* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : October 22, 2007
Date of decision : October 25, 2007

\+ **ITA No. 995/2007**

HONDA SIEL POWER PRODUCTS LTD. ..... Appellant
Through Mr. Ajay Vohra with Ms. Kavita Jha, Advocate

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through Ms. Prem Lata Bansal with Mr. Vishnu Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S.MURALIDHAR

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

Dr. S. MURALIDHAR, J.

1. Aggrieved by a decision dated 21st April, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "G", New Delhi ('Tribunal') in ITA Nos. 2852/Del/99 and 3144/Del/99 for the Assessment Year 1995-96, the Assessee has filed an appeal under Section 260-A of the Income Tax Act, 1961 ('the Act').

2. The Assessee has urged that the following questions of law arise for consideration by this Court:

"(a) Whether on the facts and in the circumstances of

> the case, the Tribunal erred in law in upholding the order of the Assessing Officer in reducing the profit earned on sale of spare parts and imported gensets from the income of the eligible undertaking(s) for the purpose of computing deductions under Section 80-HH and 80-I of the Act?
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> (b) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the profit from the sale of spare parts and imported gensets could not be regarded as income derived from the eligible undertaking(s) for the purpose of computing deductions under Section 80-HH and 80-I of the Act?
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> (c) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in segregating after sale service from the activity of manufacturing of products by the Appellate company for the purpose of deductions under Section 80-HH and 80-I of the Act?"

3. The Appellant is engaged in the manufacture and sale of portable gensets and water pumps. In the return of income for the Assessment Year 1995-96, filed on 30th November, 1995, the Assessee disclosed a business income of Rs.4,48,18,770/-. The Assessee claimed a deduction under Section 80-HH of the Act at Rs.2,56,76,813/- and under Section 80-I of the Act at Rs.3,20,96,017/- respectively. The Assessee imported certain spare parts and components which were used in the manufacturing of gensets as well as for providing after-sales service to customers. Additionally, the Assessee imported gensets of a certain capacity which were not being manufactured in India to complement its product profile and present to the customers a choice from a complete range of gensets.

4. The Assessing Officer ('AO') denied the claim of deduction under Section 80-HH and 80-I of the Act in respect of the profits earned from both the

sale of spare parts and components as well as the sale of imported gensets on the ground that the profits therefrom could not be considered to be income "derived" from the industrial undertaking.

5. In the appeal filed by the Assessee, the Commissioner of Income Tax (Appeals) ['CIT(A)'], by an order dated 22nd April, 1999 held that the profits arising from the sale of spare parts was integral to the manufacturing activity and therefore, the deduction in respect of such profits under Section 80-HH and 80-I of the Act was admissible. The CIT(A) however upheld the order of the AO disallowing the deduction under Sections 80-HH and 80-I of the Act in respect of profits derived from the sale of imported gensets.

6. Aggrieved by the order of the CIT(A), both the Revenue and the Assessee filed appeals. The Assessee contended before the Tribunal that deduction under Sections 80-HH and 80-I of the Act should have been allowed in respect of the profits arising from the sale of imported gensets whereas the Revenue contended that no such deduction should have been allowed in respect of the profits earned from the sale of spare parts. Since both the questions were connected, the Tribunal considered the appeals together. The Tribunal concluded that the import and sale of gensets could not be said to have any nexus with any industrial activity of the Assessee in India. The Tribunal rejected the Assessee's appeal on the ground that since the very purpose of Section 80-HH of the Act was to give a boost to industrial activity in India profit earned from sale of imported goods would be ineligible for deduction under the said provision. As far as the Revenue's appeal was concerned, the Tribunal relied upon the judgments of the Supreme Court in ***Commissioner of Income Tax v. Sterling Foods Limited [1999] 237 ITR 579 (SC)*** and ***Pandian***

Chemicals Limited v. Commissioner of Income Tax [2003] 262 ITR 278 (SC) to hold that profits from the sale of spare parts was not the immediate source of the business profits of the industrial undertaking, but one step was removed from it. Although such profits from the sale of spare parts or rendering after sale service could be "attributable" to the industrial undertaking, it could not be considered as profits "derived" from the industrial undertaking. Accordingly, the Tribunal allowed the Revenue's appeal.

7. Appearing for the Assessee, Mr. Ajay Vohra, learned counsel submits that the activity of import of gensets was integral to the business activity of the Assessee. He sought to draw a distinction between the expression "profits and gains derived from an industrial undertaking" in Section 80-HH (1) of the Act and the conditions subject to which an undertaking could be considered to be an industrial undertaking for the purpose of Section 80-HH (2) of the Act. His submission was that an industrial undertaking which satisfies the requirement of Section 80-HH(2) could derive its profits from activities not confined to those mentioned in sub-section 80-HH(2) and therefore, a broad meaning had to be given to the expression used in Section 80-HH(1) of the Act. He submits that it is possible, as in the Assessee's case, for an industrial undertaking to also undertake trading activity which in turn could include import of articles in order to complete the company's product profile so that the customers are offered a wider choice from a complete range of gensets. As regards the import of spare parts, he submits that merely because the spare parts that have been imported are sold and not used in the manufacture of gensets by the Assessee, that cannot deprive the Assessee of the benefit of Section 80-HH of the Act.

8. Both Sections 80-HH and 80-I of the Act use the expression "profits and

gains **derived from** an industrial undertaking". The Supreme Court has drawn a distinction between the expressions "derived from" and "attributable to" in ***Cambay Electric Supply Industrial Co. Limited v. Commissioner of Income Tax [1978] 113 ITR 84*** in the following manner [page 93] :

> "In our view, since the expression of wider import, namely 'attributable to', has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

9. In the context of Section 80-I, the Supreme Court underscored the above distinction in its decision in ***Vellore Electric Corporation Limited v. Commissioner of Income Tax [1977] 227 ITR 557 (SC).*** The decisions of the Supreme Court in ***Sterling Foods Limited*** and ***Pandian Chemicals Limited*** reiterate this distinction and insist that only such business profits that have a direct nexus to the essential business activity of the Assessee can qualify for deduction under Section 80-HH of the Act. Inasmuch as both Sections 80-HH and 80-I use the expression "profits and gains derived from an industrial undertaking", the burden is on the Assessee to show the income earned from an activity, the profits from which are claimed to qualify for deduction, has an immediate and direct nexus to the essential activity of the industrial undertaking.

10. We are in agreement with the approach adopted by the Tribunal in the instant case, which is to examine the claim in the background of the purpose of providing deductions from business profits under Section 80-HH which was to encourage industrial activity in India. It is inconceivable that the deductions should be made available in respect of profits and gains which are derived from

an activity not having a direct nexus to the industrial activity as contemplated under Section 80-HH (2) of the Act. The entire section has to be read as a whole and the interpretation placed thereon has to be fit the overall scheme of the provision which is to encourage industrial activity in India. If the interpretation sought to be placed by learned counsel for the Assessee is accepted then it might possibly lead to a situation where an industrial undertaking which has been set up for manufacturing a commodity may undertake very little manufacturing in a particular Assessment Year and yet claim deduction from the profits and gains from the sale of imported goods. That would defeat the very purpose of the provision.

11. Learned counsel for the Assessee sought to contend that in an extreme situation like the one just adverted, the Assessee may not be able to claim deduction and that the facts of every case would determine whether the Assessee should be deprived of the deduction only because a part of the income is earned from a trading activity. In our view, It is not possible to lay down a hard and first rule since, according to us, that can be only lead to further complication. That also does not appear to be the intention of the legislature in enacting the provision as it stands. Therefore, we find no infirmity in the conclusion arrived at by the Tribunal.

12. As regards the question whether profits and gains from the sale of imported spare parts used in providing after sales service to customers would qualify for deduction, we are in agreement with the conclusions arrived at by the Tribunal that this activity might be incidental to the business activity of the Assessee but that it has no direct nexus with the activity of the industrial undertaking which is the manufacture of gensets. The Tribunal was, in our

opinion, right in concluding that profits and gains from such activity cannot be held to be “derived from the industrial undertaking”.

13. For the above reasons, we are of the view that no substantial question of law arises in this appeal. The appeal is dismissed with no orders as to costs.

S. MURALIDHAR, J

MADAN B. LOKUR, J

OCTOBER 25, 2007
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