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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 677/2016
PR. COMMISSIONER OF INCOME TAX-6, NEW DELHI

..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing
Counsel, Income Tax Deptt. Along
with Mr. Yudhvir Singh, Advocate.

versus

NANDA MINT & PINE CHEMICALS LTD. Respondent
Through: Sh. S. Krishnan, Advocate.

And

+ ITA 680/2016
PR. COMMISSIONER OF INCOME TAX-6, NEW DELHI

..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing
Counsel, Income Tax Deptt. Along
with Mr. Yudhvir Singh, Advocate.

versus

NANDA MINT & PINE CHEMICALS LTD. Respondent
Through: Sh. S. Krishnan, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
23.09.2016

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The common question in ITA No. 677/2016 and ITA No. 680/2016 is as to the correctness of the ITAT's decision to allow the claim under Section 80-IB to the assessee/respondent.

The facts are that the assessee had set up a manufacturing unit in

an industrially backward area and was consequently entitled to incentives by way of excise duty refund for the concerned assessment years i.e. AY 2008-2009 and AY 2009-2010. While framing the assessment, the AO was of the opinion that the excise duty refund could not be claimed as a tax exempt income under Section 80-IB. This was based upon his appreciation of notice and findings that even though the assessee deposited excise duty and thereafter collected it from its customers and thereby comply by the terms of the exemption notification to be eligible for refund, the method of accounting adopted was questionable.

On an appreciation of these facts and based upon the decision of the Supreme Court in **Liberty India vs. Commissioner of Income Tax** reported in 2009 317 ITR 218 (SC), the AO added that an amount was in excess of ` 10 crores. The assessee succeeded in appeal before the CIT's appeal – a decision that was finally upheld by the ITAT.

It was urged on behalf of the revenue that the findings with respect to double benefit claimed by the assessee who collected the excise duty amount and thereafter claimed refund and sought to further benefit was overlooked by the appellate body in this case. It was submitted that the ratio in the subsequent judgment of the Supreme Court in **Commissioner of Income Tax vs. Meghalaya Steels Ltd.** reported in (2016) 383 ITR 217 (SC) and of this court in **Commissioner of Income Tax vs. Dharam Pal Prem Chand Ltd.** reported in (2009) 317 ITR 353 (Del) should not have been followed.

We notice, at the outset, that the nature of exemption sought and

claimed from the excise authorities was closely similar if not entirely identical with one in *Dharam Pal Prem Chand Ltd.* (supra).

The court in *Dharam Pal Prem Chand* (supra) was of the opinion that the revenue's contentions lacked merit and held as follows:-

20. In these circumstances, the submissions of the learned counsel for the Revenue is that there is no direct nexus between the refund of excise duty paid or that the refund of excise duty paid was dependent on the said notifications is, to say the least, completely untenable. As a matter of fact as found by the Tribunal as well as the Commissioner of Income-tax (Appeals), in the instant case, the assessee has adopted an incorrect accounting methodology. The assessee as found by the authorities below had on the payment of excise duty debited the profit and loss account and upon receipt of refund credited the profit and loss account. The net effect on the profit and loss was "nil" on account of the methodology followed by the assessee. There was thus, according to us, no reason to exclude the amount of refund of excise duty in arriving at "profit derived" for the purposes of claiming deduction under Section 80-IB of the Act.

21. The other contention of the learned counsel for the Revenue that the assessee by virtue of Notification No. 48 of 1999 would claim double by having passed on the duty paid to its customers then recovering it in the form of sale price, even while claiming deduction under Section 80-IB of the Act is also misconceived and deserves to be rejected at the very threshold. The reason being, firstly, no such case has been set up by the Revenue before any of the authorities below. This court cannot be called upon for the first time to appreciate submissions which have no factual foundation. Secondly, what is important to note is that the assessee as mentioned hereinabove is

in the business of manufacturing chewing tobacco and kiwam. These goods by themselves are not inputs for any other goods and hence, the apprehension of the Revenue that the assessee would claim a benefit of Notification No. 48 of 1999 has no substance.

28. Having considered the decisions cited by the learned counsel for the Revenue, as well as, by the counsel for the assessee, we are of the view that in the instant case, as noted above, the factual aspects are required to be kept in mind. The finding of the authorities below is, that the, refund of excise duty is pivoted on the manufacturing activity carried on by the assessee. Once such a finding of fact has been returned we need not go further and examine the immediate and proximate source of refund of excise duty. In other words, as to whether there was direct nexus between the refund of excise duty and industrial activity. As a matter of fact, in the questions proposed by the Revenue, there is no specific question, that this finding of the authorities below is perverse. There is of course a very broad based and general question that the order passed by the Tribunal is perverse in law and on facts. According to us, such a question is vague. A perusal of the grounds of appeal would substantiate this aspect of the matter. There is no ground taken by the Revenue whereby the substantial findings of fact have been challenged by the Revenue as being perverse."

This court notices that the ITAT has taken note of the subsequent reviewing of the Supreme Court in **Commissioner of Income Tax vs. Meghalaya Steels Ltd.** reported in (2016) 383 ITR 217 (SC).

We notice that the ITAT has in its impugned judgment considered *Liberty India (supra)*; it has also endorsed the view in *Dharampal (supra)*. In the light of these facts, we are of the opinion

that question of law urged in these two appeals does not arise. The question of law in ITA No. 677/2016 in addition is as to whether the sales of sister concerns at higher rates were genuine. The AO was of the opinion – after comparison that the net profitability of sales of other concerns was lower as compared to the assessee sister concern and consequently disallowed the amount in excess of ` 3.5 crores. The CIT (A) considered those relevant facts and held that the margin of variation was not as considerable as discerned by the AO. In the given circumstances and that consequently there was no abnormality in the profitability. In other words, the final finding in this regard was that the assessee did not load its tax exemption income eligible for treatment under Section 80-IB. Those findings were endorsed by the ITAT.

Having regard to the fact that these are pure findings of fact and further that the CIT(A) took note of the relevant facts and not only those appreciated and highlighted by the AO, we are of the opinion that no question of law arises.

The appeals are consequently dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 23, 2016/sapna