(2007) 02 DEL CK 0210

In the Delhi High Court

Case No : ITA No''s. 977 of 2005 and 186 of 2006

Commissioner of Income Tax APPELLANT

Vs

Dewan Kraft System Pvt. Ltd. RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:
Income Tax Act, 1961 — Section 80IA, 80IA(5), 80IA(7)

Citation : (2007) 210 CTR 124 : (2008) 297 ITR 305

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : P.L. Bansal and Vishnu Sharma, for the Appellant; Salil Aggarwal and Prakash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—By this common judgment two appeals being ITA Nos. 977/05 and 186/06 filed by the Revenue are being disposed of since common question of law is involved.

2. Appeal No. 977/05 arises out of the decision dated 20th January, 2005 passed by the Income Tax Appellate Tribunal for assessment year 1997-98, whereas appeal No. 186/06 pertains to the order dated 29th March, 2005 for the assessment year 1998-99 passed by the Income Tax Appellate Tribunal.

3. The brief facts leading to the filing of these appeals are: ITA No. 977/2005

4. The assessed a Private Limited Company is engaged in business of fabrication and supply of equipments and technical items. This business is being carried out in units situated at Kalamb, Himachal Pradesh which is a notified backward area. Other business units of the assessed are situated in Delhi and Noida. The profit derived from the Kalamb unit was eligible for deduction u/s 80IA of the Income Tax Act, 1961 (for short the Act) in the year under consideration, whereas such benefit was not available to the other units of assessed situated in Delhi and Noida. In the return of income for the year under consideration, the assessed

declared a gross total income of Rs. 21,91,102/- which comprised of profit from Kalamb Unit amounting to Rs. 20,92,221/-, interest and other income amounting to Rs. 10,10,149/- and loss from units in Delhi at Rs. 9,11,270/-. From this gross total income, the assessed claimed a deduction of Rs. 20,92,221 u/s 80IA of the Act being 100% profit derived from Kalamb unit and, accordingly, total income of Rs. 98,880/- was shown in its return.

5. The Assessing Officer, however, adjusted the loss of Rs. 9,11,270/- of Delhi unit against the profit of Rs. 20,92,221/- of Kalamb unit and restricted the deduction u/s 80IA of the Act at Rs. 11,80,952/.

6. Being dissatisfied with the decision of the Assessing Officer, the assessed filed an appeal and the Commissioner of Income Tax(Appeal) held that the deduction claimed by the assessed u/s 80IA of the Act at Rs. 20,92,221/- to be correct and allowed the same.

7. Aggrieved against the order of Commissioner of Income Tax (Appeal) the Revenue filed an appeal before the Income Tax Appellate Tribunal, which upheld the order of Commissioner of Income Tax (A).

ITA No. 186/2006

8. The issue in this case is whether Income Tax Appellate Tribunal is justified in allowing the deduction u/s 80IA of the Act at Rs. 18,03,143/- as against Rs. 4,53,398/- allowed by the Assessing Officer for the assessment year 1998-99. The Income Tax Appellate Tribunal, following its order dated 20th January, 2005 in ITA No. 758/Del/2001 for the assessment year 1997-98, dismissed the appeal of the Revenue.

9. It has been argued by the learned Counsel for the Appellant that as per provision of Section 80IA of the Act where gross total income of the assessed includes any profits and gains derived from any eligible business of an industrial undertaking, the whole of the profit of such eligible business is to be allowed as deduction u/s 80IA of the Act and the interest earned by the assessed is not a business income but it is an income under the head ''income from other sources'' and it cannot be treated as business income.

10. Learned Counsel for the Appellant in support of its contention has cited decision of Apex court in IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, and Commissioner of Income Tax, Tamil Nadu-V, Madras Vs. Kotagiri Industrial Co-operative Tea Factory Ltd., Kotagiri, .

11. On the other hand, it has been argued by learned Counsel for the Respondent that the Assessing Officer while computing the income, restricted the deduction at Rs. 11,80,952/- being the amount allowable to the extent of business income against the business profit of Rs. 20,92,221/- from Kalamb unit. In doing so, the Assessing Officer mixed the profits of Kalamb unit with profits of units at Delhi and Noida and, thus, erroneously restricted the deduction to the extent of business income. This has been done in the total disregard of provision

of Sub-section 7 of Section 80IA of the Act. The learned Counsel in support of his contention has cited a decision of Andhra Pradesh High Court in Commissioner of Income Tax Vs. Visakha Industries Ltd., .

12. It is an admitted fact that Kalamb Unit is the only unit of the assessed which is eligible for benefits available u/s 80IA of the Act during the years under consideration, whereas the other units situated at Delhi and Noida are not eligible for this benefit. It is also not in dispute that profits derived by the assessed from Kalamb Unit amounted to Rs. 20,92,221/- whereas the other units at Delhi and Noida resulted in the loss of Rs. 9,11,270/-. Provision of Sub-section 7 of Section 80IA of the Act which is relevant in this case, is reproduced below:

(7) 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 purpose of determining the quantum of deduction under Sub-section (5) 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 assessed 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.

13. Perusal of the above provision shows that it is a distinct and separate deeming provision which lays down the special method of computing the profits and gains entitled to deduction u/s 80IA of the Act. Moreover, this provision is of overriding nature providing specifically that during each of the assessment years in the tax holiday, period in which the assessed is entitled to deduction u/s 80IA of the Act, this provision will be applied as if the industrial unit is an independent unit and is the one and only source of income possessed by the assessed.

14. It is clear that while computing deduction u/s 80IA of the Income Tax Act, 1961, the profits and gains of Kalamb unit for the purpose of determining the quantum of deduction u/s 80IA(5) of the Act is to be computed if such eligible business of the said unit is the only source of income of the assessed. The Assessing Officer mixed the profits of the Kalamb unit with the profits of units at Delhi and Noida and, thus, he erroneously restricted the deduction to the extent of business income and this was done by him in total disregard of the provisions of Sub-section 7 of Section 80IA of the Act as mentioned above.

15. Thus, the Kalamb unit being the only unit of the assessed eligible for deduction u/s 80IA of the Act is to be treated as an independent unit and the same is to be treated as the only source of income for assessed for the purpose of computing deduction u/s 80IA of the Act. The deduction claimed by the assessed u/s 80IA of the Act, thus, is in accordance with the said provisions and as such we find that there is no infirmity in the impugned order passed by the Income Tax Appellate Tribunal.

16. The Judgments cited by learned Counsel for Appellant are not applicable for

the facts of the present case.

17. This being the position, we are of the opinion that there is no substantial question of law that arises for our consideration and we do not find any error in the view that has been taken by the Tribunal in this regard.

18. Consequently, both the appeals are dismissed.