
(2008) 01 MP CK 0097
In the Madhya Pradesh High Court

Commissioner of Income Tax

APPELLANT

Vs

Alpine Solvex Ltd.

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Income Tax Act, 1961 — Section 260A, 80E, 80HH, 80I, 80J

Citation : (2008) 219 CTR 499 : (2009) 176 TAXMAN 285

Hon'ble Judges : S.R. Waghmare, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is an appeal filed by CIT (Revenue) u/s 260A of the IT Act against an order dt. 24th Jan., 2004 passed by Tribunal in ITA No. 643/Ind/1997. This appeal was admitted for final hearing on following substantial questions of law:

(1) Whether the Tribunal was justified in holding that the assessee is entitled for deduction under Sections 80HH and 80-I of the IT Act, on the amount of Rs. 8,72,622 being the amount realized on sale proceeds of old gunny bags (packing material) which forms part of the total turnover?

(2) Whether the sale amount realised out of old gunny bags which is not the real business of the assessee can be taken into account for the purpose of granting deduction under Sections 80HH and 80-I ibid?

2. Facts in brief to appreciate the issue involved in the appeal are these.

3. Respondent (assessee) is a limited company registered as such under the Company Act. It has a solvent extraction plant where soyabean oil is manufactured from soyabean seeds. It is then sold in market. So the main business of assessee is to manufacture and sell "soyabean oil".

4. For the asst. yr. 1993-94, the respondent (assessee) claimed special deduction under Sections 80HH and 80-I on a sum of Rs. 8,73,622 being an amount

realized by them (assessee) by sale proceeds of old gunny bags (packing material). It was made part of the total turnover of assessee (respondent herein) during the assessment year in question. So, the question that arose before the AO was, whether assessee (respondent) is entitled to claim deduction u/s 80HH/80-I on the amount of Rs. 8,73,622 realized by assessee by sale of old gunny bags?

5. The AO by order dt. 25th March, 1996 rejected the claim of assessee and in consequence declined to grant deduction as claimed u/s 80HH/80-I *ibid*. In the opinion of AO, it being not an income derived by an assessee from an industrial undertaking, the same cannot be allowed to be deducted as provided in Section 80HH/80-I of the Act while calculating the profit.

6. The assessee felt aggrieved of this order of AO filed an appeal to CIT(A). By order dt. 10th Jan., 1997 the CIT(A) allowed the appeal and granted deduction to the assessee u/s 80HH/80-I as claimed in respect of an amount of Rs. 8,73,622 earned by sale of old gunny bags. It is against this order the CIT felt aggrieved and filed appeal to Tribunal. By impugned order, the Tribunal dismissed the appeal and upheld the order of CIT(A). It was held that the amount of Rs. 8,73,622 earned by the assessee from sale of gunny bags is an income derived from industrial undertaking within the meaning of Section 80HH/80-I *ibid* and hence, the assessee is eligible to claim deduction of this amount (Rs. 8,73,622) while calculating his total income for payment of Income Tax by taking recourse to Section 80HH/80-I *ibid*. It is against this order, the CIT has filed this appeal. As observed *supra*, this appeal was admitted for final hearing on aforementioned two substantial questions of law.

7. Heard Shri R.L. Jain, learned senior Counsel with Ku. Veena Mandlik, learned Counsel for the appellant (Revenue); none for the respondents, despite service and SPC having been issued to them.

8. Learned Counsel for the appellant (Revenue) while questioning the correctness of the view taken by CIT(A) and that of Tribunal contended that the same is not legally sustainable. It was contended that the amount of Rs. 8,73,622 earned by the assessee from sale of certain gunny bags lying in their factory in the year in question cannot be said to be their business much less regular business activities and hence, any income derived from sale of such gunny bags cannot be said to be an income derived from the industrial undertaking so as to enable an assessee to take benefit of special deductions as provided by Section 80HH/80-I of the Act. Learned Counsel urged that the expression "income derived from industrial undertaking" used in Section 80HH/80-I has to be and has been interpreted in restricted/narrower sense by the Supreme Court in the case of Pandian Chemicals Ltd. Vs. Commissioner of Income Tax, and hence, only that income which is earned directly from the business carried on by the industrial undertaking by the assessee, that can be taken into consideration for calculating total income and deduction available under these twin sections. Learned Counsel urged that sale of gunny bags by the assessee is not the business of assessee

and hence, any income earned by sale of gunny bags cannot be regarded as an "income derived from industrial undertaking" within the meaning of Sections 80HH and 80-I *ibid*. Learned Counsel urged that Tribunal erred in placing reliance on the decision rendered by Madras High Court *Fenner (India) Ltd. Vs. Commissioner of Income Tax (No. 2)*, which does not lay down correct principle of law. No one appeared for the respondent (assessee) to support the impugned order of Tribunal despite issuance of notice of appeal and SPC to them.

9. Having heard the learned Counsel for the appellant (Revenue) and having perused the record of the case, we are inclined to allow the appeal and while setting aside the order passed by Tribunal answer the questions framed in favour of Revenue.

10. The basic question that arises for consideration in this appeal is what is the meaning of the expression "derived from industrial undertaking" used by legislature in Sections 80HH and 80-I of the IT Act?

11. The word "derived" was first construed as far back in 1948 by the Privy Counsel in *CIT v. Raja Bahadur Kamakhaya Narayan Singh and Ors.* (1948) 16 ITR 325. This is what their Lordships held:

The word "derived" is not a term of Article Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition.

12. This definition was later approved and reiterated by the Constitution Bench of the Supreme Court in 1955 in a case reported in *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, .

13. Their Lordships of the Supreme Court had then an occasion to consider the meaning of expression "attributable to" used in Section 80E(1) of the Act in the case of *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, . In this case their Lordships compared the expression "attributable to" with the expression "derived from" and held that whenever legislature intended to give restricted meaning, it used the expression "derived from" and when it intended to give wider meaning, the expression "attributable to" was used. This issue was examined by their Lordships in the context of the scheme of Sections 80E and 80-1 of IT Act wherein these two expressions were used by the legislature. The learned Judge - Tulzapurkar, J., speaking for the Bench made following observations in this connection:

As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the legislature has

deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General, it has used the expression "derived from", as, for instance, in Section 80J. In our view, since the expression of wide import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.

14. Again this issue came up for consideration before the Supreme Court in the year 2003 in the case of Pandian Chemicals Ltd. v. CIT (supra). Referring to aforesaid decisions their Lordships affirmed the earlier view and held as under:

It is clear, therefore, that the word "derived from" in Section 80HH of the IT Act, 1961, must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking.

15. It is thus clear as being a law laid down by the Supreme Court that expression "derived from" has to be given restricted meaning while interpreting the section in which this expression is used.

16. Coming now to the facts of this case, the question is, whether income earned out of sale of gunny bags by the assessee can be regarded as income derived from an industrial undertaking for the purposes of computation of deduction in respect of profits and gains from newly established industrial undertaking in backward area for the purposes of Section 80HH and Section 80-I *ibid*? It is not in dispute that the main business of the assessee is to manufacture and sell soyabean oil by extracting it from soya seeds in their extraction plant established by them in backward area.

17. In this view of the matter, the main or we would say the only business of assessee for which the plant was set up in the backward area is to manufacture and sale of "soya oil". In these circumstances, all incomes derived from sale of soya oil have to be held as "income derived from industrial undertaking" for the purpose of calculating deductions u/s 80HH/80-I *ibid*. So far as income earned by assessee out of sale of gunny bags is concerned, it cannot be kept at par or alike the income derived from sale of soya oil. It is for the reason that firstly, sale of gunny bags is not the main or even ancillary business activity of assessee. Secondly, it is not even regular or continuous business activity of assessee. Thirdly, no investment is made by assessee for sale of gunny bags. In other words, no industrial undertaking is established for manufacture and sale of gunny bags. Fourthly, the gunny bags are never manufactured by assessee in

their plant, which is established only for production of "soya oil". Fifthly, merely because some gunny bags are lying in their factory as surplus or unused or as waste material for any reason and if such bags are sold by the assessee to earn some income, then it cannot be a ground to hold at least for the purpose of Sections 80HH and 80-I that such income is an income directly derived from the industrial undertaking of the assessee.

18. In our view, in order to derive income from the industrial t? undertaking, it must be shown by the assessee that it was so earned by sale of those goods/ commodity which was manufactured/produced in the said industrial undertakings as a part of their main and day-to-day business activity. It is only then, the income earned by sale of such goods can be termed as income derived from industrial undertaking within the meaning of Section 80HH/80-I of the Act. It is for the reason that it has a direct or immediate nexus with the assessee's industrial undertaking established in the backward area. The view that we are taking is in accord with the interpretation made by the Supreme Court in relation to expression "derived from" in aforementioned cases, wherein the expression, has been given restricted meaning. This necessarily follows that only that income which has a direct or immediate nexus with the industrial undertaking that alone will be taken into consideration for calculating the deduction u/s 80HH/80-I *ibid*. Such is not the case here, because the income earned from sale of gunny bags is not the result of direct or immediate nexus with the business of assessee carried on in the industrial undertaking.

19. We are further fortified with our reasoning by yet one more decision of the Supreme Court in Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, . The question involved in this case was whether assessee is entitled to claim deduction of sale amount realized by sale of import entitlement under the export promotion scheme for calculating profit and gains derived from the assessee's industrial undertaking, which was engaged in the business of processing prawns and other seafoods u/s 80HH of the Act. While holding that assessee is not so entitled to claim any deduction in respect of the amount so realized by selling the import entitlement, their Lordships held that there must be for the application of words "derived from", a direct nexus between the profits and gains and the industrial undertaking. Since in this case, the nexus was not direct but only incidental and hence, it does not attract the words "income derived from industrial undertaking". The assessee was held not entitled to claim any benefit of sale amount realised by sale of import entitlement for the purposes of Section 80HH/80-I *ibid*.

20. With respect, we do not agree with the view taken by Madras High Court in a case in Fenner (India) Ltd. v. CIT (*supra*), relied on by Tribunal for answering the question involved in this case against the Revenue and in favour of assessee. In this case assessee sold certain scrap lying in their factory. It was held by Madras High Court that income earned from sale of scrap amounts to income derived from industrial undertaking u/s 80HH/80-I of the Act, which is engaged in the

business of manufacture and sale of V-Belts, oil seals, etc. In the first place, this decision does not take into consideration any decision of the Supreme Court much less those holding the field as are taken note of by us supra. Secondly, it only takes into account one decision of Madras High Court in Commissioner of Income Tax Vs. Pandian Chemicals Ltd., which on facts is distinguishable. Rather on its proper reading, it supports our conclusion.

21. The reasoning of their Lordships in aforesaid case would clearly show that any income indirectly or incidentally earned by assessee from their Industrial undertaking, which is not their main business cannot be regarded as income derived from the business of industrial undertakings. It may be mentioned that Madras High Court in Fenner India's case (supra) on which Tribunal had placed reliance did not take into consideration even this decision of the Supreme Court. It is for this reason and in the light of this decision of the Supreme Court, we record our dissent to the view taken by Madras High Court in Fenner India (supra).

22. In view of foregoing discussion, we are of the considered opinion that Tribunal fell in error in holding that income earned by assessee by sale of gunny bags is an income earned from industrial undertaking within the meaning of Section 80HH/80-I ibid and hence, entitled to claim deduction from their total Income. We thus, reverse this view and set aside the order of Tribunal on our reasoning mentioned supra.

23. Accordingly, the appeal filed by Revenue succeeds and is allowed. Impugned order of Tribunal is set aside. As a consequence, the substantial questions of law framed supra, are answered in appellant's (Revenue's) favour and against the assessee. No order as to costs.