

A.F.R.

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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITA/27/2012
RAJESH KUMAR DROLIA (HUF)
VS
COMMISSIONER OF INCOME TAX
(CENTRAL-III), KOLKATA

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 7th May, 2024

Appearance :
Sri J.P. Khaitan, Sr. Adv.
Sri Sanjay Bhowmik, Adv.
Smt. Swapna Das, Adv.
...for the appellant.

Sri Aryak Dutta, Adv.
...for the respondent.

1. This appeal relating to assessment year 2005-06 has been filed by the appellant/assessee praying for setting aside the order dated 12.8.2011 in ITA/1305/Kol/2008 (Deputy Commissioner of Income Tax, CC-XX, Kolkata Vs. Rajesh Kumar Drolia) in so far as it relates to deduction under section 80IB of the Income Tax Act, 1961 (hereinafter referred to as the Act, 1961).
2. This appeal was admitted on the substantial question of law by order dated 13.2.2012 passed by this Court which

is now being reframed with the consent of the learned counsel for the parties, as under -

"Whether under the facts and circumstances of the case the appellant/assessee is entitled for deduction under section 80IB of the Income Tax Act, 1961 on profits derived from repairs and maintenance service of the moulds manufactured in the appellant industrial undertaking?"

FACTS

3. Briefly stated the facts of the present case are that the appellant/assessee is "HUF". It is engaged in manufacturing of moulds supplied to the main group concerns (Drolia Group), namely, M/s. Today's Writing Products Limited (for short TWPL) and M/s. Premium Writing Products (for short PWP). During the assessment year relevant to the previous year in question, the appellant/assessee has sold moulds and certain parts manufactured by it in its industrial undertaking entitled for deduction under section 80IB of the Act, 1961. Apart from the above, the appellant/assessee received a sum of Rs.96,01,410/- towards 'job work charges' and for 'repairing and maintenance service'. The assessing officer while passing the assessment order dated 28.12.2006 did not allow deduction under Section 80IB with respect to the aforesaid sum of Rs.96,01,410/- holding that the said amount is not eligible for deduction. Aggrieved with the assessment order, the

assessee filed an appeal being 123/CC-XX/CIT(A)C-III/07-08 before the Commissioner of Income Tax (Appeals), Central - III, Kolkata which was allowed by order dated 28.3.2008. Aggrieved with the order of CIT(A), the revenue filed ITA/1305/Kol/2008 before the Income Tax Appellate Tribunal, 'B' Bench, Kolkata (for short, ITAT) which was partly allowed by the ITAT by the impugned order dated 12.8.2011 holding that the appellant/assessee is entitled for deduction with respect to the receipt of job work charges computed at 50% of Rs.96,01,410/-.The remaining 50% on account of repair and maintenance charges was held not to be eligible for deduction and, accordingly, the appellant/assessee was held to be not entitled to get deduction under section 80IB. Aggrieved with the order of the ITAT, the appellant/assessee has filed the present appeal challenging the order of the ITAT in so far as it denies the deduction on repairs and maintenance charges under section 80IB of the Act, 1961.

SUBMISSIONS

4. Learned counsel for the appellant/assessee submits that the activity of repairs and maintenance of moulds was closely related to the activity of manufacture of moulds manufactured in the industrial undertaking in question and, as such, deduction under section 80IB of the Act, 1961 cannot be denied to the appellant. In support of his

submission learned counsel for the appellant has relied upon judgments of Hon'ble Supreme Court in Commissioner of Income Tax Vs. Meghalaya Steels Limited (2016) 383 ITR 217 (SC) and Saraf Exports Vs. Commissioner of Income Tax (2023) 453 ITR 625 (SC).

5. Learned counsel for the respondent has supported the impugned order of the ITAT.

DISCUSSION AND FINDINGS

6. We have carefully considered the submissions of the learned counsel for the parties and perused the paper books.

7. Before we proceed to examine the rival submissions of the learned counsel for the parties, it would be appropriate to reproduce sub-sections (1), (2) and (4) of Section 80IB of the Act, 1961 as under -

"80-IB. Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.-(1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11-A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in Section 33-B, in the circumstances and within the period specified in that section;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India:

Provided that the condition in this clause shall, in relation to a small-scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words 'not being any article or thing specified in the list in the Eleventh Schedule' had been omitted.

Explantation 1.- For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as

machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:-

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;*
- (b) such machinery or plant is imported into India from any country outside India; and*
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.*

Explantation 2.- Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with;

- (iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.*

(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years

beginning with the initial assessment year and thereafter twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from such industrial undertaking:

Provided that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a cooperative society) subject to fulfillment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2004:

Provided further that in the case of such industries in the North-Eastern Region, as may be notified by the Central Government, the amount of deduction shall be hundred per cent of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years:

Provided also that no deduction under this sub-section shall be allowed for the assessment year beginning on the 1st day of April, 2004 or any subsequent year to any undertaking or enterprise referred to in subsection (2) of Section 80-IC.

Provided also that in the case of an industrial undertaking in the State of Jammu and Kashmir, the provisions of the first proviso shall have effect as if for the figures, letters and words "31st day of March, 2004", the figures, letters and words "31st day of March, 2012" had been substituted:

Provided also that no deduction under this sub-section shall be allowed to an industrial undertaking in the

State of Jammu and Kashmir which is engaged in the manufacture or production of any article or thing specified in Part C of the Thirteenth Schedule."

8. From bare reading of the afore-quoted provisions of the Act, 1961, it is evident that an industrial undertaking in an industrially backward State specified in the 8th Schedule **shall be entitled to 100% deduction of the profits and gains derived from such industrial undertaking manufacturing or producing any article or thing.** The deduction is available for five assessment years beginning with the initial assessment year and thereafter 25% of the profits and gains derived from such industrial undertaking manufacturing or producing any article or thing. Thus, the basic eligibility criteria under the aforesaid sub-sections 80IB of the Act, 1961 is that the assessee must be an industrial undertaking fulfilling all the conditions specified in sub-section 2, it must derive profits and gains from business under sub-section 4. **Therefore, an industrial undertaking in an industrially backward State specified in the 8th Schedule, to be eligible for deduction under section 80IB, must be manufacturing or producing any article or thing and the profits and gains derived from such activity of manufacture or production of any article or things.**

9. In the present set of facts we find that undisputably the receipt on account of repair and maintenance does not relate to profits and gains derived by the industrial undertaking from the business of manufacture or production of any article or thing. It is neither the case of the appellant/assessee that repairs of moulds was a necessary condition of contract of sale of moulds, nor any evidence in the form of such contract of sale or any other documentary evidence were produced by the appellant/assessee at any stage of the proceedings from assessment upto Tribunal stage. Under the circumstances, receipts from **repairs and maintenance of moulds by the appellant/assessee** cannot be said to be eligible for deduction under section 80IB of the Act, 1961 particularly when there was no direct nexus to the profits and gains derived from repairs and maintenance, with the manufacturing of moulds by the industrial undertaking.

10. The judgment of Hon'ble Supreme Court in the case of Meghalaya Steels Limited (supra) relied by leaned counsel for the appellant/assessee is distinguishable on facts, inasmuch as in that case the question of certain subsidies including transport subsidy granted by the Government to industries established in remote areas, was in question. The Hon'ble Supreme Court referred to

certain judgments in which it was observed that the object of transport subsidy is not augmentation of revenue instead the object is to improve trade and commerce between the remote parts of the country and other parts which was said to be achieved by making it feasible and attracting to industrial entrepreneurs to start and run industries in remote parts, by giving them a level playing field so that they could compete with their counterparts in central (non-remote) areas.

11. The judgment in the case of Saraf Exports (supra) relied by learned counsel for the appellant, in fact, does not support the appellant's case. In paragraph 34 of the said judgment the Hon'ble Supreme Court observed as under:

"34. On an analysis of sections 80-IA and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying sub-section(2), would be entitled to deduction under sub-section (1) only to the extent of profits derived from such industrial undertaking after specified date(s). Hence, apart from eligibility, sub-section (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the importance of the words, 'derived from industrial undertaking' as against 'profits attributable to 'industrial undertaking'."

12. Thus, on true construction of sub-Sections (1), (2) and (4) of Section 80IB of the Act, 1961 and in view of the law laid down by Hon'ble Supreme Court in the case of

Saraf Exports (supra), an industrial undertaking, which becomes eligible for deduction on satisfying sub-Section (2), would be entitled to deduction under sub-Section (1) **only to the extent of profits derived from manufacture or production of any article or thing by such industrial undertaking.** Thus, the industrial undertaking eligible for deduction under Section 80IB shall be entitled for deduction only from the profits and gains derived from industrial undertaking by manufacturing or producing article or thing and not from profits attributable to industrial undertaking. There is nothing on record to show that the repairs and maintenance charges have a direct nexus with the business activity of manufacture and sale of moulds by the appellant/assessee. Therefore, profits and gains derived by the appellant/assessee (industrial undertaking) from repairs and maintenance is not eligible for deduction under Section 80IB of the Act, 1961, since such profits and gains have not been derived by the industrial undertaking from the manufacture or production of any article or thing as provided under sub-Section (2).

13. For all the reasons afore-stated, we do not find any error of law in the impugned order of the ITAT. The appeal (ITA/27/2012) has no merit and is, consequently,

dismissed. The substantial question of law is answered in favour of the revenue and against the assessee.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

Sd/A/s.