Court No. - 39 **Reserved**

Case :- INCOME TAX APPEAL No. - 562 of 2012
(A.Y. 1997-98)
Appellant :- Commissioner Of Income Tax, Meerut & Another
Respondent :- M/S Translam Ltd
Counsel for Appellant :- A.N. Mahajan, S.C.,R.K. Upadhyay
Counsel for Respondent :- S. Agarwal,R.R. Agrawal

AND

Case :- INCOME TAX APPEAL No. 570 of 2012
(A.Y.-1996-97)
Appellant :- Commissioner Of Income Tax, Meerut & Another
Respondent :- M/S Translam Ltd
Counsel for Appellant :- A.N. Mahajan, S.C.,R.K. Upadhyay
Counsel for Respondent :- S. Agarwal,R.R.Agrawal

Hon'ble Tarun Agarwala,J.
Hon'ble Dr. Satish Chandra,J.

(Delivered by Dr. Satish Chandra,J.)

Both the appeals have been filed by the department against the consolidated order dated 26.08.2004, passed by the Income Tax Appellate Tribunal, New Delhi in I.T.A. No.1769 & 1770/Del/2001 for the assessment years 1996-97 & 1997-98.

On 26.08.2009, both the appeals were admitted by a Co-ordinate Bench on the following substantial question of law:-

> *"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal have erred in law in holding that sub section (10) of section 80-1A was not applicable to the case relying on the ratio of law laid down by the Apex Court in the case of Bajaj Tempo Ltd. Vs. CIT (1992) 62 Taxman 480 ignoring the ratio of law laid down by the Apex Court in the case of CIT Vs. Sterling Foods Ltd. reported in 237 ITR 479 and CIT Vs. N.C. Buddhiraja & Co. (1993) 204 ITR page 142?"*

The brief facts of the cases are that, during the assessment year under consideration, the assessee company set up a new unit at Sansarpur Terrace, District-Kangra, (Himachal Pradesh), for manufacture and sale of Lamination tordials cores and transformers etc. It was claimed by the assessee that said unit is located in industrially backward area therefore the profits and gains of the said unit are eligible for 100% deduction under Section-80IA of the Income Tax Act. For the purpose, the component of income includes the interest income earned by the assessee company on account of charge of overdue interest from customers to whom sales were executed from Himachal unit on account of late payment of their dues and also towards bank interest. The total claim for the deduction under Section-80 IA was at Rs. 65,24,023/-, but the A.O. has allowed partial deduction of Rs. 25,93,772/-. The remaining amount was disallowed by the A.O. and the same was upheld by the First Appellate authority. However, the Tribunal has allowed entire claim of the assessee. Being aggrieved, the department has filed the present appeal.

With this background, heard Sri R.K. Upadhyay, learned counsel for the department, who has justified the order passed by the A.O. He submitted that in the case of ***CIT Vs. Sterling Foods (1999) 237 ITR 579***, it was held that:-

> *"The assessee was engaged in processing prawns and other sea food, which it exported. It also earned some import entitlements granted by the Central Government under an Export Promotion Scheme. The assessee was entitled to use the import entitlements itself or sell the same to others. It sold the import entitlements that it had earned to others."*

It was also held that:-

> *"There must be, for the application of the*

> *words "derived from", a direct nexus between the profits and gains and the industrial undertaking. In the instant case, the nexus was not direct but only incidental. The industrial undertaking exported processed sea foods. By reason of such export, the Export Promotion Scheme applied. Thereunder, the assessee was entitled to import entitlements, which it could sell. The sale consideration therefrom could not be held to constitute a profit and gain derived from the assessee's industrial undertaking. The receipts from the sale of import entitlements could not be included in the income of the assessee for the purpose of computing the relief under section 80HH of the Income-tax Act, 1961."*

He also submitted that the interest income cannot be allowed under Section-80 IA as it has nothing to do with the backwardness of the area. It has also been submitted by the learned counsel for the department that all the units of the assessee company are intermixed and the expenses on account of interest, advertisement and publicity, packing and forwarding miscellaneous expenses etc. were mostly debited in head office account though they were pertaining to the Sansarpur unit also. The A.O. further applied Global method of computation under Section-80 IA as provided under clause (10) of Section- 80 IA. He readout the provision of Section-80 IA (10) as under:-

> *"Where it appears to the Assessing Officer that, owing to the close connection beteent he 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 purpose of the deduction under this*

> *section, take the amount of profits as may be reasonably deemed to have been derived therefrom":*

Lastly, he submits that the A.O. has justified in restricting the deduction to a particular amount, so he made a request to set-aside the order passed by the Tribunal.

On the other hand, Sri Suyash Agrawal, learned counsel for the assessee had justified the impugned order passed by the Tribunal. He submitted that the Himachal units was established with the funds which came out from the head office. The expenses were debited with the head office account and the Himachal unit is not commensurate with the comparative figures with the sales effected at the head office and at the eligible unit. He also submitted that the assessee maintained the separate account books for the eligible units therefore, the A.O. has made out a case purely on presumption and surmises. According to learned counsel for the assessee, Section-80 IA(10) is not applicable in the instant case as the A.O. has not brought any evidence on record to prove any material against the assessee, so the A.O. has wrongly applied the said provision.

We have heard both the parties at length and gone through the materials available on record. From the record it appears that, the assessee has claimed the deduction under Section-80 IA. As per the ratio laid down in the case of ***CIT Vs. Delhi Press Patra Prakashan Ltd. (2013) 355 ITR 1 (Delhi)***, it was observed that:-

> "*The Commissioner (Appeals) held that the Assessing Officer had not pointed out any instance of the assessee inflating the profits either by charging higher rates or suppressing the expenditure and in the absence of any such instance of manipulation, the Assessing*

> *Officer was not correct in recomputing the profits on the basis of estimation. The Tribunal held that the nature of business of the first unit and the fourth unit of the assessee were entirely different and there was no justifiable reason for the Assessing Officer to compare the profit margin of the two units. The assessee had maintained separate books in respect of the fourth unit and no material or specific defects had been pointed out by the Assessing Officer in the books which were produced before him for verification during the course of the assessment proceedings."*

On the similar analogy, the Hon'ble Apex Court in the case of ***Arisudana Spining Mills Ltd. Vs. CIT (2012) 348 IT 385 (SC)*** held that benefit under Section-80 IA is not applicable when the assessee had not maintained the accounts for manufacture of yarn actually produced as a part of the industrial undertaking.

In the instant case, the assessee was maintaining the separate accounts for each unit as mentioned by the Tribunal, so, the assessee is entitled for the benefit under Section-80 IA and specially when the necessary condition of Section-80 IA (!0) has not been fulfilled by the A.O. to prove that the business between the eligible units and other units are so arranged that the business transaction between them produces more profit to the eligible business. The A.O. has not given any adverse finding on the basis of books of account produced by the assessee. The A.O. has also not pointed out any specific item of the eligible unit which is debited by the head office. In these circumstances, we are of the view that assessee is entitled for benefit of Section-80 IA.

Regarding the component of interest, it may be mentioned that Delhi High Court in the case of ***CIT Vs. Advance Detergents Ltd. (2011) 339 ITR 81 (Delhi)*** observed that:-

> *"Interest received from the trade debtors is deductible under Section-80 IA."*

In the said case, it was also observed that:-

> *" The order of the Assessing Officer was confirmed by the Commissioner (Appeals). The Tribunal directed the Assessing Officer to compute the deduction under section 80-1A of the Act treating the income as business income."*

Similarly, in the case of Nirma Industries Ltd. Vs. Deputy Commissioner of Income Tax (2006) 283 ITR 402 (Guj.), it was observed that:-

> *"Thus, in principle, in reality, the transaction remains the same and there is no distinction as to the source. While computing the special deduction under section 80-I, interest received from trade debtors towards late payment of sale consideration is to be included in the profits of the industrial undertaking."*

In the light of the above discussion and by considering the totality of the facts and circumstances of the case, we find no reason to interfere with the impugned order passed by the Tribunal. Hence the same is hereby sustained alongwith the reasons mentioned therein.

The answer to the substantial question of law is in favour of assessee and against the department.

In the result, both the appeals filed by the department are dismissed.

Order Date :- 17/10/2014
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(Dr. Satish Chandra,J.) (Tarun Agarwala,J.)