

RESERVED**Court No. - 32****Case :-** INCOME TAX APPEAL No. - 267 of 2005**ASSESSMENT YEAR 1997-98****Appellant :-** M/S Sai Computers (P) Ltd. Meerut**Respondent :-** Joint Commissioner Of Income Tax, Special Range, Meerut**Counsel for Appellant :-** Rishi Raj Kapoor, Ankit Saran, Mayank Agrawal**Counsel for Respondent :-** Sc, A. Kumar, A.N. Mahajan, B.J. Agarwal, D. Awasthi, G. Krishna, R.K. Upadhyay, S. Chopra**Hon'ble Tarun Agarwala, J.****Hon'ble Dr. Satish Chandra, J.****(Per Hon'ble Dr. Satish Chandra, J)**

The present appeal is filed by the assessee against the impugned order dated 17th February 2005 passed by the Income Tax Appellate Tribunal, Delhi in ITA No. 920/DEL/2001/2004 for the assessment year 1997-98.

On 24.09.2007, a Coordinate Bench admitted the appeal on the following substantial question of law :

(i) *Whether on the facts and in the circumstances of the case, the Tribunal is legally justified in disallowing the claim of Deduction under Section 80 IA at Rs. 1,22,719/-?*

(ii) *Whether on the facts and in the circumstances of the case, six persons working under control and supervision of the assessee, are not employee of the assessee?*

(iii) *Whether on the facts and in the circumstances of the case, disallowance of Staff Welfare Expenditure at Rs. 5,000/- is legally justified?*

The brief facts of the case are that the assessee company has two units namely M/s. Sai Electricals; and M/s. Sai Computer Consultancy. M/s Sai Electricals was engaged in the manufacturing and sale of transformers, electricals goods, job work etc. On the other hand, M/s. Sai Computer Consultancy was engaged in the process of

data feeding, accounts, reports, data processing etc. It has three sub units at Meerut, Lucknow and Ludhiana.

During the assessment year under consideration, the assessee has claimed the deduction under Section 80-IA in respect of M/s. Sai Electricals as well as M/s. Sai Computer Consultancy, Lucknow unit. But the same was denied by all the lower authorities and confirmed the deduction of Rs. 1,43,620/- on the ground that the total number of employees was less than ten as per Section 80-IA(10) of the Act. Being aggrieved, the assessee has filed the present appeal.

Heard Shri Ankit Saran, learned counsel for the assessee and Shri Dhananjay Awasthi, learned counsel for the Department.

From the record, it appears that the assessee has maintained the separate books of accounts for M/s. Sai Electrical and M/s. Sai Computer Consultancy. The accounts of the units were separately maintained and workers were appointed independently in both the units. The Assessing Officer observed in its order that the assessee did not employ more than ten workers which is the requirement under Section 80-IA(2)(v). The claim under Section 80IA was denied solely for the reason that the number of employees was less than ten. Section 80-IA(2)(v) of the Income Tax is as under :-

*".....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...." (Emphasis is added)*

The CIT(A) in its order has observed that there were 14 workers serving with the assessee out of which two were the Security Guards. The CIT(A) has also observed that the Security Guard cannot be considered as having been employed in connection with the business of the industrial undertaking and therefore they were excluded. Out of remaining staff, six persons were employed on contract services. These persons were described as contractors and were not counted as the employees of the assessee in terms of Section 80IA (2)(v), so the deduction was disallowed.

It may be mentioned in the case of ***CIT vs. V.B. Naranía & Co. (2001) 252 ITR 884 (Guj)***, it was observed that the persons doing the work on contract basis will have to be counted for the purpose of Section 80-IA (2)(v) for the reason that the assessee was controlling not only the work to be done by these persons, but also the manner of doing the work.

Similarly, in the case of ***CIT vs. Prihviraj Bhoorchand (2006) 280 ITR 94 (Guj.)***, it was held that the workers are engaged on contract labour basis can be said that the industrial undertaking of the assessee employs twenty or more workers in the manufacturing process carried on by it. The term employed by the statute is "employs" twenty or more workers. The plain dictionary meaning of the said term "employ" is to use the services of a person in return for payment.

In the instant case, the assessee was a company and the total number of staffs was fourteen, out of which two were the Security Guards. Thus, 12 persons were engaged in the unit of the assessee out of which six were on contract basis, but they were working for the assessee as per direction of the assessee. In other words, the assessee was controlling not only the work to be done by these persons, but also the manner of doing the work. Thus, these contract persons will have to be counted for the purpose of Section 80-IA(2)(v). When it is so, then the assessee will get the benefit of deduction under Section 80IA of the Act for the assessment year under consideration for a sum of Rs. 1,43,620/-.

The answer to the substantial question nos. 1 and 2 is in favour of the assessee and against the Department.

The question no. 3 is related disallowance of Rs. 5,000/-. The assessee has spent a sum of Rs. 16,885/- for tea, coffee, cold drinks, snacks etc. The same was disallowed by the A.O. under Section 37(2) of the Act. Finally, the Tribunal has sustained disallowance of Rs. 5,000/- on **estimate basis** and given the relief of the balance amount.

By considering the totality of the facts and circumstances of the case, it appears that the Tribunal has given the relief on **estimate basis**, which is a question of fact as per ratio laid down in the following cases :-

- I. New Plaza Restaurant Vs. I.T.O. 309 ITR 259 (H.P);
- II. Sajay Oil Cake Vs. C.I.T. 316 ITR, 274 (Guj.);
- III. Vijay K. Talwar Vs. C.I.T. (2011) 1SCC 673 ; and
- IV. Commissioner, Custom Vs. Stoneman Marbels (2011) 2SCC 758.

In view of the above, the order of the Tribunal is hereby sustained to the extent it disallowed the amount of Rs. 5,000/-. Thus, the question no. 3 is in favour of the Department and against the assessee.

In the result, the appeal filed by the assessee is partly allowed as stated above.

Order Date :- 13/02/2015

Anurag/-

(Dr. Satish Chandra, J.) (Tarun Agarwala, J.)