
(2011) 04 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No's. 302 to 304, 316 and 361 of 2008

Commissioner of Income Tax

APPELLANT

Vs

Haryana State Electronics Development Corporation Ltd.

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Income Tax Act, 1961 — Section 148, 2(29BA), 260A, 32A, 32A(2)(b)(iii)

Citation : (2012) 250 CTR 316 : (2011) 339 ITR 615

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Yogesh Putney, for the Appellant; Radhika Sun, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of IT Appeal Nos. 302, 303, 304, 316 and 361 of 2008, as according to learned counsel for the parties, common questions of law and facts are involved therein. For brevity, the facts are being taken from IT Appeal No. 302 of 2008. This appeal has been filed by the Revenue under s. 260A of the IT Act, 1961 (in short "the Act") against the order dt. 10th Aug., 2007 passed by the income tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 368/Chd/2003, relating to the asst. yr. 2000-01.

2. The appeal was admitted by this Court vide order dt. 18th Sept., 2008 for determination of the following substantial question of law :

Whether in the facts and circumstances of the case the Tribunal was right in holding that the activity of the assessee of manufacturing of identity cards amounts to "manufacture" and the undertaking of the assessee is an "industrial undertaking" for the purpose of s. 80IA of the Act, and the assessee is eligible for benefit under s. 80IA of the Act?

3. Briefly stated, the facts necessary for adjudication as narrated in the appeal are that the assessee filed its return for the asst. yr. 2000-01 on 29th Nov., 2000

declaring an income of Rs. 1,30,31,964 which was processed on 25th Jan.. 2001. It claimed deduction of Rs. 21,68,157 under s. 80IA of the Act. Proceedings under s. 148 of the Act were initiated. The AO disallowed the claim of the assessee vide order dt. 5th Dec., 2002. Feeling aggrieved, the assessee took the matter in appeal before the Commissioner of income tax (Appeals) [in short "the CIT(A)"] who vide order dt. 7th March, 2003 upheld the order of the AO and dismissed the appeal. Being dissatisfied, the assessee approached the Tribunal by way of an appeal. The Tribunal vide order dt. 10th Aug., 2007 allowed the appeal holding that the assessee was eligible for benefit under s. 80-IA of the Act. The Revenue has challenged the said order in the present appeal.

4. We have heard learned counsel for the parties.

5. The issue involved in this case is regarding allowability of deduction under s. 80IA of the Act. The various grounds taken for declining the claim of the assessee are :

(i) No manufacturing or production activity resulting in any article or thing is undertaken which would term the assessee as an "industrial undertaking" and, thus, not entitled to deduction under s. 80IA of the Act;

(ii) The voter identity card being prepared by the assessee could not be termed as "goods"; the preparation of photo identity card was taken as service provided to a particular customer and the identity card was not for general public use;

(iii) the product of the assessee can be classified as "photography apparatus and goods" which is covered in the Eleventh Schedule of the Act. In view of s. 80-IA(2)(iii) of the Act. an industrial undertaking which manufactures or produces, any article or thing specified in the list in Eleventh Schedule of the Act Is not entitled to deduction under s. 80IA of the Act.

6. Sec. 80IA provides for deduction to an assessee whose gross total income includes any profits and gains derived from any business of an industrial undertaking. The assessee is required to fulfil all the conditions enumerated in sub-s. (2) to be eligible for deduction under s. 80IA of the Act. However, sub-cl. (iii) thereof provides that the article or thing manufactured or produced by the assessee should not fall in Eleventh Schedule of the Act. The relevant portion thereof reads thus :

it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India :

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-cl. (b) of cl. (iv) which begins to manufacture or produce an article or thing during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2000, apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

7. In order to adjudicate the issue relating to the assessee being an "Industrial Undertaking" or not and whether it carries on any manufacturing activity, it would be expedient to notice the details of activities undertaken by the assessee, which are as under :

(a) Data from the voter list is entered into the computer, such data includes name, age, sex and address of the voters constituency-wise in bilingual.

(b) Photography of the individual voter-wise is carried out with the help of cameras, attendant equipment viz. TV, VCR, generator, monitor, video tapes etc.

(c) Feeding the data from video tapes to the computer machine for onward processing of Identity Cards.

(d) Application of hologram of the State on each such card and appending the signatures of the issuing authority etc.

(e) Printing and lamination of the Identity Cards.

(f) Miniature printing for onward transmission to the Election Department.

8. In addition to the above, the final photo identity card which is prepared by the assessee is a completely new product from the data from which it is started. Further, the assessee had installed various computers and other plant and machinery for the preparation of identity card.

9. Learned counsel for the assessee had placed heavy reliance on the Supreme Court judgment in *Income Tax Officer, Udaipur Vs. Arihant Tiles and Marbles (P) Ltd.*, wherein sawing marble blocks into slabs and tiles and polishing was held to be manufacture or production for purposes of s. 80-IA(2) of the Act. The apex Court analyzing the legal position and in view of the judgment in *Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others*, explained the scope of "manufacture" and "production" as follows :

It was held that the word "manufacture" and the word "production" have received extensive judicial attention both under the income tax as well as under the central excise and the sales-tax laws. The test for determining whether "manufacture" can be said to have taken place is whether the commodity, which is subjected to a process can no longer be regarded as the original commodity but is recognized in trade as a new and distinct commodity. The word "production", when used in juxtaposition with the word "manufacture", takes in bringing into existence new goods by a process which may or may not amount to manufacture. The word "production" takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods.

10. Applying the aforesaid tests, it was concluded by the apex Court as under:

We are of the view that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly result in emergence of a new

and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only is there manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and, therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondents-assessee did constitute manufacture or production in terms of s. 80IA of the IT Act, 1961.

11. It would be appropriate to examine the facts of the present case in the light of settled legal enunciation noticed hereinabove. The assessee for preparation of photo identity cards has to process the data, print the same on the cards, put hologram containing the State emblem, take photograph of the voter, match the photo with voter's data, affix the same on the cards and laminate the cards and take out the master copy duly laminated, consisting 40 miniatures per page of the above cards for the Election Department. The aforesaid activity involves making of a new final product from the data with which it started and would, thus, amount to manufacture or production of an article or thing. Once it is held that the assessee was manufacturing or producing an article or thing, necessarily it has to follow that the assessee is an "industrial undertaking" and covered under the provisions of s. 80IA of the Act.

12. The aforesaid view has the acceptance of the legislative intent as Finance (No. 2) Act, 2009 effective from 1st April, 2009 has inserted s. 2(29BA) in the Act which defines "manufacture" as under :

(29BA) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,--

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

13. The benefit of deduction under s. 80IA of the Act was sought to be denied on the plea that the assessee was rendering services to a particular customer and the identity card was not for general public use. The Tribunal had repelled the said objection as noticed in paras 12 and 13 of its order as under :

12. Another objection is that the voter identity card cannot be understood as "goods". It is argued by the Revenue that the manufacture of photo identity cards is a service provided by the assessee to a particular customer and the product so manufactured or produced are not for use by general public. In this connection a reference can be made to the decision of the Bombay High Court in the case of CIT vs. Emirates Commercial Bank Ltd. 2003 262 FTR 55 (Bom). In this judgment, the Hon'ble Bombay High Court was dealing with the claim of deduction under s. 32A in respect of computers installed in the office premises of the bank. In denying the claim, the Revenue contended before the Hon'ble High

Court that in order to attract s. 32A(2)(b)(iii), there should be existence of plant and machinery in an "industrial undertaking" for the purposes of business of "manufacture" or "production" of any article or thing. It was argued that the assessee was a banking business and could not be construed as an "industrial undertaking". In this context, the Hon"ble High Court noted that the computers were used to process the customer's data and the out-put which resulted from the computers consisted of management reports. That even a bank would constitute an industrial undertaking" in the sense that although it was rendering services, still in the course of its business, it produces articles and things. It was, therefore, concluded that the conditions of s. 32A(2)(b)(iii) are satisfied. The Hon"ble High Court specifically noted that the nature of service rendered by the bank to its customers involved the work of data processing and on the basis of such processing, information was provided to the customers.

13. In our view the parity of reasoning weighing with the Hon"ble Bombay High Court in the case of Emirates Commercial Bank Ltd. (supra) clearly applies in the instant case for the purposes of construing the eligibility of assessee's industrial undertaking for the purposes of benefits under s. 80IA of the Act. In s. 32A(2)(b)(iii) the reference is to an "industrial undertaking" for the purposes of business of construction, manufacture or production of any article or thing. Similarly in s. 80-IA(2)(iv)(a) also the reference is to an industrial undertaking which manufactures or produces articles or things. In fact according to the Hon"ble High Court, the data processing itself tantamounts to meeting the criteria of "manufacture". The instant case of the assessee stands on a better footing inasmuch as the assessee produces a tangible production in the shape of photo identity cards. Therefore, in our view the aforesaid objection taken by the Revenue does not help its stand of denying relief under s. 80IA to the assessee.

14. Learned counsel for the Revenue could not demonstrate that the approach of the Tribunal in this respect was perverse or erroneous in any manner.

15. Lastly, Sch. XI prescribes negative list which in terms of cl. (iii) of sub-s. (2) of s. 80IA denies benefit to an assessee in respect of manufacture or production of items which fall thereunder. Entry 10 of Sch. XI reads "photography apparatus and goods". The manufacture of identity cards cannot be described as photography apparatus and goods. In fact, the assessee is taking the aid of photographic apparatus and goods for manufacturing or producing identity cards. The Tribunal while adjudicating the aforesaid : issue in favour of the assessee had recorded as under :

14. The AO has also taken an objection that the product of the assessee can be classified as photography apparatus and goods and the same is covered in the Eleventh Schedule of the Act. Therefore, the assessee's undertaking manufacturing such goods is not eligible for benefits under s. 80IA. Sec. 80-IA(2)(iii) provides for denial of deduction to an industrial undertaking which manufactures or produces any article or thing specified in the list in Eleventh Schedule of the Act.

15. We have perused the Eleventh Schedule and the relevant entry reads as "photography apparatus and goods". We are unable to uphold the stand of the Revenue for the reason that it is nobody's case that the assessee is engaged in manufacture of photographic products and goods. At best it can be said that the assessee is utilizing photographic apparatus and goods in its process of manufacturing. By no stretch can it be said that the assessee is manufacturing photographic products and goods. Therefore, said objection of the AO is also not tenable.

16. No fault could be pointed in the conclusion of the Tribunal while adjudicating the aforesaid ground. In view of the above, we do not find any substance in the objections raised by the Revenue. Accordingly, the question of law is answered against the Revenue and in favour of the assessee. The appeals are dismissed.