* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA No. 1232/2008

Reserved on : July 15, 2009
Date of decision : August 19, 2009

THE COMMISSIONER OF INCOME TAX-III ...Appellant.
Through: Mr. Sanjeev Sabharwal, Mr. Mohan Prasad Gupta, Mr. Arvind Kumar Verma, Advocates

VERSUS

SPORTKING INDIA LIMITED ....Respondent
Through: Mr. Kaanan Kapoor, Advocate

CORAM:
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

% **JUDGMENT**

VALMIKI J.MEHTA, J.

1. The assessee company is an industrial undertaking within the meaning of the expression in Section 80-IA of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). For the assessment year 1998-99 an assessment was drawn under Section 143(3) of the Act. Assessing Officer (AO) subsequently

issued notices on the ground of income escaping assessment for the reason that the Assessing Officer felt that the assessee company was not entitled to the benefit of Section 80-IA.

2. The facts are that on account of loss of goods which were destroyed by fire, the assessee company was given an insurance claim of Rs. 39,35,841/-. The Assessing Officer was of the view that the amount received from the Insurance Company is not "derived from" the manufacturing activity of the assessee company and consequently the assessee was not entitled to the benefit of Section 80-IA. The order of the Assessing Officer was, however, set aside by the CIT(A) and which order was confirmed by the ITAT resulting in the Revenue being in appeal in this Court under Section 260-A of the Act. The substantial question of law which has been framed in this case is as under:

> *"Whether in the facts and circumstances of the case, learned ITAT/CIT(A) erred in deleting the disallowance made by the Assessing Officer on account of Assessee's claim for deduction under Section 80IA in respect of insurance claim received?"*

3. Section 80-IA as it stood at the relevant time for the concerned assessment year reads as under:

> "80-IA. *Deduction in respect of profits and gains from industrial undertakings, etc. in certain cases*—(1) Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking....."

4. The issue, therefore, which falls for consideration is, whether the insurance claim which has been received cannot be considered while making deductions in respect of the profits and gains from an industrial undertaking under Section 80-IA. The matter boils down to the meaning of the expression "derived from any business of an industrial undertaking" as appearing in Section 80-IA.

5. At the outset, while determining the meaning to be attributed to this expression, one must keep in mind that Section 80-IA is a part of fasciculus of provisions whereby benefits are granted to certain industrial undertakings, businesses etc. including those which are located in certain special locations/areas. The object is generation of new investment and employment with respect to particular industries in certain areas and in certain locations besides generation of revenue for the government and industries from whom plant etc. will be purchased by the new industrial undertaking. The object of the provision is further made clear from Sub-section (2) of Section 80-IA whereby such businesses are not considered for taking advantage of the deduction under Section 80-IA if either it is formed from splitting up of an existing business or by use of machinery or plant previously used and so on. The object is clearly to give fillip to the economy and to investment. This object will have to be kept in view while interpreting the provisions of Section 80-IA.

6. We find that for a similar provision of Section 80-IB, two decisions have been rendered by two Division Benches of this Court in the judgments reported as **Commissioner of Income Tax vs. Eltek SGS (P) Ltd., (2008) 300 ITR 6 (Delhi)** and **Commissioner of Income Tax vs. Dharam Pal Prem Chand Ltd. (2009) 221 CTR (Del) 133.** In the **Eltek SGS (P) Ltd.** case duty drawback was held to be profits/gains derived from an industrial undertaking and hence eligible for deductions under Section 80-IB. In the case of **Dharam Pal Prem Chand Ltd.** refund of excise duty was held to be profits and gains derived from an industrial undertaking within the meaning of an expression under Section 80-IB.

7. In fact, the Supreme Court way back in 1952 in the judgment reported as **Raghuvanshi Mills Ltd. vs. Commissioner of Income Tax, (1952) 22 ITR 484** held that where the assessee had taken policy known as "consequential loss policy" against loss of profit and its mills were completely destroyed by fire the amount received under the policy was held to be inseparably connected with the conduct of the business and hence was held to be a Revenue receipt. Para 18 is relevant and is re-produced herein:-

> *"18. The assessee is a business company. Its aim is to make profits and to insure against loss. In the ordinary way it does this by buying raw material, manufacturing goods out of them and selling them so that on balance there is a profit or gain to itself. But it also has other ways of acquiring gain, as do all prudent businesses, namely by insuring against loss of profits. It is indubitable that the money paid in such circumstances is a receipt and insofar*

as it represents loss of profits, as opposed to loss of capital and so forth, it is an item of income in any normal sense of the term. It is equally clear that the receipt is inseparably connected with the ownership and conduct of the business and arises from it. Accordingly, it is not exempt."

8. Similarly, in the case of **Commissioner of Income Tax vs. Needle Industries (India) Ltd., (200) 162 CTR (Mad) 337** a Division Bench of the Madras High Court held that the amount received from an insurer on account of loss of raw materials etc. in the fire, was held to be a trading receipt to the extent the amount received exceeded the book value of the goods and the same constituted taxable income.

9. At this stage, it may be stated that the fact that there was a fire in the unit of the assessee company is an undisputed fact. It is not as if the event is questionable. If that be so, there is no reason why keeping in account the intent of the provision of Section 80-IA and the fact that an industrial undertaking has already been established and is running, (i.e. investment done, machinery purchased, employment and revenue generated etc.) a restricted interpretation be given to the expression "derived from any business of an industrial undertaking". As held by the Supreme Court in the case of **Raghuvanshi Mills Ltd.** definitely a nexus to the business is there in case the goods of a business are destroyed and for which an insurance amount is claimed.

10. We also note with approval the following passage in the judgement of the ITAT which shows that the net effect of the profit and loss account is nil in the facts and circumstances of the present case:

> *"Moreover, the said receipts on account of insurance claim, in our opinion, are in the nature of reimbursement of loss actually incurred by the assessee as a result of goods damaged by fire and there being no element of profit involved therein, the same cannot be treated as any income separately earned by the assessee so as to exclude them for the purpose of computing deduction u/s 80IA. As rightly contended by the learned counsel for the assessee, although the expenditure incurred on the cost of goods damaged by fire is debited in the profit & loss account by the assessee and the insurance claim received on account of such goods lost in fire is credited in the profit & loss account as per the guideline for proper presentation and disclosure, the net effect is that both these transactions get nullified having no bearing ultimately on the profit shown in the profit & loss account. In our opinion, the exclusion of the amount of insurance claim received by the assessee and credited in the profit & loss account for computing deduction u/s 80IA thus is not justifiable from this angle also."*

Therefore, there is no reason why amount received from the insurance company by the assessee company should not be taken into account in determining the profits and gains of an industrial undertaking of the types specified under Section 80-IA.

11. The counsel for the Revenue has placed strong reliance on the judgments reported as **Pandian Chemicals Ltd. vs. Commissioner of Income-Tax, 270 ITR 448** and **Vania Silk Mills P. Ltd. vs. Commissioner of Income-Tax, 191 ITR 647.**

The case of **Pandian Chemicals** has held that sale of scrap is not a revenue receipt derived from business though the same was held eligible by the Madras High Court in the earlier cases of **CIT vs. Sundaram Clayton Ltd., 133 ITR 34** and **CIT vs. Wheels India Ltd., 141 ITR 745.** So far as the judgment of **Pandian Chemicals** holds that the profit amount received from the insurance company is not a revenue receipt, the same would be at divergence with the view of the Supreme Court in the case of **Raghuvanshi Mills Ltd.** (supra). We note that the **Pandian Chemicals** case does not refer to the decision of the Supreme Court in **Raghuvanshi Mills Ltd.** case which clearly holds that the amount received from an Insurance Company on account of loss of profit is very much a revenue receipt.

So far as the Supreme Court decision in the case of **Vania Silk Mills P. Ltd.**, the same cannot be applied to the facts of the present case inasmuch as the said decision turned upon the meaning of the word "transfer" as occurring in Section 45 of the Act for the purpose of determining capital gains. The decision dealt with the issue that if the machinery is damaged by fire then, it cannot be said that there is transfer within the meaning of Section 45 of the Act merely because the scrap has to be given to the Insurance Company which realises proceeds from the sale of the scrap. On the facts of the case it was, therefore, held the money received under the insurance policy in such case was not a consideration

for transfer of the property and hence was not a capital gain within the meaning of Section 45 of the Act.

12. In view of the above, we accept the contention of the assessee and reject the contention of the Revenue and answer the question of law framed by holding that ITAT/CIT(A) did not err in deleting the disallowance made by the Assessing Officer on account of assessee's claim for deduction under Section 80-IA in respect of the insurance claim receipt. The appeal is accordingly dismissed.

VALMIKI J.MEHTA, J

A.K. SIKRI, J

August 19, 2009
dkg