
(2014) 08 AHC CK 0039

In the Allahabad High Court

Case No : Income Tax Appeal Nos. 283 of 2010, 10 and 13 of 2011

Commissioner of Income Tax

APPELLANT

Vs

Prisma Electronics

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Income Tax Act, 1961 — Section 10A, 142(1), 143(2), 260A, 80IB

Citation : (2015) 377 ITR 207

Hon'ble Judges : Tarun Agarwala, J;Dinesh Gupta, J

Bench : Division Bench

Judgement

Tarun Agarwala, J.—This group of appeals raises the same question of law and are being decided together. For facility, the facts of ITA No. 283 of 2010 is being taken into consideration.

2. The assessee's factory is situated in SIDCO Industrial Estate in Jammu & Kashmir and derives income from manufacture and sale of consumer electronic durable goods. For the assessment year 2005-06, the assessee filed a return showing a loss of Rs. 64,127/-. The case was taken up for scrutiny and notice u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was issued. During the year in question, the assessee claimed deduction u/s 80-IB of the Act amounting to Rs. 18,51,055/-. The Assessing Officer issued a notice u/s 142(1) of the Act requiring the assessee to justify his claim of deduction u/s 80-IB of the Act. In response to the notice, the assessee submitted that his factory is situated in Jammu & Kashmir. On going through the claim of the assessee, the Assessing Officer found that the assessee was running the business from the same premises as a proprietorship concern and that on 1st April, 2004 a partnership firm was constituted in which two other persons were inducted as partners. According to the Assessing Officer, a new legal entity was formed on 1st April, 2004. The Assessing Officer accordingly held that the industrial undertaking under proprietorship was converted into a partnership firm on 1st April, 2004 and that the transfer of machinery or plant previously used by

the proprietorship concern was being used by the partnership firm and, accordingly, the assessee was not entitled for exemption u/s 80-IB of the Act. The Assessing Officer, accordingly, disallowed the deduction claimed by the assessee.

3. The assessee, being aggrieved, filed an appeal before the Commissioner of Income Tax, who allowed the appeal holding that the assessee was entitled for deduction u/s 80-IB of the Act. The appellate authority found that the business of the undertaking was not formed by splitting up or by reconstruction and that the undertaking was already in existence and, consequently, the assessee was not hit by the provision of Section 80IB(2)(i) of the Act. The revenue, being aggrieved, filed an appeal before the Income Tax Tribunal, which was dismissed. The Tribunal found that only the constitution of the assessee's firm was changed from proprietorship concern into a partnership firm and that there was no transfer of plant and machinery to the new firm, inasmuch as it was only a transfer of the industrial undertaking as a whole along with the assets and liabilities. The Tribunal held that there was no splitting up or reconstruction of the business, which was already in existence and that it was only a case of change of the constitution of the same industrial concern, which continued to manufacture the same item, even after the admission of a partner. The Tribunal found that the conditions that disqualifies the deductions u/s 80-IB of the Act was not existing.

4. The revenue, being aggrieved, has filed the present appeal u/s 260A of the Act, which was admitted on the following substantial questions of law:-

1. Whether the facts and circumstances of the case the Hon''ble ITAT is correct in dismissing the appeal of revenue by holding that the assessee is entailed to deduction u/s. 80IB of I.T. Act, 1961, when the industrial undertaking has been formed by transfer of already existing proprietorship business and assets to the partnership firm?

2. Whether the facts and circumstances of the case the Hon''ble ITAT is correct in holding that on the conversion of proprietorship firm into partnership firm there was no transfer of Plant & Machinery to the next firm?

3. Whether the facts and circumstances of the case the Hon''ble ITAT is correct in holding that the new Industrial Undertaking is not formed by transfer to a new business of Machinery & Plant, previously used for any purpose?"

5. We have heard Sri Dhananjay Awasthi, the learned counsel for the department and Sri Rohit Jain and Sri R.S. Agrawal, the learned counsel for the assessee in this appeal and Sri Shubham Agarwal, the learned counsel for the assessee in I.T.A. No. 10 of 2011.

6. The learned counsel for the revenue submitted that by conversion of the assessee's proprietary business into a partnership firm, led to a transfer of the assets of proprietary business to the partnership firm, as a result of which, the plant and machinery, which was being used by the proprietorship concern was

transferred and used by a partnership firm w.e.f. 1st April, 2004. Consequently, in view of the provisions of Section 80-IB(2)(i) of the Act the assessee was not entitled for deduction.

7. In order to appreciate the submission of the learned counsel for the appellant, it would be appropriate to consider the provision of Section 80-IB of the Act, which is extracted hereunder:

"Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.

(2) This section applies to any industrial undertaking which fulfills all the following conditions, namely:-

(I) it is not formed by splitting up, or the reconstruction, of a business already in existence."

8. From a perusal of the aforesaid provision, the emphasis is on the formation of the undertaking, which is not formed by splitting up or reconstruction of an existing business. The formation of the undertaking should not be confused with the ownership of the business. If the undertaking is formed by splitting up or by reconstruction, in that case, the undertaking will not be qualified for claiming exemption. In the instant case, the undertaking was already in existence and was not formed by splitting up or by reconstruction of the business. The undertaking was admittedly formed in the year 2002 and not in the year 2004. In 2004, the ownership of the business changed from a proprietorship firm to a partnership firm, wherein two persons were inducted as partners. On the conversion of the proprietorship firm into a partnership firm there was no transfer of plant and machinery to the new firm. In the instant case, there was only transfer of the industrial undertaking as a whole along with assets and liabilities.

9. Consequently, in our view the two conditions, which are provided u/s 80-IB(2) (i) of the Act, which disqualifies the deduction are not present in the instant case.

10. Our view is fortified by another similar provision, which were earlier existing u/s 84 of the Act, which was subsequently, omitted. For facility, Section 84 of the Act as it existed at the relevant moment of time is extracted hereunder:-

"Income of newly established industrial undertaking of hotels.-(1) Save as otherwise hereinafter provided, income tax shall not be payable by an assessee

on so much of the profits and gains derived from any industrial undertaking or business of a hotel or from any ship, to which this section applies, as does not exceed six per cent per annum on the capital employed in such undertaking or business or ship, computed in the prescribed manner.

(2) This section applies to any industrial undertaking which fulfills all the following conditions, namely:-

(i) it is not formed by the splitting up, or the reconstruction of a business already in existence;

(ii) it is not formed by the transfer to a new business of a building machinery or plant previously used for any purpose;

(iii) it manufactures or produces articles or operates one or more cold storage plants, in any part of India, and has begun or begins to manufacture or produce articles or to operate such plant or plants, at any time within the period of twenty-three years next following the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking."

11. From a perusal of the aforesaid provision, it is clear that Section 84 is more or less the same as provided in Section 80-IB of the Act. The Central Board of Direct Taxes issued a circular F. No. 15/5/63-IT(A-1) dated 13th December, 1963 indicating that the benefit of Section 84 is attached to the undertaking and not to the owner thereof and, consequently, the successor would be entitled to the benefit for the unexpired period of 5 years provided the undertaking is taken over as a running concern.

12. The same principle is applicable in the instant case. Admittedly, the undertaking was in existence since 2002. The proprietorship concern changed into a partnership firm. The benefit u/s 80-IB of the Act is available to the partnership firm and the conditions imposed u/s 80-IB(2)(i) does not come in the way.

13. In Commissioner of Income Tax Vs. Bullet International, a Division Bench of this Court held that the exemption granted to a proprietorship concern, which converted from a proprietorship into a partnership concern was still entitled for exemption u/s 10A of the Act.

14. In the light of the aforesaid, we hold that the Tribunal was justified in dismissing the appeals of the revenue holding that the assessee was entitled for deduction u/s 80-IB of the Act and was not hit by the provisions of Section 80-IB(2)(i) of the Act. The Tribunal was also justified in holding that upon conversion of the proprietorship concern to a partnership concern there was no transfer of plant and machinery to the partnership firm, inasmuch as there was a transfer of the industrial undertaking as a whole along with its assets and liabilities.

15. Consequently, for the reasons stated aforesaid, all the appeals fail and are

dismissed.

16. The questions of law as indicated aforesaid are answered accordingly.