

(2012) 08 DEL CK 0506

In the Delhi High Court

Case No : ITA 745 of 2011

CIT

APPELLANT

Vs

Gravs Appliance Pvt. Ltd.

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Income Tax Act, 1961 — Section 80A(2), 80B(5), 80I, 80IA, 80IA(5)

Citation : (2012) 08 DEL CK 0506

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, Standing Counsel with Mr. Puneet Gupta, for the Appellant; Amit Dayal, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. The Revenue, in this appeal, seeks to urge the following question of law: -

Whether the Tribunal was justified in holding that the sum of Rs. 86,76,687/- could be granted the benefit of Section-80IC in respect of the unit in Baddi, Himachal Pradesh, without the deduction of the losses incurred by the Delhi units in the circumstances of the case?

The Assessee had owned three units; two of them located in Delhi and the third at Baddi, Himachal Pradesh. The latter was eligible for benefit u/s 80IC of the Income Tax Act. For the relevant period i.e. AY 2006-07, the assessee declared a loss of Rs. 45,89,621/- in respect of its two Delhi units. In respect of the Baddi unit, it claimed deduction under Section-80IC on the computed profit of Rs. 86,76,687/-. The Assessing Officer adjusted the losses of the Delhi units against the profits of the Baddi unit and arrived at profit eligible for deduction u/s 80IC at Rs. 40,44,824/- The assessee carried the matter in appeal; the appeal was accepted by the CIT (A) who applied decisions of this Court including Commissioner of Income Tax Vs. Dewan Kraft System Pvt. Ltd., . The Revenue's

appeal to the ITAT was dismissed by the impugned order. The relevant reasoning of the ITAT is as follows: -

5. We have duly considered the rival contentions and gone through the record carefully. Hon''ble Delhi High Court, vide its order dated 10.2.2010, has disposed of appeals for assessment years 1992-03 to 1995-96 and 2000-01 in the case of Sona Koyo Sterling Systems Ltd. In that case, the issue relates to computation of deduction admissible u/s 80I of the Act. Hon''ble High Court has considered the meaning of gross total income as explained in section 80-B(5) of the Act as well as the conditions enumerated in sub-section (6) of section 80IA of the Act. The Hon''ble Court has also considered its earlier decision in the case of Dewan Kraft Systems (P) Ltd. wherein section 80-IA(5) and (7) were considered. Hon''ble Court has held that sub-section (6) of section 80I begins with a non-obstante clause, according to this section the quantum of deduction is to be computed as if the industrial undertaking were the only source of income of the assessee during the relevant year s. While explaining the provisions, Hon''ble Court has observed that in other words, each industrial undertaking or unit is to be treated separately and independently. This was observed because deduction u/s 80IA would be admissible only in those units and industrial undertaking which have a profit or gain. In sub-section (7) of section 80IC, it has been provided that provisions contained in sub-section (5) and subsections (7) to (12) of section 80IA shall, so far as may be, applied to the eligible undertaking or enterprises under this section, meaning thereby that same provision would be applicable in section 80IC of the Act. Hon''ble Delhi High Court in the case of Dewan Kraft Systems (P) Ltd. and Sona Koyo (supra) has held that each unit will be considered independently. In view of the above, we are of the opinion that Learned First Appellate Authority has rightly applied the ratio of Hon''ble Delhi High Court and has rightly directed the Assessing Officer not to adjust the losses of Delhi Unit while computing the eligible profit in respect of Baddi Unit for granting deduction u/s 80IC of the Act. No other issue was agitated before us. Hence, the appeal of the revenue is dismissed.

6. In the result, the appeal of the revenue is dismissed.

2. This Court has carefully considered the submissions. It is noticed that the ITAT took into account the provisions of Section-80IA (5) which are incorporated into sub-section (7). A similar provision also of Section-80IC. This provision reads as under:

80-IA (5) Notwithstanding anything contained in /any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for

which the determination is to be made.

80-IC (7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of Section 80IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section.

3. This Court is of the opinion that having regard to the express language of Section-80IC (5) as well as Section-80IC (7) which incorporates by reference Section-80IA (5), the approach adopted by the Tribunal cannot be faulted. The Court also noticed that the same reasoning has been indicated in another Division Bench ruling in *The Commissioner of Income Tax - III Vs. Sona Koyo Steering Systems Limited*, .

4. As regards the question whether the assessee can carry forward the losses of the Delhi units, the matter is to be considered appropriately by the Assessing Officer. We express no opinion on the question as it does not arise out of the order of the Tribunal. However, it is clarified that the deduction cannot exceed the gross total income computed by the A.O. in this case, in view of Section-80A (2).

5. No substantial question of law arises for consideration. The appeal is accordingly dismissed.