

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.601 of 2007

Date of decision: 7.2.2008

**Commissioner of Income Tax-I,
Ludhiana**

.....Appellant

Versus

**Mahavir Spinning Mills Ltd,
Vardhman Complex, Chandigarh
Road, Ludhiana**

.....Respondent

**CORAM:- HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE RAKESH KUMAR GARG**

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Present: Mr. Sanjeev Bansal, Advocate for the appellant-revenue.

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Rakesh Kumar Garg, J.

The revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 against the order dated 27.4.2007 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh in ITA No.368/CHD/2002 in the case of respondent-assessee for the assessment year 1998-99 raising the following substantial questions of law:-

- (A) "Whether the Income Tax Appellate Tribunal has erred in law in granting exemption u/s 10B, when no claim was made by the assessee in the return of income or the revised return, which is in violation of the Hon'ble Supreme Court decision in the case of Goetze (India) Ltd. 204 CTR 182?"
- (B) Whether on the facts and in law, the Hon'ble Income Tax Appellate Tribunal was justified in granting the benefit of Deduction u/s 10B on conversion of an

existing unit into an Export Oriented Unit from a subsequent date, by ignoring the provisions of sub section (2) of section 10B?”

(C) Whether on the facts and in law, the Hon'ble Income Tax Appellate Tribunal was justified in allowing the bad debt of Rs.1.00 lac which had not formed part of total income of the assessee in earlier previous year and was of Capital expenditure in nature?”

The respondent filed return of income for the assessment year 1998-99 on 30.11.1998 declaring income of Rs.22,59,76,930/-. Later on the respondent filed revised return of income on 21.3.2000 declaring total income of Rs.22,01,69,050/-. During assessment proceedings the assessee contended that income of one of its units, Arihant-II is exempt u/s 10B. The assessment was completed by the Joint Commissioner of Income Tax, Special Range, Ludhiana on 30.3.2001 at an income of Rs.28,97,90,970/- under Section 143(3) and the claim of Rs.1 lac as bad debt claimed by the assessee was also disallowed.

Being aggrieved against the said order of the Assessing Officer, the respondent preferred appeal before the Commissioner of Income Tax (Appeals)-I, Ludhiana. In appeal, the Commissioner of Income Tax (Appeals)-I, Ludhiana vide his order dated 31.3.2002 upheld the decision of the Assessing Officer on the issue of 10B with the observation that the respondent has not fulfilled the conditions of section 10B(2) while filing its claim before the Assessing Officer. The Commissioner of Income Tax(Appeals) confirmed the sum of Rs.1 lac disallowed as bad debt with the view that the item is definitely capital in nature and cannot be allowed under Section 36(1)(vii)/37(1) of the Act.

The assessee filed further appeal before the Tribunal against

the order of the Commissioner of Income Tax (Appeals). The Tribunal vide order dated 27.4.2007 passed in ITA No.368/CHD/2002 decided the issue in favour of the respondent. It has observed that the respondent-company came into operation during the assessment year 1991-92 whereas the circular No.1/2005 was issued on 6.1.2005. Since the circular is not with retrospective effect, and the assessee unit got registered as 100% EOU during the financial year relevant to assessment year 1995-96, as the permission was granted by Govt. of India, Ministry of Industry, Department of Industrial Development, Secretariat for Industrial Approval, EOU Section New Delhi vide their letter dated 28.10.94 the deduction shall be restricted to the profit derived from exports from and after the date of approval of DTA unit as 100% EOU and not for the earlier period.

As regard the issue of bad debt of Rs.1 lac, the Tribunal in its order allowed the appeal of the respondent with the view that the matter is pending before the Hon'ble Jurisdictional High Court in the case of CIT vs. Vardhman Polytex Ltd.(ITA No.241 of 2004) dated 21.8.2006 with a rider that if the decision in the case of CIT vs. Vardhman Polytex Ltd. is reversed by the Hon'ble Larger Bench that will be binding on the respondent.

Sh. Sanjiv Bansal, counsel for the appellant has strongly argued that Section 10B (2) of the Income Tax Act, 1961 clearly envisages that the benefit of Section 10B is not available to a unit formed by splitting up or the reconstruction of the business already in existence. Circular No.1 of 2005 was issued on 6.1.2005 and as such the Tribunal was not justified in granting the benefit of the circular to the respondent. It has also argued by him that the Tribunal was not justified in allowing the deduction of Rs.1 lac as bad debt and the amount was capital in nature and had never formed a part of taxable income of the respondent.

The contention raised by the revenue is without any merit.

The assessee has claimed exemption under Section 10B for the first time vide letter dated 19.1.2001. Admittedly, the impugned exemption was not claimed by the assessee in the original as well as revised return. This unit came into operation in the assessment year 1991-92 but during the financial year 1994-95 got converted into 100% export oriented unit (EOU) with the permission of the Department of Industrial Development, Ministry of Industry, Govt. of India, New Delhi vide letter dated 28.10.1994. Admittedly, Arihant Spinning Mills Unit-II (ASM-II) came into operation as DTA unit for the first time at Malerkotla, Distt. Sangrur (Punjab) during the assessment year 1991-92 and was eligible for deduction under Section 80-I of the Act and during the financial year relevant for the assessment year 1995-96 the said unit was got registered as 100% EOU. The whole controversy is that the assessee claimed deduction under Section 80-I during the assessment proceedings and claimed exemption under Section 10B of the Act after its conversion as 100% EOU. In such a situation, it has to be analysed in the light of both the sections, i.e. Section 10B and 80-I, and their requirement.

After going through the record of the case, the Tribunal has given a finding of fact that the unit of the assessee was entitled to the benefit under Section 10B of the Act. Admittedly, the circular No.1/2005 is clarificatory in nature and the same is also binding upon the department.

In view of these findings of fact no substantial question of law arises in the present case and the same is hereby dismissed.

(RAKESH KUMAR GARG)
JUDGE

February 7, 2008
ps

(SATISH KUMAR MITTAL)
JUDGE

