



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH		
209-2		
1)		ITA-53-2002 (O&M) <u>Decided on : 03.09.2024</u>
M/s Micromation Pvt. Ltd.		... Appellant(s)
	Versus	
Commissioner of Income Tax, Chandigarh and another		... Respondent(s)
2)		<u>ITA-40-1999 (O&M)</u>
M/s Micromation Pvt. Ltd.		... Appellant(s)
	Versus	
Commissioner of Income Tax, Chandigarh and another		... Respondent(s)
3)		<u>ITA-101-2003 (O&M)</u>
M/s Micromation Pvt. Ltd.		... Appellant(s)
	Versus	
Commissioner of Income Tax, Chandigarh and another		... Respondent(s)
4)		<u>ITA-54-2002 (O&M)</u>
M/s Micromation Pvt. Ltd.		... Appellant(s)
	Versus	
Commissioner of Income Tax, Chandigarh and another		... Respondent(s)
5)		<u>ITA-206-2002 (O&M)</u>
M/s Micromation Pvt. Ltd.		... Appellant(s)
	Versus	
Commissioner of Income Tax, Chandigarh and another		... Respondent(s)



**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Alok Mittal, Advocate,
Mr. Ishwinder Singh, Advocate and
Mr. Shubham Thakur, Advocate
for the appellant(s) – assessee.

Mr. Yogesh Putney, Sr. Standing Counsel and
Mr. Vaibhav Gupta, Standing Counsel
for the respondent(s) – revenue.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of aforementioned appeals i.e. ITA-53-2002, ITA-40-1999, ITA-101-2003, ITA-54-2002 and ITA-206-2002, as the issue involved therein is identical.

However, for the purpose of disposal of these appeals, main/common order is being passed in ITA-40-1999.

2. The issue raised in the present appeal is no more *res integra* and we must appreciate the stand taken by the learned Senior counsel for the revenue with regard to the judgment cited at Bar i.e. **Commissioner of Income Tax v. Chetak Enterprises Pvt. Ltd., [2020] 423 ITR 267 (SC).**

3. In the present appeal i.e. ITA-40-1999, the appellant(s) – assessee has challenged the order dated **18.01.1999** passed by ITAT in Appeal No.ITA No.2131/Chandigarh/91 for Assessment Year 1990-91 and the orders passed by the ITAT for subsequent Assessment Years dated **01.10.2001** in ITA-53-2002, **01.01.2003** in ITA-101-2003, **01.10.2001** in ITA-54-2002 and **12.07.2002** in ITA-206-2002.

4. The facts which need to be noted for disposal of the appeals are that the appellant i.e. M/s Micromation Pvt. Ltd., was admittedly formed by conversion of a partnership into a Private Limited Company. All the assets



and liabilities of the firm as on 31st March, 1989 were taken over by the appellant – company and the balance of machinery was also taken over by the appellant – company, which is reflected from the audited accounts of the Assessment Year 1990-91, stating clearly that there was no revaluation of the assets.

As per the Memorandum of Association (MoA) of the appellant – company, it was to take over the existing business of the Micromation of the partnership concern.

5. Section 80-I allows deduction in respect of profits and gains to a firm or a proprietorship concern upto 20% of the such profits and gains, while deductions on the profits is available upto 25% to a Private Limited Company. Apparently, the partnership concern was therefore, converted into a Private Limited Company with the aforesaid aspect in mind.

6. Be that as it may, the appellant company filed the return declaring income of Rs.1,88,100/- on 31.12.1990, which was selected for scrutiny and the respondents disallowed the deduction claimed by the appellant under Section 80(I) of the Income Tax Act, 1961 on the ground that out of the total plant and machinery worth Rs. 2,41,922/-, the machinery taken over by M/s Micromation company was of the value of Rs. 1,03,163/- and the explanation to sub-section 80(I)(2) of the Income Tax Act and the proviso thereto provided that the total value of plant and machinery transferred should not exceed 20% of its value used for machinery or plant for business.

The appeal preferred by the appellant against the order by the Assessing Officer was rejected holding that benefit of Section 80(I) of the Income Tax Act was to be given only if the undertaking was not found by



splitting up or reconstruction of business already in existence or by transfer to new business machinery or plant previously used for any purpose. Appeal before the ITAT by the appellant – assessee also failed. The same was dismissed vide order dated 18.01.1999.

7. The appeal preferred by the appellant was rejected by CIT(A), Chandigarh and the ITAT has also dismissed the appeal vide its order dated 18th January, 1999.

8. The short question, which requires to be examined by this Court is to “whether the appellant Company could be legally denied deduction under Section 80-I for the unexpired period merely because the partnership concern carrying on the same activity was converted into a Private Limited Company, which too continued and carried on the same activity.”

9. The Supreme Court in Chetak Enterprises case (supra) has examined the identical question i.e.;

“what is the effect of conversion of partnership firm into a company under Part IX of the Companies Act, 1956 ? that can be discerned from Section 575 of the Companies Act, which reads thus :

“575. Vesting of property on registration.—All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.”

It is manifest that all properties, movable and immovable (including actionable claims) belonging to or



vested in a company at the date of its registration would vest in the company as incorporated under the Act. In other words, the property acquired by a promoter can be claimed by the company after its incorporation without any need for conveyance on account of statutory vesting. On such statutory vesting, all the properties of the firm, in law, vest in the company and the firm is succeeded by the company. The firm ceases to exist and assumes the status of a company after its registration as a company. A priori, it must follow that the business is carried on by the enterprise owned by a company registered in India and the agreement entered into between the erstwhile partnership firm and the State Government, by legal implication, assumes the character of an agreement between the company registered in India and the State Government for (i) developing, ii) maintaining and operating or (iii) developing maintaining and operating a new infrastructure facility.

8. *For the purpose of considering compliance of clause (a) of section 80-IA(4)(i), the assessee must be an enterprise carrying on business of (i) developing ii) maintaining and operating of (iii) developing maintaining and operating any infrastructure facility, which enterprise is owned by a company registered in India. That stipulation is fulfilled in the present case, as the registered firm was converted into a company under Part IX of the Companies Act on March 28, 2000, which is before the commencement of the assessment year 2002-03. For the assessment year under consideration, the activity*



undertaken by the assessee is only maintaining and operating or developing, maintaining and operating the infrastructure facility, inasmuch as, the construction of the road was completed on March 27, 2000 and the same was inaugurated on April 1, 2000, whereafter toll tax was being collected by the assessee-company.”

10. In another case involving transfer of industrial undertaking from proprietorship concern to a Company, the Division Bench of Allahabad High Court, in the case of **Commissioner of Income-Tax vs. Prisma Electronics**, 2015 (377) ITR 207 : Law Finder Doc Id # 814223, held as under:-

“11. From a perusal of the aforesaid provision, it is clear that section 84 is more or less the same as provided in section 80-IB of the Act. The Central Board of Direct Taxes issued a Circular F. No. 15/5/63-IT(A-), dated December 13, 1963, indicating that the benefit of section 84 is attached to the undertaking and not to the owner thereof and, consequently, the successor would be entitled to the benefit for the unexpired period of five years provided the undertaking is taken over as a running concern.

12. The same principle is applicable in the instant case. Admittedly, the undertaking was in existence since 2002. The proprietorship concern changed into a partnership firm. The benefit under section 80-IB of the Act is available to the partnership firm and the conditions imposed under section 80-IB(2)(i) does not come in the way.”



11. In the related appeals, the issue is same, except that the same are for the subsequent Assessment Years.

12. Having noticed the conclusions arrived at by the Supreme Court as well as by the Allahabad High Court in regard to the scope of benefit of Section 80-I upon the conversion of a proprietorship concern or the partnership firm to a Private Limited Company, is answered in favour of the assessee. We allow these appeals and hold the appellant(s) to be entitled the benefit under Section 80-I and the consequent benefit of deduction for the unexpired period.

Accordingly, the Assessing Officer shall now pass the appropriate orders.

All the appeals are allowed accordingly.

Pending misc. application(s), if any, shall also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

September 03, 2024

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No