisticated machines. The said undertakings, namely, Unit nos.2, 3 & 4 are described as printing houses. In the present appeals, we are concerned only with Unit no.4 which was set up in the year 1994. Technologically advanced printing machines were imported by the assessee for establishing this unit which is housed in a new building situated at Faridabad (Haryana). Unit No.4 is involved exclusively in carrying on printing activity. The plant and machinery of Unit No.4 is capable of printing 40,000 sheets per hour.

20. Unit no.1 forwards the paper as well as the content that is to be printed thereon to Unit no.4. On the basis of material supplied by Unit no.1, the Unit no.4 prints magazines which are then bound and dispatched to subscribers and other persons as per the instructions of Unit no.1. The entire expense for running of machinery including labour, electricity, ink and other consumables utilized in the printing activity carried out in Unit no.4 is accounted for separately in the books of Unit No.4 which are separately maintained.

21. Unit No.4 also carries printing activity of job work on behalf of the persons, other than Unit no.1, who are unconnected with the assessee. The source of revenue for Unit No.4 are job work charges which are received for carrying on printing activity. During the period relevant to the assessment years 1997-98 and 1999-2000, Unit No.4 charged 77 paise per sheet from third parties and 70 paise per sheet from Unit No.1 for the job work carried on in Unit No.4.

22. The controversy that has been raised in the present appeals is regarding the expenses that are required to be allocated to Unit No.4 for the purposes of

determining the profits of Unit No.4 which are eligible for deduction under Section 80-IA or 80-IB of the Act as the case may be. During the assessment years 1997-1998, 1998-1999 and 1999-2000, the assessee claimed deduction under Section 80-IA of the Act. The Assessing Officer relying on Section 80-IA(8) of the Act, 80-IA(9) of the Act and 80-IA(10) of the Act held that the profits of the assessee from Unit No.4 were required to be recomputed. The relevant extracts from Section 80-IA of the Act are quoted below:-

“Section 80-IA. - Deduction in respect of profits and gains from industrial undertakings, etc., in certain cases.- (1) Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking or a hotel or operation of a ship or developing, maintaining and operating any infrastructure facility..... to which this section applies, there shall, in accordance with an 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 the percentage specified in sub-section (5) and for such number of assessment years as is specified in sub-section (6).”

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"(7) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-section (5) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made."

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"(9) Where any goods held for the purposes of the eligible business are transferred to any other business carried on by the

assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date :

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation : In this sub-section, "market value", in relation to any goods, means the price that such goods would ordinarily fetch on sale in the open market."

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“(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.”

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23. Section 80-IA was substituted by section 80-IA and section 80-IB by Finance Act, 1999 w.e.f. 01.04.2000. The assessee has claimed deduction under Section 80-IB of the Act for the period relevant to the assessment year 2003-2004 and 2004-2005.

24. It is not in dispute that the assessee has maintained separate books of accounts for Unit No.4 and the only issue to be addressed is whether the expenses allocated to Unit No.1 are to be taken into account for determining the eligible profits from Unit No.1. The Assessing Officer relied on the provisions of Section 80-IA(9) of the Act and Section 80-IA(10) of the Act to come to a conclusion that the profits attributable to Unit No.4 were liable to be recomputed. The Assessing Officer held that the expenses relating to cost of paper and other expenses were liable to be allocated to Unit No.4 also, inasmuch as, in his view, Section 80-IA(7) of the Act required that the profits from the eligible business must be computed as if the eligible business was the only source of income for the assessee. The ownership of newsprint, paper and other materials supplied by publishing houses to Unit No.4 for carrying on printing activity continue to vest with publishing houses. In cases where Unit No.4 carries on printing activity for other entities, the paper would not belong to the assessee, the paper as well as the rights on the content being printed in Unit No.4 would vest with other entities. In the case of the printing being done by Unit No.4 on behalf of Unit No.1, the paper would belong to the assessee but the costs of which are liable to be borne exclusively by the publishing business i.e. Unit No.1.

25. It is not in dispute that the printing charges charged by Unit No.4 to Unit No.1 were comparable to the market rates. It is a matter of record that during the period relevant to the assessment years 1997-1998 and 1999-2000 Unit No.4 was charging 77 paise per sheet for printing work done for third parties and 70 paise per sheet for printing done for Unit No.1. The Assessing Officer has also not found any manipulation or defect in the separate books maintained for Unit No.4. Section 80-IA(10) of the Act makes it mandatory for the Assessing Officer to re-compute the profits from eligible business in cases where on account of close connection between the assessee carrying on eligible business and any other

person, the affairs of the assessee with respect to the eligible business are so arranged as to give rise to higher profits to the assessee. In such cases, the Assessing Officer is required to compute the amount of profits as may be reasonably derived from the eligible business. Section 80-IA(9) of the Act deals with situations where goods held for the purposes of eligible business are transferred to another business carried on by the assessee and the consideration at which such transfer is recorded is not the market value. In such cases the Assessing Officer is required to determine the profits of the eligible undertaking by taking into account the market value of goods transacted between the businesses carried on by the assessee.

26. In the present case, there is no material to support the view that the job work charges charged by Unit No.4 from Unit No.1 were not at market rates. We are agreement with the view taken by the Tribunal that in absence of any defect or manipulation found by the Assessing Officer in the books maintained for Unit No.4 and in absence of any material to indicate that the amount charged by Unit No.4 from Unit No.1 was not at comparable market rates, it would not be open for the revenue to disregard the profits of Unit No.4 as disclosed by the assessee only on the basis that the profits were significantly higher than profits earned by the assessee from other undertakings.

27. Given the fact that Unit No.4 carries on job work of printing only, the expenses attributable to Unit No.1 which relate to the publishing business cannot be allocated to Unit No.4. Only those expenses which relate to the printing work carried on by the assessee in Unit No.4 are liable to be deducted from the job charges to arrive at the profits eligible for deduction under Section 80-IA of the Act or 80-IB of the Act as the case may be.

28. The facts relevant to the assessment year 2003-2004 and 2004-2005 are similar to the facts in the earlier assessment years. Our attention has not been drawn on any material change that has occurred in this period which would justify a view, different from the one taken in respect of the earlier assessment years. Thus, in our view, the Tribunal was correct in relying upon the orders passed in the preceding years for disposing of the appeals relating to the assessment year 2004-2005.

29. We, accordingly, hold that the CIT (Appeals) and the Tribunal were correct in holding that the assessee was entitled to deduction under Section 80-IA of the Act and 80-IB of the Act on the book profits of Unit No.4 as disclosed by the assessee.

30. We answer the questions raised in ITA Nos.1732/2006, 1733/2006 and 1734/2006 in the affirmative and in favour of the assessee.

31. The question framed in ITA No.779/2010 and the first question framed in ITA No.451/2010 is also answered in the affirmative and in favour of the assessee. The second question in ITA No.451/2010 is answered in the negative and in favour of the assessee. No orders as to costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

MAY 31, 2013
RK/MK