Reserved

Court No. - 10

Case :- INCOME TAX APPEAL DEFECTIVE No. - 82 of 2015

(Assessment Year 2007-08)

Appellant :- Mku (Armours) Pvt. Ltd.
Respondent :- Commissioner Of Income Tax Kanpur
Counsel for Appellant :- S.K. Garg,Ashsih Bansal
Counsel for Respondent :- C.S.C.

Alongwith

Case :- INCOME TAX APPEAL DEFECTIVE No. - 81 of 2015

(**Assessment Year 2009-10)**

Appellant :- Mku Pvt. Ltd.
Respondent :- Commissioner Of Income Tax Kanpur
Counsel for Appellant :- S.K. Garg,Ashish Bansal
Counsel for Respondent :- C.S.C.

Alongwith

Case :- INCOME TAX APPEAL No. - 36 of 2015

(**Assessment Year 2008-09)**

Appellant :- Mku Pvt. Ltd.
Respondent :- Commissioner Of Income Tax Kanpur
Counsel for Appellant :- S.K. Garg,Ashish Bansal
Counsel for Respondent :- C.S.C.

Hon'ble Arun Tandon,J.
Hon'ble Dr. Satish Chandra,J.

(**Delivered By:- Arun Tandon,J.**)

1. These three appeals have been filed by the assessees against the common order, dated 21.11.2014 passed by the Income Tax Appellate Tribunal, Lucknow in I.T.A. Nos.612, 401 and

152/Lko/2012 for the Assessment Years 2007-08, 2008-09; and 2009-10 respectively.

2. Common question of law as raised in all these appeals is as follows:-

> "Whether in the facts and in the circumstances of the case, the assessee is entitled to the benefit under Section 10-B of the Income Tax Act.?"

3. The facts are more or less identical in all these appeals. For the purpose of adjudication, the facts as on record of Income Tax Appeal No.82 of 2015 are being referred.

4. The 'appellant company' has set up an industrial undertaking at 118-E, Shyam Nagar, Kanpur. It is 100% export unit, as per the certificate granted by the Central Government under Section 14 of the Industries (Development and Regulation) Act, 1951. The assessee, during the period under consideration, was engaged in manufacture of 'Ballistic Helmet' and 'Bullet Proof (bullet resistant) Jackets" (hereinafter called 'Helmet and Jackets').

5. The assessee claimed benefit under Section 10B of the Income Tax Act, which was denied by the A.O. But the C.I.T.(A) has allowed the claim of the

assessee. However, the Tribunal has restored the order of the A.O. Being aggrieved, the assessees have knocked the door of this Court by filing the present appeals.

6. Sri S. K. Garg assisted by Sri Ashish Bansal, advocate on behalf of the assessees, submitted that the assessee company being '100% EOU' qualifies for exemption on purchase of raw materials meant for manufacturing under section 3B of the Trade Tax Act. Similarly, exemption under Section 10B of the Income Tax Act is allowable to the assessee.

7. On 25.2.2008, a survey under Section 133A was carried out at the factory premises of the assessee situated at 118E, Shyam Nagar, Kanpur. Certain documents and books of account were found and seized. On the spot only 17 machines were found installed at the factory premises, though the assessee had claimed that 94 machines were used for manufacture. The 77 machines were found at 'jacket division' of M/s MKU Pvt. Limited, 30 UPSIDC, Malwan & Salempur (Rooma). The seized loose papers i.e. two bills dated 7.3.2005 and 9.3.2005 disclosed engagement of cranes and labours for shifting of Hydraulic Press Machine to Malwan.

8. On the facts of the case, the A.O. opined that

the assessee is not 100% manufacturing unit, as maximum machines were installed at another division, doing manufacturing on its behalf.

9. Learned Counsel contended that the survey can have no bearing on the assessment of MKU (Armours) Private Ltd. for the reason that with effect from 1.4.2007, the entire industrial undertaking of the assessee had been transferred to MKU Private Ltd. with the due approval of the authorities concerned. In other words, the manufacturing actually had been "out sourced". It is also the submission of the learned counsel that the A.O. has wrongly denied the claim under Section 10B of the Act. The learned counsel further submits that the assessee is "100% export unit". Even if manufacturing of some items has been "out sourced" and the assembling is done by the assessee even then the assessee is entitled for the benefit under Section 10-B.

10. For the purpose, the learned counsel has drawn the attention of this Court towards an affidavit dated 11.6.2010, sworn by one Mr. Manish Khandelwal, Director of the company, where it is mentioned the commercial production of the 100% EOU was started w.e.f 1.11.2004. Some "job work process" was carried out from time to time on "out sourcing basis"

after obtaining due permission from Superintendent (Customs) Central Excise Division-III, Kanpur. Since the manufactured items, to be exported, were as per the specific requirement of the buyers of the foreign countries so the job work was got done from specialized "out sourcing unit", and such outsourcing work was always under control and personal supervision of the assessee. All the plant and machinery installed by the company M/s MKU (Armous) Pvt. Limited were new and were never used previously for any other purpose. It is also the submission of the learned counsel that the managerial and technical staff was available with the assessee for direct control and supervision of the goods to be manufacture through outsourcing.

11. The C.I.T.(A) has already verified this fact as mentioned in his order dated 15.7.2010. The C.I.T.(A) found that only a part of the manufacturing activity of 'Ballistic Helmets' and 'Bullet Proof (bullet resistant) Jackets' was out sourced. The entire raw material needed for the job work was procured by the assesee company and sent to the site of the job worker with due permission of the Excise Authorities. The job work was carried out by the job worker, under the supervision of the staff of the assessee. After the job work, the product was returned to the assessee factory, where final product was assembled,

packed and dispatched to the overseas buyers.

12. Learned counsel, further submitted that the powers of the first appellate authority are co-terminus with the power of the A.O. as per the ratio laid down in the case of **Jute Corporation of India Vs. C.I.T. 187 ITR SC 688, 693.** In support of his submissions counsel for the assessee relied upon the ratio laid down in the following cases:-

(i). Commissioner of Income-tax Vs. Talwar Khuller (P.) Ltd. [1999] 235 ITR 70 (All);

(ii). Commissioner of Income-tax Vs. Prabhudas Kishordas Tobacco Products P. Ltd. [2006] 282 ITR 568 (Guj.);

(iii). Liberty Group of Marketing Division Vs. Commissioner of Income Tax [2007] 294 ITR 294 ITR 61 (P&H).

Regarding the allegation of splitting up and reconstruction, he placed reliance on the following judicial pronouncements:-

(i). CIT Vs. Quality Steel Tubes P. Ltd. [2006] 280 ITR 254 (All);

(ii). CIT Vs. Starlight Silk Mills Pvt. Ltd. [2006] 280 ITR 37 (Guj).

(iii). Textile Machinery Corporation Ltd. Vs. CIT [1977] 107 ITR 195;

(iv). Hindustan Malleables and Forgings Ltd. Vs. Income Tax Officer [1978] 112 ITR 389 (Patna)

(v). CIT Vs. Simmonds Marshall Ltd. [1986]

161 ITR 817

13. On the other hand, Sri Dhananjay Awasthi, learned counsel for the department has supported the impugned order. On the strength of the written submission, he submits that earlier, the assessee company was known as A.R. Plimsol. In the year 2004-05 it was renamed as MKU Armor Pvt. The assessee has used old machinery. The assessee was not involved in any manufacturing activity. It had "outsourced" the manufactuer of the goods and had no direct supervision and control. The assessee is not entitled to the exemption under Section 10-B of the Income Tax Act. In support of his arguments he relied on the ratio laid down in the following cases:-

(i). **Commissioner of Central Excise, Chenai II Commissionerate Vs. F. Harley and Company (2010) 9 SCC 104;**

(ii). Grasim Industries Vs. Union of India (2011) 10 SCC 653;

(iii). Union of India Vs. Delhi Cloth and General Mills AIR 1963 SC 791;

(iv). Deepkiran Foods (P.) Ltd. Vs. Assistant Commissioner of Income-tax, Range-1 [2014] 46 taxmann 415 (Gujrat); and

(v). Brook Bond India Ltd. Vs. Commissioner of Income-tax [2004] 269 ITR 232 (Calcutta).

14. Lastly, the learned counsel for the department submits that most of the activities are "outsourced" and very small part of the manufacture was

undertaken by the assessee. This is established from the fact that the expenses incurred by way of job charges paid to the outsourcing unit during the period under consideration was 8.5 time more than the expenses incurred on wages and salary of the staff of the assessee. A very small amount was spent on power, fuel and water (i.e. Rs.5.98 lacs only). The conclusion drawn by the C.I.T.(A) is incorrect and the order passed by the Tribunal is reasonable.

15. We have heard both the parties and gone through the material available on record.

For facilitation, Section 10B of the Income Tax Act is reproduced below:-

Sec.10B *(2) This Section applied to any undertaking which fulfills all the following conditions, namely:-*

(i) it manufactures or produces any articles or things or things computer software;
(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

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

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

16. From the records, it appears that during the year under consideration, part of the activity connected with manufacturing of 'Ballistic Helmets' and 'Bullet Proof (bullet resistant) Jackets' had been outsourced, for which job charges had been paid to the job worker, who were none else but the sister concern of the assessee, by the name of MKU Pvt. Ltd. The job charges were paid in continuation to the similar job charges paid in preceding two assessment years, i.e. assessment years 2005-06 and 2006-07 which were the “1st year” and “2nd year” respectively of the existence of the '100% EOU'. Copies of the agreements executed for the job works connected with manufacture of “Ballistic Helmets” and “Bullet Proof (bullet resistant) Jackets” effecting from 1.4.2006 had been placed before the Tribunal, which form part of paper book before us also. In the said agreements, overall flow chart for manufacturing of Ballistic Helmets and Bullet Proof (bullet resistant) Jackets disclosed. Manufacture of Ballistic Helmets involves 14 stages and the manufacturing of Bullet Proof (bullet resistant) Jackets involves 7 stages. Out of such 14 and 7 stage, only 5^{th} and 3^{rd} stages respectively had been outsourced. Rest of the activities were carried out in the industrial site of the assessee situated at 118E, Shyam Nagar, Kanpur.

17. We have also examined the manufacturing

process of the final products with the help of photographs at various stages. During the course of arguments, learned counsel for the assessee points out that 'outsourcing' was limited to certain well defined 'process' and did not cover manufacturing of the entire products. Looking to very critical and sensitive nature of final products the entire outsourcing was under the control and supervision of the managerial and technical personnel of the assessee company available with it.

18. Under the circumstances the 'outsourcing' was limited only to a part of the overall manufacturing activities as were needed to be carried on for the purpose of finished products in the form of Ballistic Helmets and Bullet Proof (bullet resistant) Jackets. Section 10-B provides for exemption on manufacture or produce. The word 'manufacture' has been defined as under:-

> *"**(a). Section 10AA***
> *(iii). "manufacture" shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act, 2005.*
>
> ***(b) Section 2(r)** (Special Economic Zones Act 2005)*
>
> *"manufacturer" means to make, produce, fabricate, assemble, process or bring into existence by hand or machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair remaking, re-engineering and includes agriculture, aquaculture, animal husbandry,*

floriculture, horticulture, pisciulture, poultry, sericulture, viticulture and mining"

(c). Inserted by the Finance Act 2009

(29BA) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing -

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use: or

(b) brining into existence of a new and distinct object or article or thing with a different chemical composition or integral structure."

In the case of ***Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation (No.1) (1991) 188 ITR 370*** decided by this Court it was observed:-

"The assessee imported innumerable components of a tractor. These various parts were first assembled together in turn resulted in a tractor. The components imported by the assessee did not have propulsion and could not be called a tractor. The assessee claimed that its activity required labour, skill and management and that it was an industrial undertaking which manufactured or produced articles and was entitled to relief under Sections 80-I and 80-J of the Income Tax Act, 1961. The Tribunal held that the assessee was an "industrial undertaking" in so far it was engaged in assembling of tractors:"

In the case of ***Commissioner of Income Tax Vs. Prabhudas Kishordas Tobacco Products P. Ltd. (2006) ITR 568 (Guj)*** it was observed that:-

"that tendu leaves and tobacco, which are used

as inputs, do not retain their independent identity after the bidis are rolled after undergoing several process. Commercially, the final product is known in the trade as a distinct commodity and has a separate market. Furthermore, merely because an assessee gets the work done through contract workers, in other words, enters into a contract with the workers and pays them per piece the relief could not be denied. The test is whether the outside agency works directly under the supervision and control of the assessee, it being immaterial whether the processing is done by the workers employed by the assessee at a place outside the premises of the assessee. In relation to the additional reason given by the Assessing Officer for denying relief under section 80-I of the Act, both the determining whether a unit is a small scale industrial undertaking or not, while ascertaining the monetary limit laid down in the provision, all assets of the business were not to be taken into consideration. The Tribunal was justified in treating the activities carried on by the assessee as amounting to manufacture of bidis, entitling the assessee to relief under section 80HH and 80-I"

In the case of ***Commissioner of Income Tax Vs. Penwalt India Ltd. (1992) 196 ITR 813 (Bom)*** it was observed that:-

The assessee would be said to be engaged in the manufacturing activity if he is doing a part of the manufacturing activity by himself and, for rest of it, engages the services of somebody else on a contract other than a contract of purchase.

The assessee canvassed orders for supplying, erecting and commissioning sugar and tea machinery. The assessee's activity consisted of (I) canvassing of orders, (ii) preparing of designs and drawings on the basis of orders, (iii) placing orders for manu8facture of machinery with TH, (iv) to see that the manufacturing process is carried on by TH under the direct supervision of the assessee-company, (v) to have a check over the quality and control and to be responsible for the proper functioning of the machinery and guarantee after sale service for a stipulated period. The assessee claimed special deduction under section 80-I of the Income Tax Act, 1961."

In the case of ***Commissioner of Income Tax Vs. Elgi Ultra Industries Ltd. TC(A) Nos.451 of 2006 and 218 & 219 of 2007 dated 10.8.2012*** it was observed that the assessee himself is not personally engaged in manufacture, would not disentitle assessee from claiming the relief as one engaged in manufacturing activity, so long as assessee exercises control in work entrusted to job workers and the assessee will be entitled for benefit of manufacturing:-

"The order of the authorities below show that the assessee exercised supervision and control in the manufacturing of the parts done by the job workers on the materials supplied by the assessee in according to the specification in the dyes supplied by the assessee. They were subjected to quality control

> *too. Thus even though the assessee had not employed its own employees, yet, the fact is that at every stage the assessee had extracted control over the job work as though they were employees of the assessee. Given the fact that the dyes and the materials were given by the assessee to the job workers, who had merely bestowed their labours, the case of the assesee that it qualify for relief u/s 80IA has to be accepted*."

In the case of ***Orient Longman Ltd. Vs. Commissioner of Income Tax, Delhi-II 130 ITR 477*** it was observed that:-

> "*That though the assessee as a publisher would not be doing more than the manuscript and preparing the same for printing and book binding, yet the fact that printing and book binding was done by some else did not imply that someone else was the manufacturer. It was the business of the assessee to get the books manufactured by getting the manuscript, designing the nature of the book, finishing the anticipated product and then selling the product after getting it made. Therefore, the assessee was an "industrial company" within the meaning of s. 2(6)(c) and was entitled to be assessed at the concessional rate of tax in accordance with the provision of the Act."*

In the case of ***Addl. Commissioner of Income Tax, West Bengal-III Cultta Vs. A. Mukherjee And Co. (P.) Ltd. (1978) ITR 719 Vol 113*** it was observed that:-

> "*In order that a publisher of books should be a*

manufacturer of books it is wholly unnecessary for him to be a book binder himself. A publisher may get the books printed by any printer but the printer is not a manufacturer but a mere contractor."

In the case of ***Commissioner of Wealth Tax, Agra Vs. Mubarakali Khan (1980) 123 ITR 102*** it was observed that:-

"The assessee was a partner in two firms which were engaged in the manufacture of biris. The assessee claimed that the firms were "industrial undertakings" as defined in the Explanation to s. 5(1) (xxxi) of the W.T. Act, 1957, and the assessee's share in the firms was exempt from tax in view of s. 5(1)(xxxii) of the Act. The method of manufacture of biris involved the following process. The firms purchased tendu leaves and tabacco and these were given to local contractors for getting the biris manufactured. The labourers cut the useless portion of tendu leaves from all side and then cut the leaves to small pieces of required size. These pieces were then rolled in the shape of biris. Tobacco was filled and the top portion was closed and the biris were tied up with a thread. The biris were then brought to the factory of the firms and were heated for a short time. They were then packed in bundles of 25 each, wrapped in specially designed paper bearing trade mark and label of the firms. Therefore, from the tendu leaves and the tobacco, a new and different article, viz., biris, emerge as a result of various processes to which the tendu leaves and the tobacco were subjected. Therefore, the firms were industrial

> *undertakings as contemplated by the Explanation to s. 5(1)(xxxi) of the Act and the assessee was entitled to the exemption of the value of his shares held in the two firms under s. 5(1)(xxxii) of the Act*."

19. In the light of above discussion, we are of the view that the assessee is a manufacturer of the 'Ballistic Helmets' and 'Bullet Proof (bullet resistant) Jackets'. Only a part of the manufacturing activities was got done by the assessee from outside agency and that to under the direct control and supervision of the managerial and technical staff available with the assessee. Therefore, even on the basis of such an outsourcing the assessee has to be held to be the 'manufacturer' of the products for which it had been approved as 100% EOU. Accordingly it cannot be denied the benefit of exemption under section 10B of the Act. In the instant case, a new product has come out at final stage. It is not the case of changing the label or the cover of the product. When totally new product came into existence after the entire process then we are of the view that the assessee is entitled to the benefit of Section 10B of the Act. We set aside the impugned order passed by the Tribunal and restore the order passed by the first appellate authority pertaining to the benefit of exemption under Section 10B of the Income Act.

20. Having answered the core issue in favour of the

assessee we proceed to deal with the appeals no. defective 81 of 2015 and 36 of 2015 which relates to MKU Private Ltd. for the assessment years 2008-08 and 2009-10. In these two appeals, the Tribunal has held that, since the benefit under Section 10B had not been allowed to predecessor company i.e. MKU (Armours) Private Ltd. the same cannot be allowed to the successor i.e. MKU Private Ltd. This objection of the Tribunal gets overturned in view of our finding that MKU (Armours) Private Ltd. are entitled for exemption under section 10B of the Income Tax Act.

21. Suffice it to say that the view of the Tribunal is wholly misconceived. It may be mentioned that in terms of the agreement dated 19.3.2007, effective from 1.4.2007, the entire industrial undertaking, lock stock and barrel had been taken over by MKU Private Ltd. with due approval of the competent authoruty as designated under Industries (Development) Regulation Act 1953 and Excise Authorities. The premises of MKU (Private) Ltd., the successor had duly been approved, licenses were surrendered by the former in favour of the later. The name of implementing agency i.e. MKU Private Ltd. was substituted in place of MKU (Armours) Private Ltd., by the authorities. Therefore, it is not a case where part of the machines have been transferred from MKU (Armours) Private Ltd. to MKU Private Ltd. The

provisions contained in sub-section (7A) as have been inserted w.e.f. 1.4.2004, with simultaneous abolition of sub-section (9) and (9A) of section 10B, provides for continuance of benefit in favour of the successor unit, for the unexpired period.

22. The intention behind the insertion of said sub-section (7A) was clarified by CBDT circular no.7 of 2003 dated 5.9.2003 reported in (2003) 263 ITR 62 (St.) which reproduced hereunder:-

> *21. Allowing deduction under sections 10A and 10B, to the resulting entity in the case of amalgamation or demerger:*
>
> *21.1 The deduction under sections 10A and 10B, are not allowed to the assessee where the ownership or the beneficial interest in the undertaking is transferred by any means, due to the provisions of the sub-section (9) of section 10A and sub section (9) of section 10B. However, this condition is not applicable in certain cases, such as where a firm or sole proprietary concern is succeeded by a company as a result of the reorganization of the business, or where as a result of change in ownership, the resultant entry is a public limited company or a venture capital company.*
>
> *21.2 With a view to give boost to the export-led growth, and to eliminate the hurdles in the Mergers and Acquisitions (M&A) and other modes of business restructuring, a new sub-section (7A) in section 10A and a new sub section (7A) in section 10B have been*

inserted to provide that where an undertaking of an Indian company is transferred to another company under a scheme of amalgamation or demerger, the deduction shall be allowable in the hands of the amalgamated or the resulting company. However no deduction shall be admissible under this section to the amalgamating company or the demerged company for the previous year in which amalgamation or demerger takes place. As a consequence, sub-section(9), (9A) and the Explanation below thereto in sections 10A and 10B, become redundant and have been omitted.

21.3 The amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years.
[Sections 7(e), 7(f), 7(g), 8(b), 8(c) and 8(d)]

23. Needless to mention that a circular, particularly beneficial circular, instruction, press note etc as issued by CBDT have got a binding effect on the tax administration and it is obliged under the law to give effect to the same un-hesitatingly, as per the principle laid down in umpteen number of case laws decided by the Hon'ble Apex Court, for example:-

(i) Union of India & Another v Azadi Bachao Andolan and another reported in (2003) 263 ITR 706; and

(ii) State of Kerla vs. Kurian Abraham Pvt. Ltd. reported in (2008) 303 ITR 284 (SC)

24. Reference may also be had to law laid down in the following judgments:-

1. CIT Vs. Bullet International reported in (2012) 349 ITR 267 (Alld)

".....There is no other provision for disallowance of benefit to assessee under section 10-A of the Act. The C.I.T. (A) in his order has quoted the relevant extract from the Board's Circular No.7/2003 dated 05/9/2003 and has come to the conclusion that the Board agrees that benefit is attached to the undertaking and not to owner thereof. It is an acknowledged legal position that beneficial circular issued by CBDT is binding on the department. Reference can be made in this regard to a recent judgment of Supreme Court in Catholic Syrian Bank Ltd. Vs. Comissioner of Income Tax, Thrissur, JT 2012 (2) SC 493. Paragraph 21 is reproduced below:

> *"21. Now, we shall proceed to examine the effect of the circulars which are in force and are issued by the Central Board of Direct Taxes (for short, `the Board') in exercise of the power vested in it under Section 119 of the Act. Circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. These circulars have the force of law and are binding on the income tax authorities, though they cannot be enforced adversely against the assessee. Normally, these circulars cannot be ignored. A circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. So long as the circular is in*

force, it aids the uniform and proper administration and application of the provisions of the Act. {Refer to UCO Bank, Calcutta v. Commissioner of Income Tax, W.B. (1999) 4 SCC 599]}."

(Page 270)

"It is not disputed before us that for the earlier assessment years exemptions have been granted to the undertaking. In this view of the matter, the Tribunal was justified in holding that the assessee is entitled to get exemption under Section 10-A of the Act, 1961. The argument of the learned counsel for the department that since the proprietorship has been converted into partnership, therefore, this disentitles the assessee to claim benefits under Section 10-A of the Act,1961 does not borne out either from the plain language of sub-sections (9) and (9A) of Section 10-A of the Act, 1961 or in view of the Circular of the CBDT referred to above. No substantial question of law is involved in the appeal."

(Page 270 & 271)

(Section 10A & 10B are peri-materia with each other)

2. Woco Motherson Elastomer Ltd. Elastomer Ltd. Vs. Deputy CIT (Delhi Tribunal) reported in 36 Taxman.com 534.(2013) 59 SOT 147 (judgment dated 17th May, 2013.

"The main objection of the Assessing Officer is regarding splitting of the business. The Assessing Officer held that assessee company has been formed and has taken over the assets of the existing business by splitting the business of M/s MSSL.

While holding such a finding, the Assessing Officer has ignored the fact that it was not a case where a part of plant & machinery or other assets belonging to an undertaking were transferred. The whole undertaking consisting of all assets and liabilities as a going concern was acquired by the assessee company. It cannot be said that the undertaking has been formed by splitting or re-construction of business already in existence."

3. CIT Vs. Heartland KG Information Ltd. reported in (2014) 100 DTR 18 (Madras).

Conclusion : *The assessee having acquired its undertaking from one M/s KGISL with all the assets and liabilities as a going concern and the said KGISL enjoying the benefits of s.10A, the assessee as a Software Technology Park was entitled to relief under s. 10A even though it claimed relief under s.10B and alternatively u/s 10A; prohibition under section 10A(2)(iii) was not attracted as the transfer was not that of plant and machinery alone but of sale of whole business unit.*

Cases referred to

AGS Tiber Chemicals Industries (P) Ltd. Vs. CIT (1997) 141 CIT (Mad) 467: (1998) 233 ITR 207 (Mad)

Chokshi Metal Refinery vs. CIT (1977) 107 ITR 63 (Guj)

CIT vs. Bullet International (2012) 349 ITR 267 (All)

Circular referred to

Circular No. F.No.15/5/63-IT (A-1) dt. 13th Dec. 1963

Circular No.7 of 2003 dt. 5th Sept., 2003

4. CIT Vs. WEP peripherals Ltd. reported in 2014 362 ITR 508 (Karnataka)

"The expressions employed in sub-section (1) of Section 80IB "any business", "such business" and "eligible business" read with expression "in the case of an industrial undertaking" as occur in sub-section (3) of Section 80IB, in our opinion, it is a clear indication that the deduction contemplated under this provision is relatable to the unit/business/industrial undertaking. Therefore, whosoever is running the unit/industrial undertaking having domain over it, is entitled for deduction as contemplated by Section 80IB of the Act.

(Page 512)

Insofar sub-section (12) of Section 80IB of the Act is applicable only in the case, where there is an Amalgamation or demerger. That does not mean that a transfer of industrial undertaking by any other mode is not entitled to claim deduction under Section 80IB. In other words, it would not be correct to say that deduction under Section 80IB is available only where transfer of the unit/industrial undertaking is under the scheme of amalgamation or demerger. It is not in dispute that the unit/industrial undertaking, in the present case, enjoyed the deduction under Section 80IB from April 1, 1993 till 30.08.2000 i.e., 10 till the unit/industrial undertaking was transferred to the assessee."

(Page 512)

[this sub-section (12) of section 80IB corresponds to sub-section (7A) of section 10B]

25. In the case of **CIT vs. Heartland Delhi**

Transcription Services Pvt. Ltd. reported in (2014) 366 ITR 523, the Hon'ble Delhi High Court has ruled that after removal of sub sections (9) and (9A) from the statute book w.e.f. 1.4.2004 and simultaneous insertion of sub-section (7A) w.e.f. the same date, benefit under section 10B is applicable even where the ownership of the industrial undertaking, in continuity. In arriving at the said conclusion the Hon'ble Delhi Court has referred to and relied upon various case laws as has been referred to in the preceding paragraphs and finally held that sub section (7A) is an 'enabling provision', meant for ”continuity” of benefit under section 10 B, even after change in ownership of the 'industrial undertaking'.

26. Thus the question of law are answered in favour of the assessee and against the department in all these appeals.

27. In the result all the appeals filed by the assessees are allowed. No costs.

Order Date :-_*18*__/ _*04*__2015
Dev/-

(Dr. Satish Chandra,J.) (Arun Tandon, J.)