
(2012) 02 BOM CK 0018
In the Bombay High Court
Case No : ITA No. 1733 of 2010

CIT

APPELLANT

Vs

Hindustan Pencils Ltd.

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 260A, 80IA, 80IA(2)(iv)(b)

Citation : (2012) 343 ITR 379

Hon'ble Judges : M.S. Sankhecha, J; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Vimal Gupta, for the Appellant; S.E. Dastur with Percy J. Pardiwala instructed by Madhur Agarwal and Atul K. Jasani, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by the Revenue u/s 260A of the income tax Act, 1961, raises the following question of law :

Whether, on the facts and in the circumstances of the case and in law, the income tax Appellate Tribunal was justified in granting deduction in respect of the new unit at Silvassa disregarding the fact that the activities of the assessee do not amount to manufacturing and that the assessee is not entitled to any deduction u/s 80-IA in respect of a new unit set up after 31-3-2000, in view of the provisions of the section 80-IA(2)(iv)(b)?

The assessee filed a return of income on 29-10-2004, declaring a total income of Rs. 4.89 crores after claiming a deduction u/s 80-IA in respect of its Silvassa unit, at Rs. 50.85 lakhs and in respect of its Achhad unit at Rs. 74.55 lakhs. The Assessing Officer rejected the claim of the assessee on the ground that the assessee had not fulfilled the required conditions for the grant of an exemption. The Commissioner (Appeals) held that the assessee had installed plant and machinery worth Rs. 44.62 lakhs, which amounted to the setting up of a new industrial undertaking and that the assessee had commenced manufacturing

certain additional products such as wax crayons, poster colours, oil pastels and water colours. According to the Commissioner (Appeals), the provisions of section 80-IA were applicable only to those undertakings which had commenced commercial production before March 31, 2000. In appeal, the Tribunal observed that the assessee had started manufacturing some new items of the same nature and for the purpose installed some new plant and machinery along with the old plant and machinery, in the same unit, at the same factory site without any basic change in the administrative set up or business organisation. The Tribunal noted that earlier the assessee had engaged in the manufacture of stationery items and the new products were of the same nature.

2. The submission of the Revenue is that by installing plant and machinery worth Rs. 44.62 lakhs, the assessee had commenced a new undertaking. There is a finding of fact to the contrary. The finding of the Tribunal is that though the assessee installed plant and machinery worth Rs. 44.62 lakhs during the course of the assessment year, this was together with and along side the existing plant and machinery in the same unit, at the same site and without any change in the administrative or business set up. From the findings of the Tribunal it is evident that the assessee had not set up a separate or identifiable new unit during the course of the assessment year. In that view of the matter, the order which has been passed by the Tribunal does not suffer from any error. No substantial question of law will consequently arise. The appeal is accordingly dismissed.