

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 445 of 2014

Date of Decision: 20.10.2015

Deepak Verma

....Appellant.

Versus

Commissioner of Income Tax-II, Chandigarh

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

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

PRESENT: Mr. Ravi Shankar, Advocate and
Mr. B.M. Monga, Advocate for the appellant.

Ms. Urvashi Dhugga, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 19.6.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 1026/CHD/2013, for the assessment year 2010-11, claiming the following substantial questions of law:-

- i. Whether the ITAT is justified in reversing the order of the CIT(A) while ignoring provisions of

section 80IA(10) of the Income Tax Act, 1961, though there is no cogent and tangible material/ evidence to show the 'business transacted' between the two units one at Mohali (Non exempt) and another at Baddi (Exempt), which is a 'sine qua non' for the application of section 80IA(10) and relying upon the only ground of higher profit rate which would itself be penalizing the efficient working of the Baddi unit and is illegal and unjustified in the light of judgment of Hon'ble Bombay High Court in the case of Schmetz India (P) Ltd. (supra)?

- ii. Whether the order of the ITAT is justified in not interpreting the mandate of Section 80IA(10) in its strict sense in the light of catena of judgments of Hon'ble Supreme Court like CIT v. ACE Builders (P) Ltd. (Supra), as Section 80IA (10) being a deeming provision, whereby a legal fiction is created, and can only be invoked subject to the fulfilment of all the ingredients stated in the section, which has not been done in the instant case as the AO has failed to discharge its onus/burden of proof of proving the twin conditions: 'business between them is so arranged' and the 'business transacted' between the two units?

- iii. Whether the ITAT is justified in re-allocating the

purchases by invoking section 80IA(10) by neither relying on the Account book results wholly and nor pointing out any iota of discrepancy in the Account books?

- iv. Whether the ITAT is justified in stating that when the end product is same the cost would also be same and thereby comparing the two units, particularly when both the units are drastically different working on different technologies and having different 'modus operandi' in view of the chart produced supra, and also cannot be said to have any connection within the meaning of section 80IA(10)?

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed return of income on 15.10.2010 for the assessment year 2010-11 declaring an income of ₹ 43,95,630/- and claimed benefit of deduction under Section 80IC of the Act at ₹ 76,85,061/-. The assessment was framed by the Assessing Officer vide order dated 26.2.2013 (Annexure A-1). The Assessing Officer instead of allowing 100% deduction under Section 80IC of the Act, re-allocated the purchases between exempt and non-exempt units without following the mandate of Section 80IA(10) read with Section 80IC(7) of the Act and made addition of ₹ 55,41,224/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The said appeal was partly allowed by the CIT(A) vide order dated 21.8.2013 (Annexure A-2) by deleting addition of ₹ 50,19,196/- made on account of

reallocation of purchases. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal who vide order dated 19.6.2014 (Annexure A-3) set aside the order of the CIT(A) and restored that of the Assessing Officer. Hence, the present appeal by the assessee.

3. We have heard learned counsel for the parties and perused the record.

4. The question that arises for consideration in this appeal is whether the Assessing Officer and the Tribunal were justified in invoking Section 80IA(10) of the Act while denying benefit of Section 80IC of the Act?

5. Section 80IC of the Act provides for special provisions for deduction of certain incomes in respect of certain undertakings or enterprises in certain 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.

6. In the present case, the Tribunal after analyzing the factual matrix had recorded a finding that the assessee had shown net profit rate of 12.66% on sales of ₹ 3.36 crores in Mohali unit whereas in Baddi unit, net profit was 57.95% on the turnover of ₹ 1.53 crores which was very high. Further, the Mohali unit had machinery installed worth ₹ 55,15,306/- and at Baddi unit it was only ₹ 6,60,972/- and the same products were sold from both the units at the same price ranging between ₹ 5,25,000/- to ₹ 6,25,000/-. By mere installation of a machine

of ₹ 6 lacs, it could not be presumed that the assessee was achieving economy of scale or some other technological development. The Tribunal had concluded that it was a simple case of inflation of profits in the eligible unit and as per Section 80IA(10) of the Act, the Assessing Officer has powers to compute the reasonable profit and the CIT(A) has wrongly observed that the Assessing Officer had not pointed out any discrepancy whereas the assessee had accepted wrong allocation of various expenses before the CIT(A). It was also noticed that the Assessing Officer has also given reasons showing that profits in exempt unit have been inflated. Accordingly, the Tribunal set aside the order of the CIT(A) and restored that of the Assessing Officer. The relevant findings recorded by the Tribunal read thus:-

“11. We have considered the rival submissions carefully and find that sub-section (7) of Section 80IC under which the assessee has claimed deduction reads as under:-

“(7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section.”

From the above, it becomes clear that provisions of sub-section (5) and sub-sections (7) to 12 of Section 80IA are also applicable for considering the claim of deduction under this section. Section 80IA(10) reads as under:-

“(10) 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.”

12. The reading of the above provision clearly shows that if Assessing Officer is of the opinion for any reason if the business is arranged so as to inflate profits of an eligible unit, then the Assessing Officer has the power to compute the profits of eligible unit on reasonable basis. Admittedly, in the case before us, the purchases are made from the common sources. Some of the customers are also common. The products manufactured by the assessee are also common. Even majority of the expenditure is also common and in fact the assessee has already conceded before the Ld. CIT(A) that expenses were not properly allocated and has accepted the reallocation of expenditure. In addition to these facts,

the assessee has shown net profit rate of 12.66% on sales of Rs.3.36 crores in Mohali unit whereas on turnover of Rs.1.53 crores, the net profit is 57.95% at Baddi unit which is very high. During the course of hearing, we had asked the assessee to file copy of the invoices to find out if the products were of so called better technology were sold at a higher price and sale invoices for both the units were filed on 22.5.2014.

13. The Assessing Officer in para 9 analyzed the reasons again before him for higher profits at Baddi unit. The first point mentioned is that according to Assessing Officer, the Mohali unit had machinery of about Rs.55,15,306/- whereas the machinery at Baddi unit was Rs.6,60,972/- and, therefore, technology could not be better for Baddi unit. However, we agree with the submissions of Ld. counsel for the assessee that machinery at Mohali unit was consisted of only two items, i.e., tools and equipments which had the opening WDV of Rs.4386.35 and machinery with a WDV of Rs.18,379.30. Thus, the total machinery is less than Rs.23,000/- which cannot be called machinery and it was admitted during hearing that this would consist of some screw drivers and drilling machine. At the same time the machinery at Baddi unit is also stands at Rs.6,60,972/- and assessee could not give exact details or how the better

technology could be adopted through this small machine. The other reasons have been discussed at Point-ii in para 9 which have already been reproduced above. But ignoring even those points if we compare the sales at both the places, we find no price difference. For example in case of Mohali unit out of 39 invoices in 17 cases the assessee had sold “Soap Wrapping Machine MDT-13K”. We are giving few instances below:-

Sl. No.	Date of Sale	Name of Customer	Product	Number of Product	Rate per Product (in Rs.)
1.	10.04.2009	M/s Power Soaps Ltd.	Soap Wrapping Machine-MDT-13K	02	525000.00
2.	14.04.2009	M/s Power Soaps Ltd.	Soap Wrapping Machine-MDT-13K	02	525000.00
3.	24.04.2009	M/s Kishoresons Detergent Pvt. Ltd.	Soap Wrapping Machine-MDT-13K	03	500000.00
4.	07.05.2009	M/s Fena Pvt. Ltd.	Wrapping Machines-MDT-13K	02	55000.00
5.	22.05.2009	M/s Kishoresons Detergent Pvt. Ltd.	Soap Wrapping Machine-MDT-13K	02	625000.00
6.	17.07.2009	Divij Detergents and Chemicals Pvt. Ltd.	Soap Wrapping Machine-MDT-13K	01	600000.00
			Change Parts	01	20000.00
7.	05.12.2009	M/s Patanjali Ayurved Ltd.	Soap Wrapping Machine-MDT-13K	04	625000.00

14. In Baddi unit also out of total 16 sales during the year, in six cases the assessee has sold the same machinery i.e. “Soap Wrapping Machine MDK-13K”

and the details in few cases is as under:-

Sl. No.	Date of Sale	Name of Customer	Product	Number of Product	Rate per Unit (in Rs.)
1.	17.01.2010	M/s Jyothy Laboratories Ltd.-II	Soap Wrapping Machine-MDT-13K	02	594044.55
2.	24.02.2010	International Traders	Soap Wrapping Machine-MDT-13K	01	579208.00
3.	24.02.2010	Precision Machinists	Soap Wrapping Machine-MDT-13K	01	500000.00
4.	24.03.2010	Rahul Health Care	Soap Wrapping Machine-MDT-13K	02	600000.00

15. The above clearly shows that the same products are being sold from both the units and at the same price ranging between ₹ 5,25,000/- to ₹ 6,25,000/- in both cases. How the machines were costing less at Baddi was not explained. When the end product is same, the cost would also be the same. By installing a machine of Rs.6 lakhs it cannot be said that the assessee is achieving economy of scale or some other technological development. It is a simple case of inflation of profits in the eligible unit and in such situation the Assessing Officer has clear powers in terms of Section 80IA(10) to compute the reasonable profit. The Ld. CIT(A) has misdirected himself by observing that Assessing Officer has not pointed out any discrepancy because the Assessing Officer has clearly pointed out wrong allocation of various expenses which was accepted by the

assessee before the CIT(A). Further, the Assessing Officer has also given reasons showing that profits in exempt unit have been inflated. In Section 80IA(10), it is clearly provided that if Assessing Officer has reasons that the business has been so arranged to show inflated profits in eligible unit then Assessing Officer has power to recompute the profits of such eligible unit. As seen from the sale invoice there is definitely a reason to believe that assessee has inflated the profits in eligible unit because the same product is being sold from both the units for almost identical price. In this background, we set aside the order of CIT(A) and restore that of Assessing Officer.”

7. Learned counsel for the assessee was unable to demonstrate that the aforesaid findings of fact recorded by the Tribunal are erroneous or perverse in any manner. Thus, no substantial question of law arises in this appeal. Accordingly, the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

October 20, 2015
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(RAMENDRA JAIN)
JUDGE