

Income Tax Appellate Tribunal - Hyderabad

M/S. Disha Food Pvt.Ltd., ... vs Assessee on 23 April, 2012

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER and
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 1656/Hyd/2011
Assessment year 2008-09

M/s. Disha Food Pvt. Ltd. Hyderabad PAN: AABCD2266P Appellant	Vs.	Asst. Commissioner of Income-tax, Circle-1(2) Hyderabad Respondent
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Appellant by: Shri K.C. Devdas
Respondent by: Shri K. Viswanatham

Date of hearing: 23.04.2012
Date of pronouncement: 22.06.2012

ORDER

PER SAKTIJIT DEY, JM:

This appeal of the assessee is directed against the order dated 22.7.2011 passed by the CIT(A)-II, Hyderabad in ITA No. 0098/CIT(A)-II/2009-10 pertaining to assessment year 2008-09.

2. The assessee has filed the appeal by raising the following grounds:

1. The order of the CIT(A)-II, Hyderabad, in holding that the following receipts do not form part of the income of the industrial undertaking for the purpose of deduction u/s. 80IB of the Income-tax Act, 1961 as unsustainable on facts and in law.

- i) DFRC sales at Rs. 1,27,91,007
- ii) DFIA sales at Rs. 1,34,00,211
- iii) Interest receipts at Rs. 1,64,593
- iv) Conversion charges at Rs. 5,30,06,031

2. The learned CIT(A)-II, Hyderabad ought to have held that all the receipts enumerated at Ground No. 1 were derived from the Industrial Undertaking and therefore were eligible for deduction under section 80IB of the Income-tax Act, 1961.

M/s. Disha Food Pvt. Ltd.

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3. Any other ground that may be urged at the time of hearing of the appeal.

3. Briefly stated the facts are the assessee is engaged in the business of manufacturing and sale of biscuits. Besides its sales in the domestic market, the assessee had also exported its finished product i.e., biscuits outside the country. For the assessment year under dispute the assessee filed its return of income declaring total income of Rs. 90,72,873 after claiming the deduction for an amount of Rs. 38,88,375 u/s 80IB of the Act. In course of assessment proceedings, the Assessing Officer found from the books of the assessee that the total receipt shown in the Profit and Loss A/c. includes other income of Rs. 7,27,91,007 constituted of the following receipts:

a.	DFRC sales	-	Rs. 1,27,91,007
b.	DFIA sales	-	Rs. 1,34,00,211
c.	Interest receipts	-	Rs. 1,64,593
d.	Conversion charges	-	Rs. 5,30,06,031

4. The Assessing Officer was of the opinion that the aforesaid receipts cannot form part of business income for the purpose of claiming deduction u/s. 80IB of the Act since they are not directly derived from manufacturing activity. The Assessing Officer, therefore, asked the assessee to submit his explanation in this regard. The assessee in response to the query made by the Assessing Officer furnished his explanation which has been quoted in pages 2 and 3 of the assessment order. As can be seen from the explanation furnished, the assessee submitted that DFRC is a duty remission scheme like DEPB which permits duty free replenishment of inputs used in the export product. The duty exemption scheme basically enables duty import of inputs required for export production. The assessee referring to clause 4.2.4 of the duty remission scheme submitted that DFRC is issued for import of inputs as per SION as indicated in the shipping bills. DFRC and or the materials imported against it shall be freely M/s. Disha Food Pvt. Ltd.

===== transferable against the scheme. The assessee referring to clause 4.201 of the duty free import authorisation submitted that DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. Referring to clause 4.2.6, the assessee submitted that once export obligation was fulfilled request for transfer of authorisation or inputs imported against it can be made before the concerned registering authority. Once transferability is endorsed the authorisation holder may transfer the DFIA or duty free inputs except fuel or any other item notified by the DGFT. The assessee submitted that the perusal of different clauses of the scheme is suggestive of the fact that amounts received consequent upon availment of schemes were derived from the source of manufacture. The assessee submitted that the language contained u/s. 80IB requires that the profit and gain should be derived from any business of the industrial undertaking i.e., the source of income should fall under the head "Income from business and profession" as provided u/s. 14 of the Act. The assessee further submitted that the duty exemption schemes were availed consequent upon the exports by the industrial undertaking which arises as a consequence of the business. The export has, therefore, direct nexus to the business of the industrial undertaking. Therefore, the profit arising as a consequence of the scheme has to be treated as from the business of the industrial undertaking and, therefore, is entitled for deduction u/s. 80IB of the Act.

5. The Assessing Officer after considering the explanation submitted by the assessee was of the view that the aforesaid receipts are not directly derived from manufacturing activity and, therefore, cannot be treated as income derived from industrial undertaking for the purpose of claiming deduction u/s. 80IB of the Act. The Assessing Officer following the judgement of the Hon'ble M/s. Disha Food Pvt. Ltd.

===== Supreme Court in the case of Liberty India vs. CIT reported in 317 ITR 218 finally came to hold that the incentive profit from sale of DFRC and DFIA being in the nature of export incentives like DEPB cannot be treated as profits derived from the eligible business u/s. 80IB of the Act as they belong to the category of ancillary profit of the industrial undertaking.

6. So far as conversion charges of Rs. 5,30,06,031 are concerned the Assessing Officer found from the Profit and Loss A/c. that it has been shown as other income by the assessee. From the TDS certificate submitted by the assessee, the Assessing Officer found that the contract receipts were received from ITC Ltd. The Assessing Officer came to a conclusion that the assessee has only done job work with the materials supplied by the ITC Ltd. Hence the income cannot be considered as derived from the industrial undertaking and is to be treated as other income only. On the aforesaid finding the Assessing Officer disallowed the claim of deduction u/s. 80IB of an amount of Rs. 38,88,375. Being aggrieved with the aforesaid assessment order, the assessee filed an appeal before the CIT(A).

7. In course of hearing of the appeal before the CIT(A), the assessee reiterating the stand taken before the Assessing Officer contended that the components of income arising out of export incentives on which the claim for deduction was made have nexus with the business of the industrial undertaking. The CIT(A) after considering the contentions raised on behalf of the assessee and analysing the judgement of the Hon'ble Supreme Court in the case of Liberty India (supra) came to a conclusion that the assessee's contention that the duty exemption scheme DFRC and DFIA reduces the cost of purchases of manufactured goods and thereby reduces cost of manufacturing and increases the profit and, therefore, they have to be treated as derived from the business of M/s. Disha Food Pvt. Ltd.

===== the industrial undertaking cannot be accepted. The CIT(A) also held that the interest receipts of Rs. 1,64,593 also cannot be treated as income derived from the industrial undertaking by following the decision in the case of Tuticorin Alkali Chemicals & Fertilisers vs. CIT (227 ITR 172). So far as the conversion charges of Rs. 5,30,06,031 is concerned the CIT(A) came to a conclusion that where the cost of raw material is borne by the assessee in its own account forming the sale value as total turnover the inference can be different but if the entire raw material is supplied by the party awarding the job work and the assessee gets it done by only contributing machinery and labour then such charges are comparable to miscellaneous income like commission or brokerage. The CIT(A) finding from the assessment order that the material for job work was supplied by ITC Ltd., following the decision of Kerala High Court in the case of William Woodacker & Sons India vs. CIT reported in 305 ITR 365 came to hold that the conversion charges received being in the nature of miscellaneous receipts had to be treated as other income and, therefore, it has to be excluded for the purpose of computing deduction u/s. 80IB.

8. The learned AR submitted before us that the object of the duty exemption scheme is to reimburse the exporters for tariff paid on the imported raw materials, intermediates paid on domestically produced goods which are exported. The schemes have been framed basically to assist the exporters for neutralising the escalation in their cost attributable to the inputs. The schemes have been introduced so that the raw materials, chemicals, ingredients and packing materials could be imported without paying any duty or tax. In a case where the manufacturer is not able to import the same ingredients by way of licences could be sold in the market as a commodity. It was contended by the learned AR that the sale consideration received by sale of licences, therefore, had to be considered as arising out of the business of M/s. Disha Food Pvt. Ltd.

===== the industrial undertaking. The learned AR contended that the nomenclature of "other income" given in the Profit and Loss A/c. in no way suggests that the receipts are not from the business of the industrial undertaking. In this context the learned AR relied on the following decisions of the Hon'ble Supreme Court:

a. Vikas Kalra vs. CIT (2012) 205 Taxman 135 b. ACG Associated Capsules Pvt. Ltd.
vs. CIT (205 Taxman 136) c. Topman Exports vs. CIT (205 Taxman 119)

9. So far as the conversion charges of Rs. 5,30,06,031 is concerned, the learned AR relying upon the precedent of different High Courts submitted in the form of a Paper Book contended that the assessee having carried out the job work in the course of manufacturing of its products by utilising its plant and machinery as well as labour it should be treated as derived from the business of the industrial undertaking.

10. The learned DR contended that the receipts as shown towards DFRC and DFIA sale, interest receipt, conversion charges by their nature itself cannot be treated as income derived from the industrial undertaking for the purpose of calculating deduction u/s. 80IB. The learned DR contended that the income so derived falls within the category of ancillary income and in fact it has been shown as other income by the assessee itself. The learned DR submitted that in view of the judgement of the Hon'ble Supreme Court in the case of Liberty India (supra) the receipts cannot be treated as income derived from industrial undertaking for the purpose of calculating deduction u/s. 80IB of the Act.

11. We have heard rival contentions and perused the material on record. There is no dispute to the fact that while computing deduction u/s. 80IB the assessee has included in its total income the profits derived from DFRC and DFIA sale, interest received and conversion charges. The issue for consideration is whether such M/s. Disha Food Pvt. Ltd.

===== receipts can be treated as income derived from the eligible business of the industrial undertaking. At this stage it will be relevant to examine the provisions contained u/s. 80IB of the Act. Subsection (1) of section 80IB provides that the profits and gains derived from any business referred to in subsection (3) of section 11(B) shall be allowed a deduction of an amount equal to such percentage as specified in the section. Therefore, the conditions for claiming deduction u/s. 80IB is the profit that has been derived from the eligible business as referred in subsection (3)

of section 11(B). In the present case the eligible business of the assessee is manufacturing and sale of biscuits. The other receipts like DFRC and DFIA sales, interest and conversion charges can be treated as having direct nexus with the eligible business of manufacturing biscuits. The Hon'ble Supreme Court in the case of Liberty India while considering the claim of deduction u/s. 80IB vis-a-vis DEPB observed in the following manner:

"13. Before analyzing Section 80-IB, as a prefatory note, it needs to be mentioned that the 1961 Act broadly provides for two types of tax incentives, namely, investment linked incentives and profit linked incentives. Chapter VI-A which provides for incentives in the form of tax deductions essentially belong to the category of "profit linked incentives". Therefore, when Section 80-IA/80-IB refers to profits derived from eligible business, it is not the ownership of that business which attracts the incentives. What attracts the incentives under Section 80-IA/80-IB is the generation of profits (operational profits). For example, an assessee company located in Mumbai may have a business of building housing projects or a ship in Nava Sheva. Ownership of a ship per se will not attract Section 80-IB(6). It is the profits arising from the business of a ship which attracts sub-section (6). In other words, deduction under sub-section (6) at the specified rate has linkage to the profits derived from the shipping operations. This is what we mean in drawing the distinction between profit linked tax incentives and investment linked tax incentives. It is for this reason that Parliament has confined deduction to profits derived from eligible businesses mentioned in sub-sections (3) to (11A) [as they stood at the relevant time]. One more aspect needs to be highlighted. Each of the eligible business in sub-sections (3) to (11A) constitutes a stand-alone item in the matter of computation of profits. That is the reason why the concept of "Segment M/s. Disha Food Pvt. Ltd.

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Reporting" stands introduced in the Indian Accounting Standards (IAS) by the Institute of Chartered Accountants of India (ICAI)."

12. As can be seen from the aforesaid observation of the Hon'ble Supreme Court that the incentive envisaged u/s. 80IB is a profit linked incentive. Therefore, the incentive u/s. 80IA and 80IB is linked to operational profit. The Hon'ble Supreme Court further observed that deduction is, therefore, confined to the profit derived from eligible business mentioned in subsection (3) to section 11A of section 80IB. Each of the eligible business in the aforesaid subsection constitute a standalone item in the matter of computation of profit. Interpreting the language of the provision contained in section 80IA and 80IB the Hon'ble Supreme Court had held that the words 'derived from' are narrower in connotation as comparable to the words "attributable to". The Hon'ble Supreme Court held that by using the expression 'derived from' the Parliament has intended to cover the sources not beyond the first degree. The Hon'ble Supreme Court referring to the provisions contained under subsection (5) to section 80IA which is also applicable to the eligible business u/s. 80IB held that the profit from the eligible business is to be computed as if such eligible business is the only source of income of the assessee. Drawing analogy from the illustration given by the Hon'ble Supreme Court it can be said that the eligible business of the assessee is manufacture and sale of biscuits. Therefore, the profit derived from such manufacturing activity has a direct

linkage to the deduction u/s. 80IB of the Act. Analysing the provisions contained in section 80IA and 80IB the Hon'ble Supreme Court held that an industrial undertaking which becomes eligible on satisfying the conditions enumerated in subsection (2) would be entitled to deduction only to the extent of profits derived from such industrial undertaking. The Hon'ble Supreme Court held that DEPB or similar incentive which flows from the scheme framed by M/s. Disha Food Pvt. Ltd.

===== the Central Government or from section 75 of the Customs Act, 1962 are only incentive profits and are not profits derived from eligible business u/s. 80IB of the Act. They belong to the category of ancillary profits of such undertaking. The Hon'ble Supreme Court held in the following manner:

"Therefore, we are of the view that duty drawback, DEPB benefits, rebates etc. cannot be credited against the cost of manufacture of goods debited in the Profit & Loss account for purposes of Sections 80-IA/80-IB as such remissions (credits) would constitute independent source of income beyond the first degree nexus between profits and the industrial undertaking.

13. From the decisions of the Hon'ble Supreme Court relied upon by the learned AR in support of his contention it is seen that the decisions were rendered in the context of deduction claimed u/s. 80HHC. As has been held by the Hon'ble Supreme Court in the case of Liberty India (supra), sections 80IB and 80IA are a code by themselves as they contained both substantive as well as procedural provisions. Therefore, the judgements cited by the learned AR are not applicable to the facts of this case. In view of the aforesaid judgement of the Hon'ble Supreme Court in the case of Liberty India (supra), we hold that sales from DFRC and DFIA cannot be treated as profit from the eligible business of the industrial undertaking for computation of deduction u/s. 80IB of the Act since they are from independent source beyond the first degree nexus between profits and the industrial undertaking.

14. For the aforesaid reasons, the interest of Rs. 1,64,593 also cannot form part of the profit derived from the eligible business of the industrial undertaking for claiming deduction u/s. 80IB.

15. So far as the conversion charges of Rs. 5,30,06,031 is concerned, it is seen from the orders of the Revenue authorities that the claim of the assessee had been rejected only on the consideration that the raw material was supplied by the ITC Ltd.

M/s. Disha Food Pvt. Ltd.

===== and the assessee has carried out the job work. Therefore, it is in the nature of miscellaneous receipt. There is no dispute to the fact that the eligible business of the assessee is manufacturing of biscuits and the assessee has received the conversion charges by carrying out the manufacturing process on behalf of ITC Ltd. The word 'manufacture' is of much wider connotation and would include any process as a result of which a different commodity having distinct name, use and character emerges from the raw material. It is, therefore, cannot be denied that the assessee received conversion charges from manufacturing process through which a new

product has emerged from the raw material supplied by ITC Ltd. It is not relevant at all that the raw material was not on assessee's own account but supplied by ITC Ltd. Our view is fortified by the judgement of the Hon'ble Delhi High Court in case of CIT vs. Sadhu Forgings Ltd., reported in 336 ITR 444 and the Madras High Court in case of CIT vs. Esquire Translam Industries reported in 344 ITR 398. We, therefore, hold that the conversion charges received is in course of manufacturing activity by using the same machinery and labour which were used for manufacturing assessee's own product has a direct nexus with the eligible business of the assessee. Therefore, the profit derived from conversion charges has to be included in the profit of the business for computing deduction u/s. 80IB of the Act. The Assessing Officer is directed to recompute the deduction u/s. 80IB accordingly. The ground raised by the assessee is partly allowed.

16. In the result, the appeal is also partly allowed.

Order pronounced in the open court on 22nd June, 2012.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER
Hyderabad, dated the 22nd June, 2012

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

M/s. Disha Food Pvt. Ltd.
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Copy forwarded to:

1. M/s. Disha Food Pvt. Ltd., c/o. M/s. Sekhar & Co., Chartered Accountants, 133/4, R.P. Road, Secunderabad.
2. The Asst. Commissioner of Income-tax, Circle-1(2), Hyderabad.
3. The CIT(A)-II, Hyderabad.
4. The CIT-I, Hyderabad
5. The DR - A Bench, ITAT, Hyderabad.

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