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

Decided on : 08.01.2015

+ **ITA 662/2012, C.M. APPL.19726/2012**

CIT

..... Appellant

Through : Ms. Rubal Maini, Advocate.

versus

MODI XEROX INDIA LTD.

..... Respondent

Through : Ms. Kavita Jha and Sh. Vaibhav
Kulkarni, Advocates.

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 revenue claims to be aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 13.06.2008 in ITA No.3116/(ASR)/2004.
2. The appeal was disposed of on an earlier occasion, on 01.02.2011, on the basis of a direction to the revenue to approach the Income Tax Appellate Tribunal (ITAT) again by reframing the questions urged. The order permitted the withdrawal of the appeal, ITA Nos.1319-21/2009 and permitted the revenue to amend the questions of law. It is in these circumstances that the present common appeal has been filed.
3. The revenue urges the following questions of law in support of the present appeal, stating that they are substantial questions which require consideration:

“(a) Whether the ITAT erred in law and on merits in upholding the order of CIT(A) directing the AO to obtain figures of sales

(notional) from toner, developer and photoreceptors unit to other units as reduced by the actual figures of sales and to further adjust the amount by the profits of toner, developer and photoreceptors unit for the purpose of computing the deduction under Section 80HHC of the Income Tax Act, 1961?

(b) Whether on the facts and in the circumstances of the case and in law, the ITAT is correct in upholding the method of computation of deduction u/s 80HH of the Income Tax Act, 1961 arrived by the CIT(A)?

(c) Whether the order of the ITAT is perverse as it fails to appreciate that the Xerographic unit and tone, developer and photoreceptors units were a composite units?

(d) Whether the units (xerographic, tone developer and photoreceptors) of the assessee claimed to be distinct and separate manufactured distinct and separate items?

(e) Whether the ITAT failed to appreciate that no separate books of account were maintained by the assessee?

(f) Whether the order of the ITAT is perverse in law in not taking note of the provisions of Section 80HHC of the Income Tax Act, 1961?

(g) Whether on the facts and in the circumstances of the case, the Ld. ITAT is legally justified in holding that the claim of deduction u/s 80HH of the Income Tax Act, 1961 is allowable with respect to the profit of two profit making industrial units only and holding that loss of third unit is to be ignored?

(h) Whether the Ld. ITAT erred in law and on facts in holding sale of scrap is not to be included in total turnover while computing deduction u/s 80HHC of the Act?

(i) Whether order passed by the Ld. ITAT is perverse in law and on merits?

(j) *The Hon'ble Court may kindly allow the appellant to amend and modify question of law suggested above and or formulate new/additional questions of law."*

4. The Court has considered the submissions and is of the opinion that having regard to the judgment of the Allahabad High Court in ITA 30/2001 dated 15.04.2010 (*Commissioner of Income Tax v. M/s. Modi Xerox Ltd*), question nos.(c), (d) and (e) do not arise. The finding of the Allahabad High Court in this regard for the assessment year 1991-92 is as follows:

"There were three separate units for the aforesaid activities. It appears that the two units, viz. unit manufacturing xerographic equipment and unit manufacturing toner, developer and photoreceptors, were profit making units and the third unit, viz. servicing and trading activities, has suffered loss. The assessee claimed deduction under Section 80-HH at Rs.7,18,75,912/- and deduction under Section 80-I at Rs.8,92,44,892/- against which the assessing authority has allowed deduction under Section 80-HH at Rs.2,04,93,837/- and deduction under Section 80-I at Rs.2,56,17,297/-. The dispute between the assessee and the assessing officer appears to be with regard to the working of the deduction under section 80-HH and 80-I were on account of (a) the assessing officer allowed deduction under the aforesaid sections on the aggregate profits of the assessee-company without seeking to separately determine the profits derived from the two eligible industrial undertakings, viz. (i) Xerographic Equipment Unit & (ii) toner, developer & photoreceptors unit, and (b) the assessing officer allowed the deduction under Sections 80-HH and 80-I on the profits of the assessee-company after reducing brought forward losses and allowances....."

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5. The Court thereafter considered the facts of that case as well as the decisions cited by the revenue – *Synco Industries Ltd. v. Assessing Officer*

(Income-tax) and another 2008 (299) ITR 444; *Liberty India v. Commissioner of Income-Tax* 2009 (317) ITR 218 (SC) and further the judgment of this Court in *Commissioner of Income Tax v. Dewan Kraft Systems P. Ltd.* 297 ITR 305 (Del).

6. The Allahabad High Court thereafter held as follows:

*“We have considered the facts and circumstances of the present case and the law laid down by the Apex Court and the decision of the Delhi High Court referred herein above. It is not the case of the assessing authority that the gross income of the Company was nil. From perusal of the income disclosed to all the three units it appears that the gross income was not nil and, therefore, the assessee was eligible to claim the deduction under Sections 80-HH and 80-I of the Act. After becoming eligible to claim the deduction, the question for consideration is that whether deduction is eligible to the income derived to each industrial undertaking independently or on a consideration of the losses suffered by the service unit. Sections 80-HH and 80-I of the Act contemplate the deduction from the income derived by the undertaking. The CIT (Appeal) has rightly held that income of the undertaking shall be calculated on a consideration of an absorbed business losses, etc. in respect of each individual unit and thereafter on the profit derived by the unit the deduction is to be allowed. This view of the CIT (Appeal) confirmed by the Tribunal is in accordance to provisions of the Act as well as inconsonance with the law laid down by the Apex Court and Delhi High Court. The Apex Court in the case of *Synco Industries Ltd. v. Assessing Officer (Income-Tax)* and another (supra) has held that non obstante clause appearing in Section 80-I(6) of the Act is applicable only to the quantum of deduction, whereas, the gross total income under Section 80B(5) which is also referred to in Section 80-I(1) of the Act is required to be computed in the manner provided under the Act which presupposes that the gross total income shall be arrived at after adjusting the losses of the other division against the profits derived from an industrial undertaking. The Apex Court further*

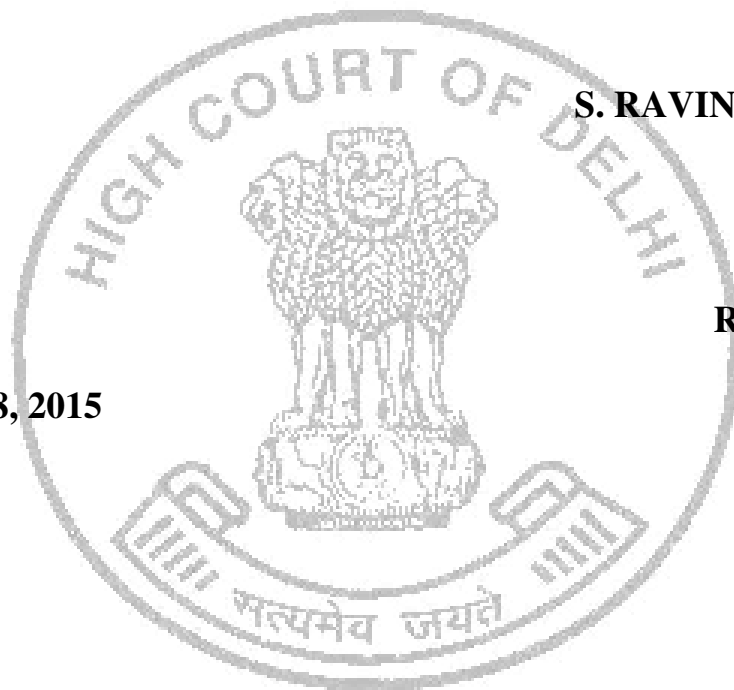
held that under Section 80-I(6) of the Act for the purposes of calculating the deduction, the loss sustained in one of the units, cannot be taken into account because sub-section (6) of the Act contemplates that only the profits shall be taken into account as if it was the only source of income. Therefore from the decision of the Apex Court, two principle of laws emerges – one for the purposes of computation of gross total income the losses of other units are to be taken into account but for the purposes of calculating the deduction of industrial undertaking, the loss sustained in another unit cannot be taken into account and only the profit shall be taken into account as if it was the only source of income of that unit. In this view of the matter, we are of the view that there is no error in the order of the Tribunal.”

7. The present appeal pertains to assessment year 1994-95. Having regard to the fact that in respect of same assessee, the Allahabad High Court has ruled against the revenue, we are of the opinion that question nos. (b), (c), (d), (e) and (g) do not arise for consideration.

8. So far as question nos. (a) and (f), i.e. the issues arising out of inter-unit sales/transfer and the applicability of Section 80HHC to the circumstances of the case are concerned, this Court notices that the ITAT itself has upheld the order of the CIT who remitted the matter for consideration to the Assessing Officer, after making factual enquiry. In the light of this order, this Court finds that question nos. (a) and (f) are accordingly not substantial and do not require to be answered.

9. As to question (h), the issue here concerns the sale of scrap and whether it is to be included in the total turnover while computing deduction under Section 80HHC of the Income Tax Act. Here it is not disputed that the previous judgment of this Court in *CIT v. Punjab Stainless Steel Ind.* (2007) 162 Taxman 9 (Del) to the effect that such sales are to be excluded from the

computation for the purposes of Section 80 HHC has been upheld by the Supreme Court in its judgment in *CIT v. Punjab Stainless Steel Industries* (2014) 364 ITR 144 (SC). This question is accordingly answered in favour of the assessee and against the revenue. So far as the other questions are concerned, the Court is of the opinion that they do not merit consideration as they are general and insubstantial. The appeal is accordingly dismissed in the above terms along with the pending application.



S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

JANUARY 08, 2015