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

Decided on: 28th January, 2019.

\+ ITA 72/2019 & CM Appl. 3927-28/2019

INTEC CORPORATION ..... Appellant

Through: Mr. Bharat Beriwal, Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX -11, NEW DELHI ..... Respondents

Through: Mr. Ashok Kumar Manchanda, Sr. Std. Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (OPEN COURT)

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1. The assessee appeals a decision of the Income Tax Appellate Tribunal (ITAT), for Assessment Year 2008-2009. Its claim for benefit of deduction under Section 80-IC of the Income Tax Act [hereafter referred to as the 'Act'] was disallowed by the AO. The Appellate Commissioner, however, set aside the disallowance and granted the benefit. The ITAT by the impugned order reversed the Commissioner's decision. In the return of income for Assessment Year 2008-09, which was subject to scrutiny, the assessee declared ₹1,62,82,400/-. It claimed deduction of ₹3,13,09,690/- from its gross total income under Section 80-IC stating that a new industrial unit at Selaqui, Uttrakhand had started during the assessment year. The assessee manufactured roof mounted air conditioner units for the Indian Railways. Till 2007-2008, this activity was carried out at Kala Amb, Himachal Pradesh. The Kala Amb unit enjoyed the Section 80-IC benefit

which had ended sometime in 2005. The assessee during the scrutiny claimed that it had purchased 3 Ton Cap Wire Rope Hoist Mach Machine on 23.04.2007 and one of the two *"Map 1305 Hydraulic Pallets"* on 04.04.2007. These were transferred to the new unit at Selaqui on 07.07.2007. It also used old tools and equipments valued at an insignificant amount of ₹18,000/-. The A.O. was not satisfied with these declarations and was of the view that having regard to the value of the machinery, that previously used machinery for any purpose is more than 20% of the value of the plant and machinery used in the new unit, the assessee has failed to satisfy the conditions laid down in Section 80-IC(4)(ii) of the Act. In so holding the AO also took note of the fact that the machinery was initially taken to Kala Amb and later transported to Selaqui. The AO, therefore, disallowed ₹3,13,09,690/-. The CIT(A) granted relief.

2. The ITAT addressed itself to the question whether the Selaqui unit was eligible to claim exemption under Section 80-IC. In so doing, it took note of certain circumstances that the assessee did not have the competence in Selaqui unit to carry out manufacturing activities; but it transferred used machinery in excess of 20% from Kala Amb unit to Selaqui unit, contrary to Section 80-IC(4)(i) and that minimal expenditure was debited to the P&L Account under the head 'salary' to establish *prima facie* that any manufacturing was carried out at the new unit. To consider all this, the ITAT took note of several documents such as agreement to sell, the lease deed of 16.12.2006, the site plan annexed to the lease deed, the balance sheet for the period 31.03.2008, and further noted that the plant and machinery in the Selaqui unit as on 31.03.2008 was declared to be of value of ₹3,50,353/- as against which, the turnover reported was in excess of ₹11.3 crores. The ITAT further noted that the assessee had claimed that it

purchased machinery from M/s Grip Engineers Pvt. Ltd., Ballabhgarh and ABB, Faridabad but stored it at Kala Amb unit for want of space and non-availability of Transit Form issued by the Government of Uttrakhand. The ITAT disbelieved this explanation. Some of the material parts of the ITAT's findings are as follows:

> *"19. Moreover, when this fact is examined in the light of the fact that no travelling allowance has been debited by the assessee to the P&L account during the year under assessment, it is difficult to believe that any manufacturing activities have been carried out at the Selaqui unit. Because earning the turnover of Rs. 11.11 crores with profit of Rs. 3.13 crores from the assembling/ manufacturing unit is humanly not feasible without supervision of senior/ junior functionaries of the assessee either from Kala Amb unit or from Head Office, Delhi nor any skilled worker has ever visited the Selaqui unit or proved to be engaged. So, all these facts strengthen the findings returned by the AO which have been overturned by the CIT (A) on the basis of whims and fancies. Since the assessee has transferred tools and machinery more than 20% of the total machinery employed at Selaqui unit from Kala Amb unit it is violation of section 80-IC(4) (ii) of the Act.*
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> *20. The factum of transfer of machinery by Grip Engineers Pvt. Ltd., Ballabhgarh and ABB, Faridabad to the Kala Amb unit of the assesee on 23.04.2007 and 28.04.2007 respectively with which the assesee has alleged to have started manufacturing in the month of June 2007 is not to be seen in isolation, rather it is to be seen in the light of the connected facts and circumstances that the assessee has debited only amount of Rs.1,35,388/- under the head wages, bonus, PF, ESI, etc., with which at the most only one worker can be hired and no expenditure has been debited to P&L account on account of travelling expenses nor any telephone, tele-fax and internet facility is proved to have been established at Selaqui unit. So we are of the considered view that new plant and machinery, even if assumed to be transferred by the assessee from Kala Amb unit to Selaqui unit, it was never put to use to carry out the manufacturing activities to qualify for exemption*

u/s 80-IC.

21. Furthermore, when we examine the factum of non-availability of the machinery at Selaqui unit in the light of the fact that no manpower was engaged by the assesee to carry out the manufacturing activities at Selaqui unit, the entire assessee's case to claim exemption u/s 80-IC goes flat. Perusal of the P&L account statement, available at page 147 of the supplementary paper book, shows that the expenditure of Rs.1,35,388/- has been debited to the P&L account under the head wages, bonus, gratuity and other benefits which comes to roughly ₹50,000/- per month of wages, PF, gratuity, etc. Annexure 4 annexed with the tax auditor's report, available at page 54 of the paper book, shows the monthly contribution of Rs.2,000/- which leads to the irresistible conclusion that only one worker was hired for the Selaqui unit during the entire period under assessment.

22. The contention of the ld. AR of the assessee that since the assessee is carrying out the function of assembly of RMPU with the parts procured from different manufacturers like chassis, compressors, electric motors, copper wire, mounting plate sheet metal box, etc. by engaging requisite number of employees and they were paid at the rates prevailing in the State of Uttarakhand, whose wages cannot be compared with the wages of employees at Delhi, is not tenable because apart from the composite expenses of Rs. 1,53,588/-, no other expenditure on account of wages/salary have been debited to the P&L account."

3. Learned counsel urged that the substantial question of law, which requires consideration is with respect to the ITAT's findings, firstly that Section 80-IC was not available to Selaqui unit and secondly, other adverse findings that the unit was created by splitting up the existing unit contrary to Section 80-IC(4)(ii). It was urged in this regard that the nature of the business i.e. manufacturing activity could not be disputed and furthermore, that the work did not entail labour intensive activity but was rather capable of being performed by very few workmen. Learned counsel also submitted

that the ITAT could not have doubted the high turnover reported. It was further urged that for the later years, the Revenue Authorities had accepted higher losses even though the value of machinery reported to have been purchased was over ₹30 lakhs.

4. This Court has carefully examined the orders of the Appellate Commissioner and the ITAT. Undoubtedly, the CIT(A) reversed the AO's opinion. We note further that in the 17-page order of the CIT(A), more than 14 pages were devoted to recording the assessee's contentions; the Appellate Commissioner then went on virtually to paraphrase an affidavit of one Mr.R.S.Sindhu, filed during the course of appellate proceedings. Relevant findings of the CIT(A) are as follows:

> *"{4.1} The appellate was required to furnish evidence of movement of goods from M/s SIRL, Faridabad to Selaqui, in response to which the appellant filed copies of invoices along with relevant forms and also produced the original invoices of the purchase of all the goods from M/s SIRL during the year under consideration. It is seen that the goods were accompanied by transit forms in Form No.16, required under rule 26(3) of the Uttranchal VAT Rules, 2005. M/s SIRL is also verified to have filed its return of income of Assessment Year 2008-09 disclosing income of Rs.5,75,11,150/-. It is seen from the bills of purchase of raw material from M/s SIRL that the description of the goods is of 'chassis of RMPU', whereas the goods transferred to Kala Amb are of 'Roof mounted package air-conditioner', and 'Electric panels'. The appellant has stated that its manufacturing process consists of manufacturing of wire harness, piping of copper pipes, fitting of compressor & electrical motor, fitting of mounting plate, fitting the electrical panel and leak testing. It has further been affirmed that these goods were sent to the Kala Amb unit to be tested and then supplied to the Indian Railways as the new unit at Selaqui was not yet approved by the Indian Railways for the testing of the air-conditioners. The appellant has placed on record copy of its correspondence with the Central Excise*

Division, Dehradun, Uttrakhand, regarding exercise of option of exemption from excise duty for the new industrial unit at Selaqui, including its undertaking to apply for Central Excise Registration as soon as the goods mentioned become chargeable to duty. The appellant has also relied o n a number of judgments dealing with the question of the process of manufacture to argue that even manufacture of a 'part' is manufacture so long as that part is duitable as a separate part. The appellant has furnished a copy of the order of the Customs, Excise and Service Tax Appellate Tribunal in the case of the appellant, reported at 156 ELT 544 [2003], wherein it is held that 'roof top mounted package unit of air-conditioner' is an item distinctively classifiable under Central Excise Law, on which excise duty is payable. For all these reasons, I am unable to agree with the finding of the Assessing Officer that there was no value addition at Selaqui or that no new article or thing came into existence.

{4.2} The appellant has also filed a reconciliation of units manufactured at Selaqui with detailed chart in numbers of purchase of chassis of RMPU, chassis of LHB type RMPU, mounting plate with switch gear and wiring, sheet metal box and chassis of Garib Rath, and transfer of semi finished RMPU to Kala Amb. The said chart clearly shows that the Assessing officer has not considered purchase of five numbers of RMPU on 21.8.2007 and four numbers of RMPU – Garib Rath on 4.12.2007. The appellant has also shown that the turnover of the business has increased from Rs.``,07,93,708/- in the preceding year to Rs.16,72,68,395/- and the profit of the Kala Amb unit has also increased from Rs.1,37,57,883/- to Rs.2,51,86,186/- from the previous year. Hence the Assessing Officer's apprehension that the business of the Kala Amb unit has been split or reconstructed to set up the Selaqui unit appears unfounded.

{4.3} I have also carefully considered the issue of transfer of machinery from the Kala Amb unit to Selaqui unit. The Assessing officer has disbelieved the explanation offered that the machinery comprising one Wire Rope Hoist Machine and one Hydraulic Pallet Machine were temporarily kept at the Kala Amb Unit as the transit form was unavailable. The appellant has stated that the Wire Rope Hoist Machine,

purchased from M/s Grip Engineers, Faridabad, was transported by the appellant's own truck along with 21 electric Motors purchased from ABB Ltd., Faridabad, in the interest of economy. The appellant has filed evidence that the machinery was stored at the Kala Amb stores for a total period of 14 days from 23.5.2007 to 7.6.2007 and the said machinery was never used before its installation at Selaqui. It is also shown that the Kala Amb Unit already had a Chain Hoist Machine and there was no need to purchase or install another machine at that unit. An affidavit by the partner Shri R.S.Sidhu affirming these facts has been filed. After considering these facts, it is held that the appellant has furnished sufficient evidence regarding the installation of the new machinery at the Selaqui unit and the more transportation through Kala Amb does not disentitle the appellant from its claim of deduction under Section 80IC."

5. Under Section 260A, this Court is to frame substantial questions of law wherever they do arise. Though the findings of facts by the AO were reversed by the CIT(A), and in turn were set aside by the ITAT, that *ipso facto* does not attract the jurisdiction of this Court unless the reasoning or the approach of the ITAT is so unreasonable or manifestly irrational. The ITAT in its remit is the final tribunal of fact. In this case, the court is of the opinion that the ITAT performed the task to the extent it could, having regard to the materials which it elaborately and exhaustively analyzed. The inference it drew cannot be called perverse or illegal. No substantial question of law arises.

6. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J.

PRATEEK JALAN, J.

JANUARY 28, 2019
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