
(2010) 08 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : ITR No. 1 of 2010 (A.Y. 1986-87 and 1987-88)

Liberty Group Marketing Division

APPELLANT

Vs

CIT

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 80HH, 80I, 80IA, 80IA

Citation : (2012) 344 ITR 312

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

Bench : Division Bench

Advocate : S.K. Mukhi with Ms. Jyoti, for the Appellant; Rajesh Katoch, for the Respondent

Judgement

Ajay Kumar Mittal, J.—In pursuance of a direction issued by this court u/s 256(2) of the income tax Act, 1961 (in short "the Act"), the following question of law has been referred to this court for its opinion by the income tax Appellate Tribunal, Delhi Bench "C", New Delhi (hereinafter referred to as "the Tribunal"):

Whether, in the facts and in the circumstances of the assessee's case, the Tribunal has erred in law while not accepting claim u/s 80-I although the assessee fulfilled all the requisite conditions of being an industrial undertaking?

The facts, in brief, are that the assessee is deriving income from 2 commission and also trading in footwear and filed a return on 30-7-1986, declaring an income of Rs. 7,27,330 for the assessment year 1986-87. The assessee claimed deduction u/s 80-I of the Act of Rs. 1,40,920 in the assessment year 1986-87 and Rs. 97,494 in the assessment year 1987-88. On enquiry, the assessing officer found that the entire stock was got manufactured from the sister concern for which production charges were paid at Rs. 12,60,474. The assessee-firm purchased raw material and supplied the same to the sister concern for manufacturing process. The Assessing Officer disallowed the deduction claimed u/s 80-I of the Act for both the abovesaid assessment years holding that the assessee-firm was not an industrial undertaking. On appeal, the Commissioner of

income tax (Appeals) (in short "the CIT(A)") upheld the view of the assessing officer and held that the assessee was getting the shoes made from cobblers on job work basis. On further appeal to the Tribunal, the view of the assessing officer as upheld by the Commissioner of income tax (Appeals) was affirmed.

2. We have heard learned counsel for the parties and perused the record.

3. The issue that arises for consideration in this reference is whether the assessee who was getting the shoes made by engaging the cobblers, etc., or from sister concern would be said to be deriving income from an industrial undertaking within the meaning of section 80-I of the Act and entitled to deduction thereunder.

4. Learned counsel for the assessee submitted that the assessee was entitled to deduction u/s 80-I of the Act in view of the judgments in *ASPINWALL and CO. LTD. Vs. Commissioner of Income Tax*, *Commissioner of Income Tax Vs. U.P. State Agro Industrial Corporation (No. 1)*, *Commissioner of Income Tax Vs. Penwalt India Ltd.*, *Commissioner of Income Tax Vs. Talwar Khuller (P.) Ltd.*, *Commissioner of Income Tax Vs. Prithviraj Bhoorchand*, *Commissioner of Income Tax Vs. Prabhudas Kishordas Tobacco Products Pvt. Ltd.*, *Commissioner of Income Tax Vs. Taj Fire Works Industries*, and *Commissioner of Income Tax Vs. Liberty Group Marketing Division*,

5. Learned counsel for the Revenue supported the order passed by the Tribunal and submitted that a similar issue arose before this court in *Liberty Shoes Limited Vs. Commissioner of Income Tax*, wherein this court held that the assessee was not entitled to deduction u/s 80-IA in respect of profits and gains from the business of sale of PVC, Liberty shoes got manufactured according to its own specifications, designs, etc., from outside agencies. Learned counsel further submitted that this court relying upon the judgment of the Apex Court in *Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore*, had decided the issue against the assessee and in favour of the Revenue. According to the learned counsel, none of the judgments relied upon by the assessee discusses the scope of the expression "derived from" which occurs in section 80-I of the Act and has been explained in *Sterling Foods Ltd.* by the Apex Court.

6. We have given our thoughtful consideration to the rival submissions of learned counsel for the parties.

7. u/s 80-I of the Act, a deduction of twenty-five per cent, in the case of corporate tax assesseees and twenty per cent, in other cases is allowed out of the profits and gains derived from a new industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft included in the gross total income.

8. The hon"ble Supreme Court in *Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore*, was seized of the matter relating to deduction u/s 80HH of the Act. The assessee had earned income by sale of the import

entitlements. It was held that it would not constitute profit and gains derived from its industrial undertaking of processing sea food and the assessee was not entitled to the benefit of section 80HH of the Act. The Division Bench of this court in *Nahar Exports Ltd. Vs. Commissioner of Income Tax*,) following the aforesaid judgment of the Apex Court, while dealing with the expression "derived from", had recorded as under (page 497):

The word derive is usually followed by the word from and it means: get, to trace from a source; arise from, originate in, show the origin or formation of. The source of import entitlements could not be said to be the industrial undertaking of the assessee. The source of the import entitlements could only be said to be the Export Promotion Scheme of the Central Government whereunder the export entitlements became available. There must be, for the application of the words derived from, a direct nexus between the profits and gains and the industrial undertaking. In the instant case, the nexus was not direct but only incidental. The industrial undertaking exported processed sea foods. By reason of such export, the Export Promotion Scheme applied. Thereunder, the assessee was entitled to import entitlements, which it could sell. The sale consideration therefrom could not be held to constitute a profit and gain derived from the assessee's industrial undertaking. The receipts from the sale of import entitlements could not be included in the income of the assessee for the purpose of computing the relief u/s 80HH of the income tax Act, 1961.

9. The words "profits and gains derived from Industrial Undertaking" 10 occurring in section 80IA of the Act were under consideration of this court in *Liberty Shoes Limited Vs. Commissioner of Income Tax*, . The assessee who was earning profit from business of trading activity or products of other concerns was held not to derive income from such industrial undertaking. Following the dictum laid down in *Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore*, it was held that the assessee was not entitled to any benefit under the said provision.

10. The issue raised herein, thus, authoritatively stands resolved against the assessee.

11. Suffice it to notice that the judgments cited by learned counsel for the assessee were either prior in point of time to the judgment delivered by the Apex Court in *Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore*, wherein the scope of the expression "derived from" was elaborated and discussed or the Apex Court judgment in *Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore*, was not under consideration in those judgments. Therefore, the assessee cannot derive any advantage from those pronouncements.

12. Accordingly, the question of law, referred to above, is answered in favour of the Revenue and against the assessee. The reference stands disposed of accordingly.