

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 271 of 2010 (O&M)

Date of decision: 2.5.2017

Nexo Industries Private Limited

.....Appellant

Vs.

Commissioner of Income Tax, Ludhiana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. S.K. Mukhi, Advocate with Mr. Jaswinder Singh,
Advocate for the appellant-assessee.

Mr. Z.S. Klar, Senior Standing counsel for the respondent-
revenue.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 29.5.2009, Annexure A.1, passed by the Income Tax Appellate Tribunal, Chandigarh Bench ‘B’, Chandigarh (in short, “the Tribunal”) in ITA No.231/CHD/2008 (Departmental Appeal), for the assessment year 2004-05, claiming following substantial questions of law:-

“(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in disallowing the claim for deduction under Section 80IB in respect of export rebate/refund of ₹ 1,09,26,642/- which is nothing but integral and inseparable part of business profits derived from exports of manufactured goods and assessed to

Income Tax as part of business profits under Section 28 in the hands of the appellant?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the correct claim of the appellant and the correct decision of the Commissioner of Appeals distinguishing clearly the facts of the present case from those of the decision in *Liberty India Vs. CIT* (2007) 207 CTR 243(P&H) without examining the correct factual and legal position?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in coming to the conclusion that the income derived from the export of goods manufactured is not eligible for deduction under Section 80IB of the Income Tax Act?

(iv) Whether on the facts and in the circumstances of the case, the Tribunal was justified in recording the erroneous findings in para 4 of its order, against the appellant when the factual position of the present case has been clearly stated by the appellant before the Assessing Officer as well as the Commissioner of Appeals who has rightly accepted that export rebate/refund was nothing but profits of business and allowed deduction admissible in respect thereof as evident from both the orders of lower authorities which had not been correctly seen by the Tribunal?

(v) Whether on the facts and in the circumstances of the case, the Tribunal was justified in equating duty drawback decided in *Liberty India's* case with the refund/rebate of Excise Duty on exports made of goods manufactured to treat the same as not being business profits and as if it is an export incentive unrelated to business?

(vi) Whether on the facts and in the circumstances of the case, the claim of the appellant under Section 80IB in respect of profits derived from the Industrial Undertaking

by including the export rebate/refund therein ought not to have been allowed in full, as claimed by the appellant.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee filed its return of income for the assessment year 2004-05 showing a total income of ₹ 6,12,61,027/- from which deductions of ₹ 1000/- under Section 80G, ₹ 1,22,76,375/- under Section 80IB and ₹ 72,61,014/- under Section 80HHC of the Act were claimed. The Assessing Officer allowed only ₹ 53,40,434/- as deduction under Section 80HHC of the Act and the remaining amount was disallowed by him. Out of deduction under Section 80IB of the Act, only ₹ 29,82,838/- was allowed by him and the balance of the claim was disallowed. The Commissioner of Income Tax (Appeals) [CIT(A)] allowed the claim under Section 80IB of the Act while upholding the disallowance under Section 80HHC of the Act. Aggrieved by the order, the revenue filed an appeal before the Tribunal. Vide order dated 29.05.2009, Annexure A.1, the appeal of the revenue was partly allowed. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. The issue that arises in this appeal as was urged by learned counsel for the appellant-assessee is whether deduction under Section 80IB of the Act could be declined in respect of excise duty rebate/refund.

5. The Tribunal while adjudicating the appeal of the assessee had noted that the assessee had consented that the issue was covered by the decision against it in *Liberty India's Vs. CIT*, (2007) 207 CTR 243(P&H). This fact was, however, disputed by the learned counsel for the assessee. It was claimed that Excise Duty paid at the time of purchase

of raw material was refunded to the assessee as after the manufacture of the goods, the goods were exported out of India. It was claimed that the Excise Duty refund was in adjustment of Excise Duty paid. It was a contra entry. Since the issue had been decided on the basis of concession given in *Liberty India's* case (supra), it was argued that in various decisions the relief under Section 80IB of the Act could not be declined on Excise Duty refund and thus, the matter requires to be re-adjudicated. It was prayed by learned counsel for the appellant which could not be effectively controverted by the learned counsel for the respondent-revenue that in such circumstances, the matter be remanded to the Assessing Officer who shall examine the factual matrix and keeping in view the legal position in this aspect decide afresh in accordance with law.

6. As a result of the above, it is held that the matter with regard to relief under Section 80IB of the Act requires to be re-adjudicated. Consequently, the matter is remanded to the Assessing Officer to decide it afresh, after hearing the parties by passing a speaking order in accordance with law. As a result, the appeal stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

May 02, 2017
'gs'

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes