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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 7th April, 2015

+ ITA 126/2001

M/S TRIMATIC ENGINEERING CO. P. LTD. Appellant

Through None

versus

ASST. COMMISSIONER OF INCOME TAX Respondent

Through Mr. Rohit Madan, Mr. Ruchir Bhatia
and Mr. Akash Vajpai, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The question of law framed by this Court for decision in this appeal is:

“Whether relationship of master and servant is necessary to claim deduction under 80I of the Income Tax Act, 1961?”

2. The appellant concededly employed and utilised the services of workers through the contractor Buta Singh. At the relevant time during the assessment year 1986-87, the appellant employed 18 workers including those supplied by labour contractor. It claimed a deduction under Section 80I to the extent of Rs.92,251/- being 25% of the profit i.e. Rs.3,69,005.00. The AO declined it and included the amount in the taxable income by the impugned order dated 23.3.1989. The AO was of the opinion that since the employees engaged by the assessee were through a contractor and not its own employees, the assessee could not be said to have qualified for the said deduction by reason of Section 80I(2)(iv). The assessee appealed to the

Commissioner of Income Tax (Appeals) who accepted the contentions and inter alia, recorded as follows:

“From the above it is clear that though the appellant’s representative is correct in claiming that the appellant is entitled for the deduction if it has employed at least ten workers whether casual or regular the appellant will have to satisfy the requirement that at least 10 workers were engaged in the manufacturing process. From the order of the ACIT it is not clear as to whether this requirement was satisfied while claiming the deduction under section 80I. The ITO will, therefore, look into the claim of the assessee for deduction under section 80I and satisfy himself that at least 10 workers were engaged in the manufacturing process during the year and allow the deduction as per law.”

3. The revenue’s appeal to the Income Tax Appellate Tribunal was accepted and the order of the CIT(Appeals) was reversed. The ITAT held as follows :

“I have heard the rival submissions. Admittedly, more than 10 employees were not on the pay rolls of the assessee. It was submitted that the persons employed through contractors should also be treated as the employee of the assessee. The learned counsel failed to establish the relationship of employer and employee with those persons who were employed through the contractors. It was found that those persons were working under contractor and not under the assessee company. As such, in my opinion, those persons cannot be treated as employees of the assessee company. Finding given in this regard by the assessing officer is correct in my opinion. Accordingly, I reverse the order of the Commissioner of Income Tax (Appeals) and restore that order of the assessing officer.”

4. This Court has carefully considered the grounds of appeal as well and

heard the counsel for the revenue. Section 80I enables deduction in respect of profits and gains from industrial income to the extent of 20%. This Court is at present concerned with the one provided in Section 80I(2)(iv). The same reads as follows :

“80I. xxxxx

(2) This Section applies to any industrial undertaking which fulfils all the following conditions, namely :-

xxxxx

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.”

5. It is evident from a plain reading of the above provision that all that the provision's intent was that an industrial undertaking in order to qualify for the deduction should be involved in inter alia, production of articles or things and should employ 10 or more workers in manufacturing process carried on with the aid of power or in a manufacturing process carried on without the aid of power, employ 20 or more workers. Considering that the provision is a beneficial one and meant to provide relief to industrial undertaking involved in manufacturing. The restrictive interpretation placed by the ITAT in the circumstances of the case is not justified.

6. There is nothing in Section 80I(2)(iv) to say that the relationship in order to qualify for the term “employment” must be one of master and servant and cannot extend to contractual employment. That the concept of permanent or direct workmen is the precondition envisioned in Section 80I(2) when it was the term “employs” does not appear to be reflected in the

statute as is imputed by the lower authorities. This Court also notices that there are situations where it has been held that services provided by outside agencies would also qualify for benefits of Section 80I. In *Krishak Bharti Cooperative Limited V. Deputy Commissioner of Income Tax* 358 ITR 168, a Division Bench of this Court held that service charges received from the owner of the unit, could in fact be considered as profit derived from an industrial undertaking and thus be entitled for deduction under Section 80I. In other words, even though the ownership of unit, from which the profit was derived by the industrial undertaking claiming deduction under Section 80I, did not vest with it, the Court held that it was entitled to the said benefit. For the above reasons the Court is of the opinion that this appeal is entitled to succeed. In view of the above, the appeal is answered in favour of the assessee and against the revenue.

7. The appeal is accordingly allowed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

APRIL 07, 2015

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