(2009) 08 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 206 of 2009 (O and M)

Commissioner of Income Tax, Karnal — APPELLANT

Vs

Nice Overseas — RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:
Income Tax Act, 1961 — Section 260A, 80IB

Citation : (2009) 08 P&H CK 0019

Hon'ble Judges : Daya Chaudhary, J;A.K. Goel, J

Bench : Division Bench

Advocate : Sukant Gupta, for the Appellant; Pankaj Jain, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—The revenue has preferred this appeal u/s 260A of the income tax Act, 1961 (for short, ""the Act"") against the

order of Income Tax Appellate Tribunal, New Delhi, Bench ''SMC passed in IT Appeal No. 821/DEL/2006 on 25-7-2006 for the assessment

year 2002-03, proposing to raise following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Hon''ble ITAT was right in law in confirming the order of the CIT(A) directing

the Assessing Officer to allow deduction u/s 80IB on the amount of duty drawn back received by the assessee which cannot be termed as income

derived from"" an industrial undertaking as held by the Hon''ble Supreme Court of India in the case of CIT v. Sterling Foods [1999] 237 ITR 579

(SC)""?

2. Whether on the facts and circumstances of the case the Ld. ITAT is right in law in allowing deduction u/s 80IB of the income tax Act, 1961 on

total business profits which includes duty drawn back/export incentives without considering the provisions of section 80-IB under which the

deduction is allowable only from the income derived from the industrial undertaking having direct nexus with the activity of industrial undertaking?

The assessee received export incentives and claimed deduction u/s 80-IB of the Act. The claim of the assessee in respect thereof was disallowed

following judgment of the Hon''ble Supreme Court in CIT v. Sterling Foods [1999] 237 ITR 579 1. The said view has been affirmed by the

CIT(A) and allowed the claim of the assessee but the Tribunal restored the same, which view was affirmed by the Tribunal.

2. It is not disputed that the matter is covered against the assessee by the judgment of the Hon''ble Supreme Court in Sterling Foods, (supra) and

order of this Court in Raj Overseas v. CIT [2008] 174 Taxman 566. Accordingly, the appeal is allowed. The order of the Tribunal is set aside and

that of Assessing Officer is restored.

