

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of Decision: 11.07.2018

(1) ITA No. 194 of 2010

Ramesh Kumar Dudani

.....Appellant

**Versus**

The Commissioner of Income Tax, Chandigarh

.....Respondent

(2) ITA No. 379 of 2011

Ramesh Kumar Dudani

.....Appellant

**Versus**

The Commissioner of Income Tax, Chandigarh and another

.....Respondents

(3) ITA No. 384 of 2011

Ramesh Kumar Dudani

.....Appellant

**Versus**

The Commissioner of Income Tax, Chandigarh and another

.....Respondents

(4) ITA No. 223 of 2012

Ramesh Kumar Dudani

.....Appellant

**Versus**

The Commissioner of Income Tax, Chandigarh and another

.....Respondents

(5) ITA No. 431 of 2015

Ramesh Kumar Dudani

.....Appellant

**Versus**

The Commissioner of Income Tax, Mohali and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mrs. Radhika Suri, Senior Advocate with  
Mr. Manpreet Singh Kanda, Advocate  
for the appellant.

Mrs. Urvashi Dhugga, Senior Standing counsel  
for the revenue-respondents.

**AVNEESH JHINGAN, J.**

This order shall dispose of five appeals filed by appellant- Ramesh Kumar Dudani, Proprietor of M/s Technical Products Corporation, Mohali as common questions of law and facts are involved in all the appeals.

2. The appeals have been preferred by the assessee under Section 260-A of the Income Tax Act, 1961 ( for short 'the Act') against the orders passed by the Income Tax Appellate Tribunal, Chandigarh (hereinafter referred to as “the Tribunal”) as per details given hereinunder.

Assessment years involved in the appeals are tabulated below:

| <b><i>Sr. No.</i></b> | <b><i>This Court ITA No.</i></b> | <b><i>Appeal No. in Tribunal.</i></b> | <b><i>Order dated</i></b> | <b><i>Assessment year</i></b> |
|-----------------------|----------------------------------|---------------------------------------|---------------------------|-------------------------------|
| 1                     | ITA No. 194 of 2010              | ITA No.322/Chd/2009                   | 30.07.2009                | 2005-06                       |
| 2                     | ITA No. 379 of 2011              | ITANo. 1143/Chd/2010                  | 30.03.2011                | 2006-07                       |
| 3                     | ITA No. 384 of 2011              | ITA No.597/Chd/2011                   | 29.07.2011                | 2007-08                       |
| 4                     | ITA No.223 of 2012               | ITANo. 1147/Chd/2011                  | 30.01.2012                | 2008-09                       |
| 5                     | ITA No.431 of 2015               | ITA No. 309/Chd/2013                  | 10.07.2015                | 2009-10                       |

3. For convenience sake facts of ITA No.194 of 2010 are being extracted.

4. The appellant claimed that following substantial questions of law arise for consideration of this Court:

(i) Whether in the facts and circumstances of the case the

order passed by the Hon'ble Income Tax Appellate Tribunal is perverse as it has upheld the action of the Assessing Officer under Section 80IC(7) read with 80IA(10) contrary to the material on record and without application of mind?

(ii) Whether in the facts and circumstances of the case the Hon'ble Income Tax Appellate Tribunal was right in upholding the order passed by the Assessing Officer on conjectures and surmises disallowing the expenditure of Rs.5 lacs claimed by TPC-I and attributing the same to TPC-II when separate books of accounts had been maintained by the TPC-I and TPC-II, the authenticity of which has never been doubted by the Assessing Officer.

(iii) Whether the Assessing Officer could resort to the provisions of Section 80IC(7) read with Section 80IA(10) after granting benefit to TPC-II under Section 80IC of the Income Tax Act?

5. On 25.04.2011, the appeal was admitted for consideration of question No.(iii) only.

6. The brief facts necessary for adjudication of the present appeal as narrated in the appeal are that the assessee is a proprietorship concern. It has two manufacturing units-one at Mohali referred to as TPC-I and the second unit at Theog (Himachal Pardesh) described to as TPC-II. TPC-II qualified for deduction under Section 80 IC of the Act. TPC-I manufactures 172 products whereas TPC-II manufactures only 9 products. Only two products manufactured at TPC-I and TPC-II are common. The assessee maintained separate accounts of both the units. The accounts were duly audited. Assessment year 2005-06 was the first assessment year for claiming benefit under Section 80 IC of the Act. The appellant filed return declaring the total income as Rs.11,42,967/-. The return was taken up in scrutiny. The A.O. issued show cause notice for huge variation of net profit rate in TPC-I and TPC-II. The gross receipt in TPC-I was Rs.4 crores and gross profit was Rs.11,42,967/-. As regards TPC-II, the receipts were Rs.84,24,902/- and the profit was Rs.16,84,726/-. The assessee filed the reply explaining the

reasons for difference in profit. The A.O. after making the comparative chart of depreciation; administrative expenses and manufacturing expenses exercised power under Section 80IC(7) read with Section 80IA(10) of the Act and added expenses of Rs. 5 lakh to TPC-II, reducing the income of TPC-II. Consequently the profit of TPC-I was increased by Rs. 5 lakh. The assessment was finalised vide order dated 28.12.2007.

7. Aggrieved of the assessment order the assessee filed an appeal. The Commissioner of Income Tax (Appeals), Chandigarh, [CIT(A)] dismissed the appeal vide order dated 19.03.2009.

8. Further appeal was filed before the Tribunal and the same was also dismissed vide order dated 30.07.2009. Hence, the present appeal(s) by the assessee.

9. We have heard learned counsel for the parties and perused the paper book.

10. The issue involved in the present appeals is "*whether the Assessing Authority was justified in resorting to Section 80IA(7) read with Section 80IA(10) after granting benefit to TPC-II under Section 80IC of the Act?*".

11. Section 80IC of the Act provides for special provisions for deduction of incomes in respect of certain undertakings or enterprises in special category States. Sub-section (7) of Section 80IC of the Act makes the provisions of sub-section (5) and sub-sections (7) to (12) of Section 80IA of the Act applicable to eligible undertaking or enterprise under this Section. According to Section 80IA(10) of the Act, where profits in the eligible units have been inflated by an assessee, the Assessing Officer is empowered in terms of the aforesaid Section to determine the reasonable

profit.

12. The bone of contention of the entire controversy in the present appeals is the difference in the percentage of profit shown by TPC-I and TPC-II. The revenue authorities proceeded on the basis that plants and machinery of both the units were similar; the raw material used was the same and the end user of products of both the units were same. Moreover TPC-II is located at Theog (Himachal Pradesh) and being a new unit, the operational over head expenses, depreciation expenses and administrative costs were bound to be higher. The authorities had drawn a comparison of consumption of packing material, consumable store, telephone expenses, depreciation expenses and manufacturing expenses. Relying upon the comparison, the A.O. concluded that the case was covered under Section 80IA(10) and made an addition by disallowing expenses of Rs.5 lakh in TPC-II which has been sustained by CIT (A) and the Tribunal.

13. For ready reference Section 80IA (10) of the Act is reproduced below:

"Where it appears to the Assessing Officer that owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the assessing officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom."

14. From a perusal of the aforesaid provision, it is evident that it has to be established that the business between the two units was so arranged that more than ordinary profits were disclosed in the eligible unit/business. The matter was required to be examined in extenso in view of

various pleas raised by the assessee to substantiate the genuineness of its activities of the TPC-II. In our opinion, the Revenue Authorities have not dealt with the issue in right perspective as while adjudicating the matter they failed to appreciate that separate audited books of account had been maintained by both the units. The said books of account had never been doubted by the revenue nor any discrepancy was pointed out. Moreover, while comparing the various expenses, the facts in-totality are required to be considered. It needs special mention that TPC-I manufactures 172 products whereas only 9 products are being manufactured by TPC-II. In order to invoke Section 80IA(10) of the Act, in the facts of the present case, some link between the products was required to be established. As per case of the assessee, there are just two common products between the two units. Moreover the production facility at TPC-II was never doubted. It is not clear from the orders passed by the authorities below whether any verification was undertaken by deputing a personnel at TPC-II. The difference in percentage of profit calculated in two units by itself would not be sufficient to doubt the activities and take recourse to Section 80IA(10) of the Act. The fact that depreciation expenses at TPC-I were more as the land and building was owned in TPC-I whereas the TPC-II was running on a leased building was required to be kept in mind while adjudicating the issue. Further generator sets, office equipments, vehicles, computer, visual equipments, EPBX and fax machine, have been installed in TPC-I which were not in TPC-II.

15. The comparison of utilization of packing material consumed by the two units and then converting it into percentage was not sufficient to conclude as done by the authorities below. While examining the issue it

had to be kept in mind that the sale in TPC-I was about Rs. 4 crores whereas in TPC-II, it was approximately Rs.84 Lakhs. Similarly the figures of consumption of consumable store items have been converted into percentage. It is, thus, concluded that the comparative study of expenses and conclusion of the authorities below that TPC-I has a close connection with TPC-II as TPC-II does not have the requisite assets to run an independent unit, are not based on legally justified conclusions. Moreover, the assessing officer had held TPC-II entitled to the benefit under Section 80IA of the Act.

16. Suffice it to notice, that resistance of learned counsel for the revenue that the issue of maintenance of separate books of account cannot be considered as appeal was admitted only for consideration of question No.3 and not for question No.2 is not well founded. The substantial question of law has to be framed, not the arguments supporting the said question.

17. From the facts which are required to be examined between TPC-I and TPC-II the assessing officer and appellate authorities having failed to appreciate in true legal perspective, it cannot be concluded that the business of TPC-I had been so arranged in a manner to inflate the profit of TPC-II.

18. Thus, without expressing any opinion on merit, the matter is remanded back to the A.O. to decide the issue afresh after giving opportunity to the assessee. The A.O. shall consider the facts in totality and pass fresh order in accordance with law. Needless to say that illustrations noticed hereinbefore are the examples of material which the assessing officer is required to examine while adjudicating the issue of applicability of

Section 80IA(10) of the Act and it shall not be taken to be any expression of opinion on the merits of the controversy.

19. The appeals stand disposed of accordingly.

(AJAY KUMAR MITTAL)  
JUDGE

(AVNEESH JHINGAN)  
JUDGE

11.07.2018  
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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable:       | Yes/No |