

\$~
*
14
+

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 540/2015

COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr. N.P. Sahni, Senior standing
counsel with Mr. Nitin Gulati, Junior standing
counsel.

versus

RAJAT DEEP OVERSEAS (P) LTD Respondent
Through: Mr. Ved Jain with Mr. Pranjal
Srivastava, Advocates.

And

ITA 628/2015

COMMISSIONER OF INCOME TAX-7 Appellant
Through: Mr. N.P. Sahni, Senior standing
counsel with Mr. Nitin Gulati, Junior standing
counsel.

versus

RAJAT DEEP OVERSEAS (P) LTD Respondent
Through: Mr. Ved Jain with Mr. Pranjal
Srivastava, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
20.10.2015

%

Dr. S. Muralidhar, J.

1. These two appeals by the Revenue under Section 260A of the Income Tax

Act, 1961 ('Act') are directed against the common order dated 12th February
Signature Not Verified
Digitally Signed
By:AMULYA
ITA Nos. 540/2015 & 628/2015

3

2015 in ITA Nos. 236/Del/2013 and 883/Del/2013 for the Assessment Year ('AY') 2009-10.

2. The brief facts leading to the filing of the present appeals are that the Assessee is a manufacturer of auto parts and accessories having an unit in Haridwar which, for the purposes of Section 80-IC of the Act, was eligible for deduction from its income. The Assessee filed its annual return of income for the AY in question showing a gross total income of Rs. 2,69,85,125 on a total turnover of Rs.11.13crore. A sum of Rs. 2,69,25,260 was claimed as deduction under Section 80-IC of the Act, leaving a sum of Rs.59,864 as taxable income.

3. The case was picked up for scrutiny and notice under Section 143 (2) of the Act was issued by the Assessing Officer ('AO'). An assessment order was passed on 30th November 2011 under Section 143 (3) of the Act. In the said order, the AO held that (i) 20% of the sale value of the products was attributable to the 'brand' and hence, was not eligible for deduction; (ii) profit to the extent of 5% of the total turnover of the Assessee was attributed to the past experience, expertise and knowledge, etc. of the related and connected persons and not to the eligible unit; and (iii) only 12% of the remaining income, after making adjustments, was to be considered as eligible for deduction under Section 80-IC of the Act. Accordingly, the AO computed the deduction at Rs 4,06,637 as against Rs. 2,69,25,260 claimed by the Assessee under Section 80-IC of the Act.

4. In the appeal filed by the Assessee, the Commissioner of Income Tax (Appeals) ['CIT (A)'] by an order dated 9th November 2012 (i) restricted the reduction of deduction to 10% from 20% as far as issue (i) was concerned; (ii) set aside the order of the AO to the extent that 5% of the sale value was held not to form part of the eligible profit and (iii) set aside the restriction of the deduction to 12% of the remaining profit.

5. As a result of the above order, the Assessee and the Revenue Assessee filed their respective appeals, ITA Nos. 236 and 883/Del/2013, before the ITAT. The ITAT, in the impugned order, noted that as regards issue (i) for the preceding AY 2008-09 also the reduction attributable to the brand had been restricted to 10% by the AO and had been deleted by the ITAT. In the absence of any distinguishing feature having been brought out by the Revenue, the ITAT held that no deduction could be made from the eligible profits on account of the 'brand'.

6. As regards issue (ii), the ITAT approved the view of the CIT (A) on the basis of what was decided for AY 2008-09. As regards issue (iii), the ITAT negatived the contention of the Revenue that the Assessee had also earned income from its branch offices and Head Office and was, therefore, not eligible for any deduction under Section 80-IC of the Act. The ITAT noted that the DR was unable to show any clinching evidence that any income producing activity was carried out from any place other than the eligible unit. The ITAT held that the entire income producing activity stemmed only from the Hardwar unit and no other place.

7. The Revenue has filed the present two appeals against the common order of the ITAT in ITA Nos. 236/Del/2013 and 883/Del/2013. This Court issued notice in ITA No. 540 of 2015 limited to the issue whether the Respondent/Assessee can include the name of its branches and head office (i.e., other than the Haridwar Unit) for the purpose of deduction under Section 80-IC. The Court also issued notice in the companion ITA No. 628 of 2015 and directed it to be listed along with ITA 540 of 2015.

8. This Court has heard the submissions of learned counsel for the parties. Learned counsel for the Assessee placed before the Court the profit and loss account for the Assessee as a whole for the years ending 31st March 2008 and

5

31st March 2009. He has also placed the details of the schedule of fixed assets of the head office and the works at Haridwar as well as statement of expenses and salaries and wages statement of the branches. As far as the head office is concerned, the net block as on 31st March 2008 was Rs. 13,22,101.14 whereas the net block for the works at Haridwar was Rs. 1,26,80,393.35. The corresponding figures for the year ending 31st March 2009 were Rs. 43,62,243.40 and Rs. 1,20,87,372.35. As regards the branch offices at Bangalore, Mumbai and Kolkatta, the total expenditure figures for the year ending 31st March 2009 were Rs. 2,86,690; Rs. 5,98,981 and Rs. 5,12,949 respectively which even in the aggregate was insignificant in comparison with the expenses of the entire company which was Rs.9,08,34,838.18 for the same period. Likewise the expenses towards salaries and wages of the branches constitutes a small percentage of the total expenditure of the Assessee on that head. These figures bear out the contention of the Assessee that the income generating activity was only at the works units at Haridwar and not at the head office or branch offices. Therefore, on facts the Court is unable to find any perversity vitiating the impugned order of the ITAT.

9. No substantial question of law arises for determination.

10. The appeals are accordingly dismissed.



S. MURALIDHAR, J



VIBHU BAKHRU, J

OCTOBER 20, 2015

Rk