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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 07.12.2023
Judgment pronounced on: 10.01.2024

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ITA 1021/2019

THE PR. COMMISSIONER OF INCOME TAX -6 Appellant
Through: Mr Aseem Chawla, Sr. Standing
Counsel with Ms Pratishtha
Chaudhay and Mr Aditya Gupta,
Advocates.

versus

NIRJA PUBLISHERS & PRINTERS PVT. LTD. Respondent
Through: Ms Sujatha Shirolkar, Advocate.

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ITA 157/2023

THE PR. COMMISSIONER OF INCOME TAX 6 Appellant
Through: Mr Ruchir Bhatia, Sr Standing
Counsel with Ms Deeksha Gupta,
Adv.

versus

NIRJA PUBLISHERS AND PRINTERS PVT. LTD. Respondent
Through: Ms Sujatha Shirolkar, Advocate.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:****CM APPL. 12487/2023 in ITA 157/2023 [Condonation of delay in re-filing the appeal]**

By way of this application, the appellant/revenue has sought



condonation of delay of 245 days in re-filing the appeal No. ITA 157/2023 after curing the defects raised by the Registry of this court. The delay is explained largely on account of collation of relevant records. There being no serious objection, the application is allowed and accordingly the delay in re-filing the appeal is condoned.

ITA 1021/2019 & ITA 157/2023

1. These two appeals between same parties are based on similar factual and legal matrix, so taken up together for disposal. The appeal bearing ITA No. 1021/2019 pertains to the Assessment Year 2011-12 while the other appeal bearing ITA No. 157/2023 pertains to the Assessment Year 2012-13. Both these appeals brought by revenue under Section 260A of the Income Tax Act seek to assail orders passed by the Income Tax Appellate Tribunal in the respective appeals. On advance notice, the respondent/assessee entered appearance through counsel. We heard learned counsel for both sides.

2. For the sake of convenience, the orders passed in these two appeals after preliminary hearings are extracted below:

2.1 ITA 1021/2019 Order dated 11.09.2023

“1. This appeal concerns Assessment Year (AY) 2011-12.

2. The appellant/revenue seeks to assail the order dated 08.07.2019 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”]. The appellant/revenue has proposed the following questions of law for consideration of this court:

(i) Whether on the facts and circumstances of the case, the ld.



ITAT was justified in not considering the facts that no new product was manufactured by Assessee after material received from holding company and as such assessee was not eligible for deduction under section 80IC of the Income Tax Act, 1961?

(ii) Whether on the facts and circumstances of the case, the Id. ITAT was justified in not considering the fact that total sale of assessee was made to the holding company, to be sold solely under the brand name of holding company and as such payment of trade discount to augment sale is a false claim and consequently the Assessing officer was justified in treating the expenditure as commission payment?"

3. We may note that insofar as the second question which is proposed by the appellant/revenue is concerned, the Tribunal has returned a finding of fact that the assessee sold books to its holding company i.e., S.Chand Co. Ltd., albeit, at a discount.

4. The Tribunal has also noted that the discount offered by the respondent/assessee was in the nature of trade discount and not commission.

5. Clearly, given this finding of fact, the respondent/assessee, as correctly ruled by the Tribunal, was not required to deduct tax at source under Section 194H of the Income Tax Act, 1961 [in short, "the Act"]. Therefore, the conclusion arrived at by the Tribunal, which is also the view taken by the CIT(A), is that the disallowance under Section 40(a)(ia) of the Act could not be sustained.

6. We may note that this view has been accepted by the Supreme Court in **Commissioner of Income-tax v. Ahmedabad Stamp Vendors Association**, [2012] 25 taxmann.com 201(SC).

7. Therefore, insofar as proposed question no. (ii) is concerned, in our view, that question does not arise for consideration.

8. As regards the proposed question no.(i), since Ms Sujatha Shirolkar, Advocate seeks accommodation, list the appeal on 07.12.2023".

2.2 ITA No. 157/2023 order dated 16.03.2023

"1. This appeal concerns Assessment Year (AY) 2012-13.

2. This appeal seeks to assail the order dated 14.11.2019 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

3. In passing the impugned order the Tribunal has followed its decision rendered for AY 2011-12.

3.1 Broadly, two issues arose for consideration before Tribunal. First, whether deduction claimed by the respondent/assessee under Section 80IC of the Income Tax Act, 1961 [in short, "the Act"] was sustainable? Second, whether trade discount offered by the respondent/assessee could



be treated as commission, as was done by the Assessing Officer (AO)?

3.2 The AO, after treating the trade discount as commission, concluded that since tax had not been deducted at source under Section 194H of the Act, the amount claimed as trade discount had to be added by taking recourse to Section 40(a)(ia) of the Act.

4. We have asked Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, as to whether the deduction was allowed by the AO in AY 2010-11, which was the initial year in which the petitioner had claimed the benefit under the provisions of Section 80IC of the Act.

4.1. Mr Bhatia affirms the position that the AO had in fact allowed the deduction. However, it is Mr Bhatia's contention that new facts had been found in the succeeding AY i.e., AY 2011-12.

4.2 It is also Mr Bhatia's contention that in the initial AY i.e., AY 2010-11, the return of the respondent/assessee has been processed under Section 143(1) of the Act.

5. We have perused the impugned order. Prima facie, according to us, the facts found by the Tribunal in AY 2011-12 do not appear to have undergone a change. Therefore, the AO's view that deduction should be denied under Section 80IC of the Act, seems to be untenable.

5.1 Both the CIT(A) as well as the ITAT have ruled in favour of the respondent/assessee. This is also the position with regard to the second issue, which concerns trade discount.

6. Since Mr Bhatia says that the appeal filed by the appellant/revenue concerning AY 2011-12 is listed on 23.03.2023, at his request, list the above-captioned appeal on the same date i.e., 23.03.2023".

3. Briefly stated, the circumstances relevant for present purposes are as follows.

3.1 Pertaining to the assessment years 2011-12 and 2012-13, the respondent/assessee timely filed the returns of income, which were processed under Section 143(1) of the Act and selected for scrutiny assessments, so notices under Section 143(2) of the Act were issued.

3.2 In the course of assessment proceedings, the Assessing Officer noticed that the respondent/assessee had claimed deductions under Section



80IC of the Act to the tune of Rs.7,88,63,013/- pertaining to Assessment Year 2011-12 and Rs.10,40,36,033/- pertaining to Assessment Year 2012-13. As regards the deduction pertaining to the Assessment Year 2011-12, on being called upon by the Assessing Officer to explain the claim, the respondent/assessee furnished detailed submissions, but the same were rejected by the Assessing Officer observing that the respondent/assessee did not carry out any printing or binding of books in the eligible undertaking at Rudrapur as neither the paper nor the printed material reached the eligible unit for printing, cutting and binding etc. and no manufacturing activity had actually taken place in the Rudrapur premises, therefore, the deduction of Rs.7,28,63,013/- under Section 80IC of the Act could not be allowed. Further, pertaining to the Assessment Year 2011-12, the Assessing Officer also made an addition of Rs.6,04,45,025/- under Section 40(a)(ia) of the Act on account of trade discount offered by the respondent/assessee to the buyer M/s S. Chand & Co. holding that the said discount was in the nature of commission on which tax deductible at source (TDS) under Section 194H of the Act was not deducted by the respondent/assessee.

3.3 As regards the deduction under Section 80IC of the Act claimed by the respondent/assessee for the Assessment Year 2012-13, the Assessing Officer reiterated the above mentioned reasoning of the previous year i.e., Assessment Year 2011-12 and held that the respondent/assessee had not carried out any printing or binding of books in the eligible undertaking at Rudrapur, so the deduction of Rs.10,36,64,265/- claimed by the respondent/assessee in this regard was liable to be disallowed. The Assessing Officer for the Assessment Year 2012-13 also took a stand similar



to the one pertaining to the Assessment Year 2011-12 as regards addition under Section 40(a)(ia) of the Act, thereby adding a sum of Rs. 3,96,77,265/- holding that the trade discount offered by the respondent/assessee to the buyer M/s S.Chand & Co. was in the nature of commission on which the respondent/assessee had failed to deduct TDS under Section 194H of the Act.

3.4 The respondent/assessee preferred appeals against the said orders of the Assessing Officer on both counts, pertaining to both Assessment Years. The Commissioner Income Tax (Appeals) allowed both appeals, holding that the material on record, including the additional evidence, established the claim of the respondent/assessee that from the premises of eligible undertaking, printing activity had genuinely been carried out, so the claim of deduction under Section 80IC of the Act was fully allowable; and that the material on record including the additional evidence clearly established that the payment made by the respondent/assessee to M/s S.Chand & Co. was in the nature of trade discount and not in the nature of commission, so there was no necessity to deduct TDS under Section 194H of the Act and as such, addition under Section 40(a)(ia) of the Act was not sustainable.

3.5 The appeals filed by the appellant/revenue pertaining to both assessment years were dismissed by the Tribunal by way of the orders, impugned in the present two appeals.

4. As mentioned above, these appeals revolve around two common issues, namely the deduction claimed by the respondent/assessee under



Section 80IC of the Act and the addition made by the Assessing Officer under Section 40(a)(ia) of the Act. As also mentioned above, the issue under Section 40(a)(ia) of the Act stands already covered in favour of the respondent/assessee by way of judgment of the Supreme Court in the case of ***Ahmedabad Stamp Vendors Association*** (supra).

4.1 Therefore, this court has to deal with only the first issue to the extent as to whether the Assessing Officer took a correct view by holding that the respondent/assessee was not entitled to claim deduction under Section 80IC of the Act because there was no printing or manufacturing of books in the eligible undertaking at Rudrapur.

5. During arguments, learned counsel for the appellant/revenue contended that the orders impugned in the present case are not sustainable since there is ample material on record to establish that no printing or binding of books was taking place in the eligible undertaking. The arguments advanced on behalf of the appellant/revenue in entirety dealt with the factual aspects, aimed at establishing that there was no printing or binding of books carried out in the eligible undertaking, therefore, the respondent/assessee was not entitled to claim deduction under Section 80IC of the Act. On the other hand, learned counsel for the respondent/assessee supported the impugned orders and contended that this court under Section 260A of the Act cannot examine a question of fact.

6. Evidently, neither side disputes the status of the respondent/assessee as running the eligible undertaking in terms of Section 80IC of the Act. The



only dispute in the present case is that according to the appellant/revenue, no printing or binding of books is carried out in the eligible undertaking of the respondent/assessee at Rudrapur, and there being no manufacturing activity, the respondent/assessee is not entitled to the deduction under Section 80IC of the Act. On the other hand, according to the respondent/assessee, as also held in the impugned orders, the process of printing and binding of books is certainly carried out in the eligible undertaking of the respondent/assessee at Rudrapur.

7. The question as to whether the exercise of printing and binding of books is carried out at the eligible undertaking of the respondent/assessee is a question of fact, on which findings of CIT(A) in favour of the respondent/assessee were confirmed by the Tribunal.

7.1 The relevant findings delivered by CIT(A) are extracted as follows:

“I find that in the case of the appellant, the AO has not disallowed the deduction u/s 80-IC on the ground of violation of prescribed conditions but on the basis of finding that the appellant did not actually carry out any operation at the premise of the eligible undertaking. Without prejudice, as the issue has been independently examined on merit and the appellant's claim of deduction u/s 80-IC in respect of publishing activity carried out from the premise of the eligible undertaking is found to be genuine, based on facts substantiated by relevant evidences, which have not been refuted by the AO in the remand report, the appellant's claim for deduction u/s 80-IC is held as fully allowable. Accordingly, the appellant gets full relief on this ground”.

7.2 There being no ground raised by the appellant/revenue alleging perversity in the said findings of facts, this court under Section 260A of the Act cannot venture into that aspect.



8. In view of aforesaid, we find that no substantial question of law arises for consideration in the above-captioned appeals. Consequently, both appeals are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

JANUARY 10, 2024/as