(2012) 02 GAU CK 0040

In the Gauhati High Court

Case No : IT Appeal No. 23 of 2011

Commissioner of Income Tax — APPELLANT

Vs

I. Tech Electronics — RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:
Income Tax Act, 1961 — Section 260A, 263, 80IC, 80IC(2), 80IC(3)

Citation : (2012) 248 CTR 108 : (2012) 341 ITR 533

Hon'ble Judges : Adarsh Kumar Goel, C.J;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : A. Hazarika and B. Chakraborty, for the Appellant; R. Goenka and A. Goenka, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Goel, C.J.—This appeal has been preferred by the Revenue under s. 260A of the IT Act, 1961 against the order dt. 19th March, 2010 passed by the Tribunal, Guwahati Bench, in ITA No. 214/Gau/2007 for the asst. yr. 2004-05 claiming following substantial questions of law:

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified and correct in law in setting aside the order of the CIT passed under s. 263 of the IT Act, 1961 ?

(2) Whether on the facts and in the circumstances of the case, the respondent assessee can be said to be engaged in any production or manufacturing activity within the meaning of s. 80-IC of the IT Act, 1961 ?

(3) Whether on the facts and in the circumstances of the case, the respondent assessee is entitled to deduction under s. 80-IC of the IT Act, 1961 ?

The assessee claimed deduction under s. 80-IC in respect of income derived from assembling of colour TV which was claimed to be manufacturing activity'' falling under s. 80-IC(3) of the Act. The AO allowed the said claim but the CIT, exercising jurisdiction under s. 263 of the Act, set aside the said order and directed the AO to disallow the claim of the assessee. It was held that assembling component and turning them into TV/computer/DVD did not amount to manufacture as no new article different from the raw material came into being. Aggrieved thereby, the assessee carried the matter to the Tribunal by submitting that jurisdiction under s. 263 of the Act could not be exercised on an issue on which two views are possible and also by submitting that assembling of colour TV from different components and parts amounted to manufacture. Reliance was placed on decision of the Tribunal in another identical case in Rajib Ranjan Pujari vs. ITO (ITA No. 189/Gau/2008). Reference was also made to the reasons given by the AO as follows:

6. The assessee firm M/s I. Tech Electronics located at EPIP, Amingaon, Guwahati started assembling of colour TV w.e.f. 23rd Oct., 2003. Being an SST unit, it obtained DIC Registration Certificate on 1st Aug., 2003. The assessee claimed 100 per cent deduction of its profits and gains derived from the industrial unit under s. 80-IC of the IT Act for the asst. yr. 2004-05 being the initial assessment year. The assessee was asked vide this office letter dt. 28th Aug., 2006 to justify the claim of deduction. In response, the assessee''s Authorised Representative submitted that M/s I. Tech Electronics begins its manufacturing activity w.e.f. 23rd Oct., 2003 i.e. during the period beginning on the 24th day of December, 1997 and ending before the 1st day of April, 2007 in an industrial area at village Numalijolah under Silasundarighopa Mouza of North Guwahati Circle in the District of Kamrup, Assam. The location of the manufacturing unit falls under Khasra Nos. 275 and 306 as notified vide Notification No: 32 of 1999 dt. 8th July, 1999 of Central Excise. The Authorised Representative further submitted that M/s I. Tech Electronics was covered under s. 80-IC(2)(iii) of the IT Act and the amount of deduction in this case was accordingly 100 per cent of profits and gains derived by the unit for ten assessment years commencing with the initial asst. yr. 2004-05. I have gone through the submissions of the assessee''s Authorised Representative very carefully and also seen that the industrial unit of the assessee is situated at Export Promotion Industrial Part (EPIP), Amingaon-village Numalijolah, Mouza Silasundarighopa, District Kamrup, Assam, as notified by the Board in its Notification No. 116 dt. 26th March, 2004. Spot enquiry has also been made by the Inspector of income tax attached to this office to verify the existence/genuineness of the industrial unit. His report is placed on records. As the assembling of colour TV from various component parts is a process of manufacture or production, I am of the opinion that the assessee firm is engaged in manufacturing activity and entitled to deduction as specified in subs. (3) of the s. 80-IC of the IT Act.

2. The Tribunal upheld the plea of the assessee following its earlier order in Rajib Ranjan Pujari (supra) and also holding that exercise of revisional jurisdiction by the CIT was not called for.

3. We have heard learned counsel for the parties.

4. Learned counsel for the Revenue submits that the assessee was merely purchasing different components from Salora International Ltd. and after assembling the TV/DVD, the same were sold back to the same party. Same was the position with regard to Kitchen Appliances India Ltd. from whom the assessee was purchasing different components and selling assembled products. These activities did not amount to ''manufacturing.

5. Notice was issued and the assessee is represented by learned counsel, who supports the view taken by the Tribunal. He also relies upon judgments of Punjab & Haryana High Court in Commissioner of Income Tax Vs. Mahesh Chandra Sharma, and of Delhi High Court in CIT vs. Jackson Engineers Ltd. (2010) 36 DTR (Del) 168 holding that when a new and different article emerges having distinctive name, character and use, the process could be held to be manufacturing. In Mahesh Chandra Sharma (supra), reliance was placed, inter alia, on judgments of the Hon''ble Supreme Court in Gramophone Co. (India) Ltd. vs. Collector of Customs 1999 (114) ELT 770 (SC) and Union of India (UOI) Vs. Delhi Cloth and General Mills, .

6. The Tribunal has upheld the view that producing of TV sets by purchasing items like cabinet, chassis, IC, picture tube could be held to be manufacturing. It has not been shown that the view of the Tribunal in the case of Rajib Ranjan Pujari (supra) has been challenged by the Revenue. Moreover, the view taken by the Punjab & Haryana High Court and Delhi High Court also supports the case of the assessee. No contrary view has been shown.

7. In view of above, the order of the Tribunal cannot be held to be erroneous. No substantial question of law arises. The appeal is dismissed.

