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

R.1-4

+ **ITA 160/2001**

COMMISSIONER OF INCOME TAX, DELHI Appellant
Through: Mr. Ashok K. Manchanda, Senior
Standing counsel.

versus

M/S SONA STEERING SYSTEMS LTD. Respondent
Through: Mr. R. Santhanam and Mr. A. P. Sinha
Advocates.

With

ITA 166/2002

COMMISSIONER OF INCOME TAX, DELHI Appellant
Through: Mr. Ashok K. Manchanda, Senior
Standing counsel.

versus

M/S SONA STEERING SYSTEMS LTD. Respondent
Through: Mr. R. Santhanam and Mr. A. P. Sinha
Advocates.

+ **ITA 9/2003**

COMMISSIONER OF INCOME TAX, DELHI Appellant
Through: Mr. Rahul Chaudhary, Senior Standing
counsel.

versus

M/S SONA STEERING SYSTEMS LTD. Respondent

Through: Mr. R. Santhanam and Mr. A. P. Sinha
Advocates.

And

+

ITA 15/2004

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Ashok K. Manchanda, Senior
Standing counsel.

versus

M/S SONA STEERING SYSTEMS LTD. Respondent
Through: Mr. R. Santhanam and Mr. A. P. Sinha
Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI
ORDER
% **13.07.2016**

1. These are four appeals by the Revenue against orders dated 23rd February 2001, 31st December 2001, 8th March 2002 and 17th March 2003 of the Income Tax Appellate Tribunal ('ITAT') for Assessment Years ('AYs') 1991-92, 1992-93, 1993-94 and 1995-96 in ITA Nos. 1371/Del/95, 948/Del/96, 6203/Del/96 and 3247/Del/98 respectively.
2. Among the questions framed in the above appeals, there is one question that is common to ITA Nos. 166 of 2002, 9 of 2003 and 15 of 2004. This pertains to the ITAT holding the expenditure on the axle plant to be revenue expenditure as contended by the Assessee and not a capital expenditure as contended by the Revenue. While it is one of the substantial questions of

law framed by this Court in ITA 15 of 2004, it is the sole question in ITA Nos. 166 of 2002 and 9 of 2003. Consequently, the Court proposes to deal with the said question first.

3. It is not in dispute that the above same question also arose in the appeal filed by the Revenue before the ITAT for AY 1991-92 was answered in favour of the Assessee by the decision dated 23rd February 2001 of the ITAT. Against the said decision dated 23rd February 2001, the Revenue filed ITA No. 160 of 2001. It appears that no question was framed as regards the expenditure pertaining to the Axle plant in the said ITA No. 160 of 2001. In other words, the decision of the ITAT dated 23rd February 2001 for AY 1991-92 holding that the expenditure pertaining to the Axle plant is revenue expenditure has attained finality. It is this decision that has been followed by the ITAT for AYs 1992-93, 1993-94 and 1995-96. Further the decisions of this Court in *Jay Engineering Works Ltd. v. CIT (2009) 311 ITR 405 (Delhi)*, *CIT v. SRF (2015) 372 ITR 425 (Delhi)* and as well as *CIT v. Monnet Industries Ltd (2011) 332 ITR 627 (Delhi)* which was later affirmed by the Supreme Court in *CIT v. Monnet Industries Ltd. (2013) 350 ITR 304 (SC)* support the case of the Assessee in this regard.

4. Consequently, the said question, which has been framed for the said three AYs 1992-93, 1993-94 and 1995-96, is answered in favour of the Assessee and against the Respondent.

5. ITA Nos. 166 of 2002 and 9 of 2003 are accordingly dismissed.

6. In ITA No. 160 of 2001, for AY 1991-92, the first question framed for

consideration reads as under:

“(i) Whether Rs. 98,535 incurred on local travel, telephone and other misc. expenses are to be taken into consideration for calculating disallowance under Rule 6D of the Income Tax Rules, 1962.”

7. The CIT (A) has, while deciding the above issue in favour of the Assessee relied on the order passed in the Assessee's own case for the earlier years. Nothing has been pointed out by the Revenue to show why the treatment for AY 1991-92 should be any different. The question is accordingly answered in favour of the Assessee and against the Revenue.

8. In ITA 160 of 2001, the second question of law framed reads as under:

“(ii) Whether the ITAT was right in holding that interest of Rs. 28,38,648 and office expenditure of Rs.13,74,247 are revenue expenditure and not capital expenditure.”

9. As far as this question is concerned, the Court finds that the issue stands covered in favour of the Assessee and against the Revenue by the decision in ***Jay Engineering Works Ltd. v. CIT*** (*supra*), which has been subsequently followed by this Court in ***CIT v. Monnet Industries Ltd*** (*supra*) and ***CIT v. SRF*** (*supra*). In particular, in ***Jay Engineering Works*** (*supra*) , the Court has discussed the issue in paras 14, 15 and 16 as under:

“14. On an appreciation of the law laid down by the various decisions referred to above, it is clear that the nature of the new business is not a decisive test for determining whether or not there is an expansion of an existing business. The nature of the business could be as distinct as a jewellery business and a business of cinematographic films; it could be as different as manufacture of metal alloys and manufacture of rubber products. What is of importance is that the control of both the

ventures, the existing venture as well as the new venture, must be in the hands of one establishment or management or administration. The place of business of the existing business and the new business may not be in close proximity - it could be as far apart as Baroda and Bangalore. However, the funds utilised for the management of both the concerns must be common as reflected in the balance sheet of the company.

15. In other words, there may be several permutations and combinations that may arise for determining whether the expenditure is revenue or capital and each case must, of course, be dealt with on the broad principles that have been accepted by the Courts as are mentioned above.

16. Applying these principles to the present case, it is quite clear to us that the control over the two units is in the hands of the same management and administration. There is no doubt on this score and in fact, the annual report of the assessed, which has been shown to us by learned Counsel, makes a reference to the Project at Hyderabad. There can be no dispute from the facts that have been placed before us on record that the new venture was managed from common funds and there is the necessary unity of control leading to an interconnection, interdependence and interlacing of the two ventures such that it can be said that the fuel injection equipment project is only an extension of the existing business of the assessed and, Therefore, the expenditure incurred by the assessed on this Project is a revenue expenditure.”

10. The CIT(A) has in the present case found as a matter of fact that there was “complete unity of control and there was a common fund and these factors are also pertinent that the business of manufacture of axle was an expansion of the business and not a new business. Since the production had commenced, the appellant would be entitled for the deductions in respect of interest paid i.e. Rs. 28,38,648 and other expenses like to staff etc. amounting to Rs. 13,74,247”. This factual finding, affirmed by the ITAT, is not shown to be perverse.

11. Consequently, this Court answers the second question in ITA No. 160 of 2001 in favour of the Assessee and against the Revenue.

12. The third question in ITA 160 of 2001 reads thus:

“(iii) Whether the ITAT was right in holding that the assessee was entitled to deduction of Rs. 26,70,016/- on account of scientific research although it was claimed for the first time in the belated return filed under Section 139 (4) of the Income Tax Act, 1961?”

13. The fourth question is also related to the third question. The issue is whether such deduction could have been allowed even though the AO had not examined and considered the claim on merits but disallowed it only on technical grounds?

14. As far as the above issue is concerned, it has been submitted by Mr. Ashok K. Manchanda, learned Senior Standing counsel for the Revenue and reiterated in his written submissions that no opportunity was given to the AO by the CIT (A). He urged that the CIT (A) should have remanded the matter to the AO for his comments.

15. It is seen that the CIT (A) took into account the detailed note submitted by the Appellant and the material furnished in respect of the testing and research facilities. As rightly pointed out by the ITAT, the power of the CIT (A) is parallel and is co-terminus power with the AO to examine the facts. In any event as explained in ***Goetze (India) Ltd. v. Commissioner of Income Tax (2006) 284 ITR 323 (SC)***, the bar to considering a revised return in which a claim is made for the first time applies to the AO but not to the

appellate authority. On merits the Revenue is unable to dispute that the Assessee was otherwise entitled to the deduction. Consequently, the third and fourth questions in ITA No. 160/2001 are answered in favour of the Assessee and against the Revenue. Resultantly, ITA No. 160/2001 is dismissed.

16. Now turning to ITA No. 15/2004, Question No. (i) framed in this appeal has already been answered in para 3 above.

17. Question No. 2 in this appeal reads as under:

“(2) Whether the ITAT was correct in holding that Assessee is entitled to deduction u/s 80-I of IT Act in respect of the following:

- (a) Cash discount from customers Rs.4,92,380
- (b) Trade liability written back u/s 41 Rs.11,13,640
- (c) Income due to exchange rate fluctuation on import of raw material Rs.2,18,327.
- (d) Miscellaneous receipts on account of telephone Rs.42,783.
- (e) Interest on term loan written back Rs.39,202.”

18. In respect of (a) cash discount from customers (b) trade liability written back under Section 41 (c) exchange rate income on import of raw material and (d) miscellaneous receipts in the form of reimbursement of telephone expenses, canteen expenses for employees, the ITAT held that the Assessee had rightly claimed these amounts to be eligible for deduction under Section 80-I of the Act as they were “business income of the industrial undertaking or only a reimbursement to the Assessee for the expenses incurred.” As far as the question of interest on term loan written back, the issue has been restored to the AO for verification. The ITAT has held that if the interest had

been claimed as deductible expenditure in the earlier years, it should be treated as income derived from industrial activity

19. A written note has been submitted by Mr. Manchanda on the question of entitlement of the Assessee to deduction of the Section 80-I of the IT Act. Admittedly, the Assessee has a steering unit which was set up in the period relevant to AY 1989-90 but in respect of which no deduction was claimed since there was no taxable profit. This position continued in AY 1990-91 as well. The axle unit was the new unit for AY 1991-92. The Assessee had been treating the two units as separate undertakings and claiming deductions under Section 80-I of the Act for each unit. As far as AY 1991-92 was concerned, the revenue expenses in relation to the axle unit was capitalised. However, while filing the return the said amount was shown as revenue expenditure against the income of the existing steering unit. The main point urged by Mr. Manchanda is that the Assessee cannot be permitted to take contrary positions. In other words, according to him “the Assessee cannot be allowed to play hot and cold in the same breath and claim differently in different situations just to suit its own convenience.” He referred to para 17 of the order of the ITAT in relation to AY 1992-93 regarding computation of the claim of deduction under Section 80-I of the Act to be contrary to its own decision in the earlier paragraphs in the same order in the appeal for AY 1992-93. He urged that the central question is when there is more than one unit which is treated separately for the purposes of claiming deduction under Section 80-I of the Act, could the Assessee be permitted to adjust the loss of one unit against the profit of the other?

20. The submissions of Mr. Manchanda have been considered. In the first place it requires to be noticed that the question pertaining to Section 80-I of the IT Act has not been framed in ITA No. 160/2001 which relates to AY 1991-92 or in the Revenue's appeals for AYs 1992-93 and 1993-94. Further the question framed in relation to AY 1995-96 is not in the form urged now by Mr. Manchanda. It essentially pertains to individual items which will qualify for deduction under Section 80-I of the Act. The question framed is not about adjusting the loss of one unit against the profit of another.

21. Conscious of the above difficulty, Mr. Manchanda pleaded that the Court should now frame additional questions of law pertaining to Section 80-I of the Act for the four AYs in question. This request is unable to be acceded to by the Court. The appeals have been pending for more than 12 years and it is not possible at this stage to frame additional questions.

22. In any event, the issue appears to be covered by the decision of this Court in the Assessee's own case in ***Commissioner of Income Tax v. Sona Koyo Steering Systems Ltd. (2010) 321 ITR 463***. There the Court discussed in some detail the plea of this very Assessee, having two units namely a steering unit and an axle unit that only the profit making unit should be considered eligible for the purposes of computing the deduction under Section 80-I (1) read with Section 80-I (6) of the Act. The Revenue was in appeal in those cases against orders of the ITAT and the substantial question of law framed by the Court read as under:

“Whether, in the facts and circumstances of the case, the Income-tax Appellate Tribunal erred in law in holding that the loss of one unit could not be set off against the other unit in

view of the provisions of section 80-I(1), (6) and 80B(5) of the Income-tax Act, 1961?”

23. The above question was answered in favour of the Assessee and against the Revenue following the decision of the Supreme Court in *Synco Industries Ltd. [2008] 299 ITR 444 (SC)*. What is apparent is that the Court recognised that for computing deduction under Section 80-I (6) of the Act, a loss sustained in one of the units is not to be taken into account. Section 80-I (6) contemplates that only the profits shall be taken into account as if it was the only source of income. The Court therefore does not see any need to re-visit the said question.

24. Turning to the question framed, the plea of Mr. Manchanda that income from sale of scrap, interest received and miscellaneous income had got “no direct or immediate connection with the eligible activities of the industrial undertaking” is unacceptable. It overlooks the fact that scrap is generated from the production process and it is part and parcel of the main business activity. Likewise, cash discounts from customers, trade liability written back, exchange rate income on import of raw materials and receipts on account of telephone expenses and canteen expenses (in the nature of reimbursement by employees) cannot be said to have no nexus with the essential activity of the industrial undertaking. Consequently, the Court is unable to find any legal infirmity in the decision of the ITAT on this aspect.

25. Question (ii) in ITA 15/2004 is accordingly answered in favour of the Assessee and against the Revenue.

26. Resultantly, all four appeals ITA Nos. 160/2001, 166/2002, 9 of 2003 and 15/2004 are dismissed with no order as to costs.

S. MURALIDHAR, J

NAJMI WAZIRI, J

JULY 13, 2016
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