

(2014) 07 KAR CK 0081
In the Karnataka High Court
Case No : Income Tax Appeal No. 477 of 2013

Ace Multi Axes Systems Ltd.

APPELLANT

Vs

Deputy Commissioner of Income Tax

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 143(3), 263, 80IA, 80IB

Citation : (2014) 367 ITR 266

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : S. Parthasarathi, Advocate for the Appellant; K.V. Aravind, Advocate for the Respondent

Judgement

N. Kumar, J.—The assessee has preferred this appeal against the order passed by the Tribunal affirming the finding recorded by the Commissioner of Income-tax that the assessee is not entitled to claim deduction under section 80-IB(3) of the Income-tax Act, 1961 (for short, "the Act"), as in the ninth year it ceased to be small scale industry. The assessee is a company engaged in the business of manufacture and sale of components/parts of CNC lathes and similar machines. The assessee furnished its return of income, admitting a total income of Rs. 1.76 crores which was initially processed under section 143(1) of the Act. Subsequently, the case was subjected to scrutiny under section 143(3) of the Act. The Assessing Officer concluded the assessment, determining the assessee's income at Rs. 1,79,82,653, after disallowing certain expenses, aggregating to Rs. 2.91 lakhs. The Commissioner of Income-tax, by virtue of the power conferred under section 263 of the Act, initiated suo motu proceedings on the ground that the assessment order was erroneous and prejudicial to the Revenue. According to the Commissioner, the Assessing Officer has wrongly allowed the deduction under section 80-IB(3) of the Act, as claimed by the assessee. After hearing the assessee, he passed an order setting aside the assessment order with a direction to decide the claim under section 80-IA/ 80-IB. In pursuance of the said direction issued, the assessing authority disallowed

the assessee's claim of Rs. 75,81,910 under section 80-IB(3) of the Act. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) dismissed the appeal. Aggrieved by the said order, the assessee preferred an appeal to the Tribunal. The Tribunal, on consideration of the rival contentions, held, each assessment order is separate and independent. The Revenue authorities had every power to examine and analyse the facts and figures, as well as relevant law point of each year to find out, all the conditions are fulfilled or not. The value of the plant and machinery exceed rupees one crore during the year under consideration, which incidentally deprived the assessee to call itself as a small scale industry and, therefore, the Tribunal was of the view that the authorities below were justified in denying the assessee's claim for deduction under section 80-IB(3) of the Act. Accordingly the appeal came to be dismissed. Aggrieved by the said order, the assessee is before this court.

2. The substantial question of law that arises for our consideration in this appeal is as under:

"When once the eligible business of an assessee is given the benefit of deduction under section 80-IB on the assessee satisfying the conditions mentioned in sub-section (2) of section 80-IB, can the assessee be denied the benefit of the said deduction on the ground that during the said 10 consecutive years, it ceases to be a small scale industry?"

3. Section 80-IB is an incentive provision. It provides deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. For an industrial undertaking to be eligible for the said deduction, it has to fulfil all the conditions mentioned under sub-section (2) of section 80-IB. The four conditions which are stipulated therein are, firstly, the industrial undertaking must not have been formed by splitting up or reconstruction of a business already in existence. The second condition is, such an undertaking is not formed by transfer of machinery or plant previously used for any purpose. The third condition is that the industrial undertaking manufactures or produces any article or thing not being any article or thing specified in the list in the Eleventh Schedule. However, in respect of a small scale industrial undertaking, even that condition is waived. In other words, a small scale industry manufacturing or producing any article or thing specified in the list in the Eleventh Schedule is also entitled to the aforesaid deduction. The fourth condition is the said industrial undertaking employs 10 or more workers in a manufacturing process carried on with the aid of power or employs 20 or more workers in a manufacturing process carried on without the aid of power. Once these four conditions are fulfilled, the assessee is entitled to the benefit under section 80-IB of the Act. Sub-section (3) of section 80-IB provides the extent of deduction eligible under section 80-IB and also the number of years such a deduction is available to such an undertaking. Sub-section (3) mandates that the industrial undertaking shall be eligible for the said deduction for a period of 10

consecutive years, beginning with the initial assessment year. However, it is subject to two conditions as stipulated therein. The second condition is what is applicable to the case on hand which provides, if the industrial undertaking is a small scale industrial undertaking, it has to begin manufacture or produce articles or things at any time during the period beginning on the 1st day of April, 1995, and ending on March 31, 2002. This is a condition which a small scale industry has to fulfil in addition to the conditions mentioned in sub-section (2) of section 80-IB. Once all these conditions are fulfilled, a small scale industry is entitled to the benefit of deduction for a period of 10 consecutive years beginning with the initial assessment year. In the entire provision, there is no indication that these conditions had to be fulfilled by the assessee all the 10 years. When once the benefit of 10 years, commencing from the initial year, is granted, if the undertaking satisfy all these conditions initially, the undertaking is entitled to the benefit of 10 consecutive years. The argument that, in the course of 10 years, if the growth of the industry is fast and it acquires machinery and the total value of the machinery exceeds Rs. 1 crore, it ceases to have the said benefit, do not follow from any of the provisions. It is true that there is no express provision indicating either way, what would be the position if the small scale industry ceases to be a small scale industry during the said period of 10 years. Because of that ambiguity, a need for interpretation arises. If we keep in mind the object of the Legislature providing for these incentives and when a period of 10 years is prescribed, that is the period, probably, which is required for any industry to stabilize itself. During that period the industry not only manufactures products, it generates employment and it adds to the wealth of the country. Merely because an industry stabilizes early, makes profits, makes future investment in the said business, and it goes out of the definition of the small scale industry, the benefit under section 80-IB cannot be denied. If such a literal interpretation is placed on the said provision, it would run counter to the very object of granting incentives. It would kill the industry. Therefore, keeping in mind the object with which these provisions are enacted, keeping in mind the industrial growth which is required to be achieved, if two interpretations are possible, the courts have to lean in favour of extending the benefit of deduction to an assessee who has availed of the opportunity given to him under law and has grown in his business. Therefore, we are of the view, if a small scale industry, in the course of 10 years, stabilizes early, makes farther investments in the business and it results in its going outside the purview of the definition of a small scale industry, that should not come in the way of its claiming benefit under section 80-IB for 10 consecutive years, from the initial assessment year. Therefore the approach of the authorities runs counter to the scheme and the intent of the Legislature. Thereby they have denied the legitimate benefit, an incentive granted to the assessee. Both the said orders cannot be sustained. Therefore the substantial question of law is answered in favour of the assessee and against the Revenue. Hence we pass the following:

ORDER

The appeal is allowed. The impugned order is hereby set aside. The original order of granting the benefit of deduction under section 80-IB, is restored.

Ordered accordingly.