

Court No. - 32

Case :- INCOME TAX APPEAL No. - 385 of 2008

Petitioner :- Commissioner Of Income Tax,Agra

Respondent :- M/S Ambika Sheet Grah(P) Ltd.,Nunihai,Agra

Petitioner Counsel :- Shambhu Chopra

Hon'ble Sunil Ambwani,J.

Hon'ble Pankaj Mithal,J.

We have heard Shri Shambhu Chopra for the department. Shri Suyash Agarwal appears for the respondent.

This Income Tax Appeal under 260-A of the Income Tax Act, 1961 (the Act) arises out of the order of Income Tax Appellate Tribunal dated 25.4.2008, by which the appeals filed by the revenue and cross objections filed by the assessee relating to Assessment Year 2001-02, were dismissed. The Tribunal confirmed the order of the CIT (A) allowing the appeal and setting aside the order of the A.O. disallowing to the assessee the deduction in the business of cold storage under Section 80IB (11) of the Act.

The appeal has been preferred on the substantial question of law framed in the memo of appeal as follows:-

"Whether the Hon'ble ITAT was correct in concluding that the income derived from running a **stand - alone cold storage plant** is also eligible for deduction in terms of provisions of Section 80IB (11), in a similar manner in which income derived from running cold storage facility is eligible for such deduction under the provisions of Section 80IB (11)".

The assessee claimed deduction from out of the profits

from business from a cold storage. The A.O. did not allow the deductions under Section 80IB (11) of the Act on the ground that the business of running the cold storage alone is not entitled to deduction under Section 80IB (11) unless the facility of transportation was also provided by the assessee to bring the services under the expression 'cold chain facility', used under Section 80IB (14) (aa). The appellate authority did not agree and allowed the deduction. The Tribunal by long and elaborate reasoning supported by the case law arrived at a conclusion that the cold chain facility may not include the transportation also. The "cold chain facility" is defined under Section 80IB (14) (aa) as follows:-

"80IB...

(14)...

(aa) "**cold chain facility**" means a chain of facilities for storage or transportation of agricultural produce under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce."

The Tribunal found that the deduction from profits of business of setting up and operating cold storage facility for agricultural produce is applicable to cold storage and that taking into account the definition of 'cold chain facility', it cannot be said that both storage and transportation of agricultural produce should be necessary to admit the deduction. The words "storage" and "transportation" are separated by the word "or" which clearly suggests that both these facilities may be offered together or separately provided these are within the chain of facilities.

In paragraphs 28 and 29 the Tribunal has considered the argument advanced by the department and has held

as follows:-

"28. So far as the other conditions for eligibility of deduction u/s 80IB (11) are concerned, there is no dispute. It is fairly admitted by both the parties that whatever facilities assessee has, they are under scientifically controlled conditions. Thus, the dispute is centralized on the interpretation of the definition of "cold chain facility" as provided in sub section (14) (a) as reproduced above. The first view of definition iscold chain facility means "a chain of facilities for storage or transportation...". From this interpretation, we find that even though words "storage" and "transportation" have been separated by the conjunction "or" but both are linked together to the words "chain of facilities" and hence an industrial undertaking should have both system of storage as well as transportation to become a part of the chain of facilities. In other words, conjunction "or" would effectively mean "and" so that words "storage" and "transportation" both are equally tagged to the words "chain of facilities". In other words, both should form a chain with each other. Both are complimentary to each other and absence of one will not make the chain complete. When we give effect to this interpretation then unless an assessee has both the system of storage as well as transportation, under zero temperature it will not get deduction u/s 80IB (11) i.e. an industrial undertaking having only cold storage system or another industrial undertaking having only refrigerated transportation system will not be eligible for deduction u/s 80IB (II). This view of the Revenue is fortified by the use of the word "and" in the explanatory notes, between "storage" and "transportation" and by the common sense understanding of the words "chain of facilities" supported by documents on the subject released by some State Government, public sector undertakings or by some foreign agencies as referred to by Id. DR.

29. The second interpretation is to read the definition as per conjunction "or" used therein i.e to read the "storage" and "transportation" separately i.e a cold chain facility means "a chain of facilities for storage"... or "a chain of facilities for transportation".....From this interpretation one can infer that if an industrial undertaking has a chain of facilities for storage with other conditions fulfilled or if it has a chain of facilities for transportation

with other conditions fulfilled then both types of assesseees will be entitled for such deduction under this section. There is no dispute that assessee is handling agricultural produce such as potatoes. There is also no dispute that the facilities laid down for storage are scientific. In our considered opinion, chain of facilities here would mean several facilities in sequence for the purposes of storage or transporation of agricultural produce. In respect of storage, this would start from unloading, pre-cooling further cooling, badla (turn around), humidity control, temperature control, removal, normalizing temperature and then loading back. We do not have any other item in the list of facilities provided either in the statute or in the rules or through any executive instructions, which an assessee should possess for forming a chain and for being eligible to this deduction. In absence of any specific list of facilities which could alone form a chain, the list of facilities provided by the assessee and highlighted by the Id. CIT (A) are, therefore, acceptable if we consider the second interpretation. There is no material on record or suggested by Revenue so as to reject these facilities as not in sequence and therefore, not a chain. It is not proved by the Revenue that facilities provided by the assessee are inbuilt or integral to cold storage plant and hence, are not additional and thus do not become part of chain of facilities....."

The Tribunal also relied upon a speech of Finance Minister while introducing Finance Act, 1999 in which he made it clear that more and more cold storage plants and cold storage transportation either singly or in integrated manner should come up and help in preservation of agricultural produce. The Tribunal found that this intention cannot be fulfilled, if a restricted meaning is given to the definition of cold chain facility, and unless there is an integrated facility for storage and transportation from "end to end" an industrial undertaking is not possible.

The Tribunal has thereafter given reasons for not

accepting the interpretation pleaded by revenue. These reasons are enumerated as follows:-

(1) It is not explained by Revenue as to what facilities should an industrial undertaking have to constitute a chain of facilities other than what the assessee has described for the purposes of storage.

(2) Integrated business of cold storage and cold transportation is not envisaged by this section or by the definition of cold chain facility as distinguished from Section 80IB (11A) where such integrated business is visualized.

(3) Non obstante clause used in the beginning of sub section (11) shows that benefit under this section can be considered to a cold storage plant independent of any benefit to it covered under sub sections (3), (4) or (5) under different conditions stipulated therein.

(4) Items to be stored in a cold storage plant for claiming deduction under sub sections (3), (4) or (5) are not specified but for claiming deduction under sub section (11), the class of items to be dealt with are specified i.e. such deduction can be claimed only if an undertaking deals in agricultural produce.

(5) From the interpretation canvassed by the Revenue, it is not clear whether an assessee owning cold transportation system to bring agricultural produce from farm land to the cold storage or another assessee owning cold storage plant and the third assessee owning another cold transportation for agricultural produce from storage plant to the consumer join together to form a

chain as canvassed by the Revenue, will get benefit independently. Similarly, it is not made clear by the Revenue that if an assessee owning a fleet of refrigerated transportation only, will get deduction u/s 80IB (11), even though it does not own any cold storage plant. If a fleet of refrigerated transportation can be called a chain of facilities for transportation, then multiple chambers in a big cold storage plant should be equally said to be a chain of facilities for storage, or even owning number of cold storage plants of single chambers can be called a chain of facilities for storage.

(6) Further sub section (11) uses the words “a cold chain facility”. Use of the word “a” signifies that even one chain of facility will be entitled to deduction i.e. any industrial undertaking having facility either in the beginning or in the middle or in the end of an otherwise integrated business can avail the benefit.

(7) As per interpretation canvassed by the Revenue, unless an assessee, owning an industrial undertaking operating the composite business of transportation and storage from farmer to the consumer, will not be entitled to such deduction under Section 80IB (11). In other words, unless somebody has infrastructure to that extent, benefit could not be availed. This restricts conferring of benefit to a very small segment of assesseees who are capable of owning such composite system and thus would restrict the deduction to a smaller number of assesseees which is against the intention of the legislature which has introduced these provisions to encourage more and more preservation of agricultural produce

and more and more setting up of cold storage facilities or cold storage transportation.

(8) The Revenue could not point out convincing reasons as to why assessee should be denied deduction.”

The Tribunal thereafter relied upon judgments in which it has been held that where two possible interpretations of a taxing provision are possible, the one, which is favourable to the assessee should be preferred vide **Mysore Minerals Ltd. Vs. Commissioner of Income Tax (1999) 239 ITR 775 (SC)**; **Commissioner of Income Tax vs. Podar Cement Pvt. Ltd (1997) 226 ITR 625 (SC)**; **Commissioner of Income tax vs. Madho Pd. Jatia (1976) 105 ITR 179 (SC)**; **Commissioner of Income tax vs. Kulu Valley Transport Co. P. Ltd. (1970) 77 ITR 518 (SC)** and **Commissioner of Income-tax vs. Gwalior Rayon Silk Manufacturing Co. Ltd. (1992) 96 ITR 149 (SC)**.

We find considerable substance in the reasons given by the Tribunal in coming to a conclusion that it is not necessary that there should be facility of transportation along with the facility of cold storage to constitute a cold chain facility. The business of cold storage alone, without any transportation facility with refrigeration back to back upto consumption and, linking farmer and market also qualifies for deduction in terms of provisions of Section 80-1B (11) of the Act. The word "or" in the context here means and should be interpreted as disjunctive particle. The statute should be read in its ordinary, natural, and grammatical sense.

The question of law is answered in favour of the assessee and against the revenue.

The Income Tax Appeal is **dismissed**.

Order Date :- 10.8.2011

RKP