(2011) 09 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : ITR No. 119 of 1996 (A.Y. 1990-91)

CIT APPELLANT

Vs

Punjab Wool Combers Ltd. RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Income Tax Act, 1961 — Section 154, 256(1), 32AB, 80I, 80I(6)

Citation : (2012) 344 ITR 466

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Rajesh Katoch, for the Commissioner, for the Appellant;

Judgement

Ajay Kumar Mittal J.—In this reference filed u/s 256(1) of the income tax Act, 1961 (for short ""the Act""), the income tax Appellate

Tribunal, Chandigarh Bench, Chandigarh (in short ""the Tribunal""), vide order dated May 30, 1996, passed in Reference Application No. 310

Chandi/95 arising out of I.T.A. No. 1408/Chandi/94 at the instance of the Revenue, in respect of the assessment year 1990-91, has referred the

following questions of law, for the opinion of this court:

1. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is right in law in holding that the provisions of

section 80-I(8) and (9) are not applicable in this case and that the Commissioner of income tax (Appeals) was not justified in restoring this issue

back to the assessing officer for reconsideration?

2. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is right in law in holding that no adjustments could

be made by the assessing officer while working out the deduction u/s 80-I of the income tax Act in this case?"" Both the questions are inter-

connected and, therefore, are being taken 2 up together.

Brief facts necessary for adjudication of the reference may be noticed.

The assessee-company is engaged in manufacture and sale of wool tops in the head office, i.e., combing unit and hosiery and knitting yarn in the

spinning unit. The assessee filed return in respect of the assessment year 1990-91 declaring income of Rs. 99,80,390 whereas in the revised return

filed on 1-2-1991, the assessee declared income of Rs. 99,88,880. The assessee claimed deduction u/s 80-I of the Act in respect of the spinning

unit, initially at Rs. 48,49,050 and later on in the revised return at Rs. 43,49,673. Deduction u/s 80-I were claimed at the rate of 25 per cent, of

Rs. 1,73,98,693, which was arrived at after reducing Rs. 33,31,678 u/s 32AB and Rs. 17,26,466 as trading profits from the profits in respect of

the spinning unit. During the course of scrutiny, the assessing officer came to the conclusion that profits of the combing unit had been reduced to

increase the profits of the spinning unit with a view to claim higher relief u/s 80-I. It was noticed that for the assessment year 1989-90 the assessee

had shown profit in the combing unit at 11.04 per cent, whereas the same had declined to 7.11 per cent, in the year relevant to the assessment

year in question. Similarly, in respect of the spinning unit, the gross profit rate was 14.28 per cent, whereas in the assessment year under discussion

had shown the said rate at 14.12 per cent. In the opinion of the assessing officer, the profits of the spinning unit had been inflated to the extent of

Rs. 96,16,477. The assessing officer, thus, computed the deduction u/s 80-I of the Act at Rs. 20,42,020. The assessee noticed that there were

certain mistakes in the computation of deduction u/s 80-I and, hence, moved an application u/s 154 of the Act. The assessing officer calculated the

relief u/s 80-I at Rs. 30,14,523 as against the amount of Rs. 20,42,020 calculated earlier.

3. The assessee preferred an appeal before the Commissioner of income tax (Appeals) (in short ""the CIT(A)"") who set aside the order of the

Assessing Officer and remitted the matter for applying the provisions of section 80I(8) and (9) of the Act. Not satisfied with the said order as well,

the assessee filed further appeal before the Tribunal.

4. The Tribunal observed that setting aside of a particular issue without any

reasoning in a given case may result in a grievance to the assessee. The

Tribunal accepted the submission made on behalf of the assessee that section 80-I(8) of the Act could apply only where the goods had been

transferred from one unit to another unit at less than market price. It was shown on behalf of the assessee to the Tribunal that except in respect of

one lot of 3539 kgs. out of total of 815361 kgs. there was a little difference of Rs. 7,715. In this regard, the Tribunal noted that when total transfer

was of the order of Rs. 14,37,24,264, the difference of Rs. 7,715 was insignificant and very nominal. It was further noted that though the transfer

rate was slightly less than the market rate, it was still higher than the cost price of the combing unit. The Tribunal, after relying on a decision of

another Tribunal, in (1994) 49 ITD 430 was of the opinion that the assessing officer was not empowered to reallocate the expenses u/s 80I(6) or

80-I(8) of the Act. It was noted, in particular, that for the assessment years 1986-87 to 1989-90, the assessee had been allowed relief u/s 80-I

without any interference from the assessing officer. The Tribunal, thus, held that there was no justification for the learned Commissioner of income

tax (Appeals) to have set aside the issue for reconsideration of deduction u/s 80I(8) of the Act.

5. So far as the question of applicability of section 80I(9) of the Act is concerned, the Tribunal accepted the submission made on behalf of the

assessee that the provisions of the said section were applicable only where there were transactions between the assessee and an outsider and not

when there were transactions between one unit and the other of the same assessee. The Tribunal, thus, held that setting aside of the assessment

order by the Commissioner of income tax (Appeals) for deciding the issue of relief u/s 80-I by considering the provisions of sections 80-I(8) and

80I(9) of the Act was not justified.

6. This is how the aforesaid two questions have been referred to this court for its opinion.

7. We have heard learned counsel for the petitioner-Revenue and have perused the record.

8. The issue for adjudication in the present case is, whether the assessee who was deriving income from manufacture and sale of wool tops at its

woollen unit and had made certain profits from the combing unit had reduced the profits of the spinning unit in order to make higher relief u/s 80-I

of the Act. The Tribunal on appreciation of evidence that there was no attempt on the part of the assessee to reduce the profits of the combing unit

in order to enhance the profit of the assessee to claim higher deduction u/s 80-I, observed in paragraphs 14 to 16 of its order as under:

14. We also find substantial merit in the submissions of the learned counsel for the assessee that section 80-I(8) could apply only where the goods

had been transferred from one unit to other unit at less than the market price. It has been demonstrated before us by the learned counsel for the

assessee that except in respect of one lot of 3539 Kg. out of total of 815361 Kg. there was a slight difference of Rs. 7,715. It is significant to note

that when the total transfer was of the order of Rs. 14,37,24,264, the difference of Rs. 7,715 was insignificant and very nominal. It is also

significant to note that though the transfer rate was slightly less than the market rate, it was still higher than the cost price of the combing unit.

15. In the case of (1994) 49 ITD 430 the Tribunal has also held that the assessing officer is not empowered to re-allocate the expenses u/s 80-I(6)

or u/s 80-I(8) of the income tax Act. We find that for the assessment years from 1986-87 to 1989-90 the assessee has been allowed relief u/s 80-

I without any interference from or disturbance by the assessing officer. The method of accounting has been the same in the earlier years as in the

year under consideration and for a difference of measly amount of Rs. 7,715, the entire claim of the assessee cannot be upset. We, therefore, hold

that there was no justification for the learned Commissioner of income tax (Appeals) to set aside the issue for reconsideration of deduction u/s

80I(8) of the Act.

16. As regards the applicability of section 80I(9), we are in agreement with the reasoning of the learned counsel for the assessee that the said

section is applicable only where there are transactions between the assessee and an outsider and not when there are transactions between one unit

and the other of the same assessee. We, therefore, hold that the learned Commissioner of income tax (Appeals) was not justified in setting aside

the assessment order for deciding afresh the issue of relief u/s 80-I by considering the provisions of sections 80I(8) and 80I(9) of the Act. We

further hold that since there was no difference between the transfers from the combing unit to the spinning unit, there was no justification for making

any adjustments as made by the assessing officer. The first two grounds are, therefore, accepted.

9. The Tribunal on appreciation of evidence concluded that there was no difference in the rate adopted by the assessee in respect of transfers from

the combing unit to the spinning unit and that the provisions of section 80-I(8) and (9) were not attracted in the present case.

10. In view of the aforesaid findings of fact recorded by the Tribunal, which has not been shown to be perverse in any manner by the learned

counsel for the petitioner-Revenue so as to persuade this court to hold that the Tribunal had erroneously decided the issue in favour of the

assessee. The first question noted above is accordingly answered against the Revenue and in favour of the assessee. In the light of the above, the

second question being consequential also stands decided in the same terms. Reference stands disposed of.

