

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1342 OF 2014

Malay N. Sanghvi .. Appellant.
v/s. ..
Income Tax Officer 8(3)-2 .. Respondent.

Dr. K. Shivram, Sr. Advocate with Mr. Rahul Hakani, i/b. Mr. Sameer Dalal, for the Appellant.
Mr. Tejveer Singh, for the Respondent.

**CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.**

DATE : 31st JANUARY, 2017.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 8th January, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 8th January, 2014 is in respect of Assessment Year 2009-10.

2 The Assessee urges only the following question of law for our consideration:

“ Whether in the facts and in the circumstance of the case and in law, the Tribunal erred in restricting the Appellant's claim of deduction under section 80IB of the Income Tax Act, 1961 to Rs.12,03,773/-, invoking the provisions of section 80IA(10) of the Income Tax Act, 1961?”.

3 This Appeal was on board on 23rd January, 2017. During the course of hearing for admission, it was pointed out by the Appellant that

the impugned order restricted the deduction under Section 80IB of the Act by relying upon Section 80IA(10) of the Act. This, without considering the fact that the Appellant's contention that condition precedent for its application, is not present. We were inclined to admit Appeal. However, at that time, it was pointed out that finally this Appeal would need to be restored to the Tribunal for re-examination of the appropriate application of Section 80IA(10) of the Act to the present facts. In the above view, it was requested that the Appeal itself could be disposed of at the stage of admission.

4 Mr. Tejveer Singh, learned Counsel for the Revenue also did not dispute the fact that the scope of the Appeal is within a very narrow compass and it could be disposed of at the stage of admission. Therefore, the Appeal was adjourned to today i.e. 31st January, 2017 to enable the Revenue to prepare itself for final hearing of Appeal.

5 In the above view, question as proposed by the Appellant is admitted as a substantial question of law and by consent of the parties, the Appeal itself is taken up for final disposal.

6 The Appellant-Assessee is an individual, who carries on business of manufacturing and selling of liquid soap and hand-wash at Jammu. The Appellant's wife has a unit of her own, also engaged in the manufacture of liquid soap and hand-wash in the name and style of M/s. Umbergam Industries at Valsad.

7 The Appellant claimed the benefit of deduction under Section 80IB of the Act being a specified industrial undertaking. During the course of Assessment Proceedings, the Assessing Officer by virtue of sub-section

(13) of Section 80IB of the Act invoked Sections 80IB (8) and (10) of the Act to determine the allowable claim. The Assessing Officer found that the Appellant had claimed deduction at the net profit ratio of 35% of its Jammu unit. However, the Assessing Officer found that the profit ratio of the unit belonging to Appellant's wife at Valsad was 5%. Therefore, the Assessing Officer on invocation of Section 80IA(10) of the Act, taking the net profit ratio of the Valsad unit of his wife, adopted 10% net profit ratio to allow deduction under Section 80IB of the Act.

8 Being aggrieved, the Appellant carried the issue in Appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 18th July, 2012, the CIT(A) held that Section 80IA(8) and (10) of the Act, cannot be invoked to restrict the deduction claimed under Section 80IB of the Act. This for the reason that there is no arrangement between the wife's unit at Valsad and the Appellant's unit at Jammu to produce more than ordinary profits at Jammu unit or any transfer of goods/services, inter se, resulting in extraordinary profits. Thus, allowed the appeal and deleted the disallowance.

9 Being aggrieved, the Revenue carried the issue in Appeal to the Tribunal. The Tribunal by the impugned order allowed the Revenue's Appeal, holding that the Assessing Officer was justified in invoking the provisions of Section 80IA(10) of the Act to re-determine the profits of the Appellant's unit. This for the reasons that the Appellant's unit at Jammu as well as his wife's unit at Valsad makes sales of its liquid soaps to the same persons. Thus, concluding that restricting the benefit of Section 80IB of the Act at 10% of net profit ratio of the Jammu unit, was reasonable.

10 The grievance of the Appellant is that sub-section (10) of Section 80IA of the Act, cannot be invoked in the facts of the present case to restrict its deduction under Section 80IB of the Act on the basis of the profits of the Appellant's wife unit at Valsad. This for the reason that there are no business transaction between the Appellant's unit at Jammu and his wife's unit at Valsad. Moreover, there is nothing on record to indicate that any transaction between them has resulted in more than ordinary profits arising to the Jammu unit in the normal course of business. It is submitted that the above aspect was completely overlooked by the Tribunal while disposing of the Appeal.

11 We note the fact that the CIT(A) has rendered a finding that there is nothing on record to indicate that there is any arrangement between the Appellant's Jammu unit and his wife's unit at Valsad to generate more than ordinary profits or any transfer of goods and/or services inter se, below the market price, resulting in inflated profits to the Appellant's Jammu unit. Even before us, nothing has been shown by the Revenue that there is any business transacted between Appellant's unit at Jammu and his wife's unit at Valsad which resulted in inflating the profits being earned by the Appellant or that there is any transaction between them. The Tribunal has without considering the validity of the above finding of CIT(A), adopted the test of common customers of both the Appellant's Jammu unit and his wife's unit at Valsad, to conclude that profits of the Appellants, are inflated. Common customers by itself in the absence of some arrangement between the parties does not indicate transfer of profits to Appellant's Jammu unit. The factual finding of the CIT(A) has not been considered by the Tribunal in the impugned order. This issue requires re-consideration by the Tribunal in the context of the

appropriate interpretation to be put on Section 80IB(8) and (10) of the Act.

12 In the above view, the substantial question of law is answered in the affirmative by way of remand. Therefore, we set aside the order of the Tribunal and restore the issue for fresh consideration by the Tribunal, in accordance with law.

13 Needless to state that any observations made by us in the order, will not influence the Tribunal even remotely in deciding the matter in accordance with law on the basis of material available before it. All contentions left open.

14 Accordingly, **Appeal allowed** in the above terms. No order as to costs.

(A.K.MENON,J.)

(M.S.SANKLECHA,J.)