IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.325 & 326/Coch/2017
Assessment Years : 2005-06 & 2006-07

Navas M. Meeran, Adimaly Agro Food Industries, Adimaly. [PAN:AEIPM: 2852E]	**Vs.**	The Assistant Commissioner of Income-tax, Circle-1(2), Kochi.
(Assessee-Appellant)		**(Revenue-Respondent)**

Assessee by	Sjhri R. Krishnan, CA
Revenue by	Smt. A.S. Bindhu, Sr. DR

Date of hearing	20/02/2019
Date of pronouncement	01/03/2019

O R D E R

Per CHANDRA POOJARI, AM:

These appeals filed by the assessee are directed against separate orders of the CIT(A)-I, Kochi and pertain to the assessment years 2005-06 and 2006-07.

2. The assessee raised the following grounds of appeal:

1. The learned Commissioner (Appeals) erred in sustaining the disallowance made by the Assessing Officer in respect of deduction u/s 80IB of the Income Tax Act

2. The learned officer ought to have held that income by way of subsidies, job work charges and sale of scap amounts to profit of business for the purpose of deduction u/s. 80IB of the Act. .

3. The learned officers failed to note that the above receipts are directly connected to the manufacturing activity of the appellant and therefore qualified for deduction u/s 801B of the Income Tax Act.

4. The learned officers ought to have appreciated that all the receipts for which deduction u/s 801B of Income Tax Act was claimed are based on the activities of the appellant firm and that the industrial undertaking though leased out, carried out manufacturing activity, which is sufficient compliance of law for the purpose of 80IB of the Income Tax Act.

5. The learned Commissioner (Appeals) erred in concluding that other income amounting to Rs. 99,097/- does not qualify for deduction u/s 801B. It is incidental to business.

6. The learned Commissioner (Appeals) erred in sustaining the addition of Rs 10,08,618/- in respect of alleged bogus purchases having been made by the appellant out of undisclosed sources. The findings of the Commissioner of Income Tax (Appeals) is bad in law.

However, the Ld. AR did not press grounds relating to denial of deduction of job work charges and sale of scrap and hence, they are dismissed as not pressed.

2.1 The only argument of the Ld. AR was with regard to denial of deduction u/s. 80IB of the Act on subsidies. The assessee claimed deduction u/s. 80IB on receipt of subsidies but the same was rejected by the Assessing Officer and the CIT(A).

3. Against this, the assessee is in appeal before us.

4. After hearing both the parties, we are of the view that a similar issue was considered by the Supreme Court in the case of Meghalaya Steels Ltd. (383 ITR 217) wherein it was held that when income from cash assistance received

against export schemes are included as income under the head profits and gains of business or profession, it is obvious that subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head profits and gains of business or profession and not under the head income from other sources. Therefore, the asssessee is entitled to deduction u/s. 80IB of the Act. In view of the above judgment, subsidies is to be considered for deduction u/s. 80IB of the Act. Accordingly, we allow this ground of appeal taken by the assessee.

5. Ground No. 5 relating to denial of deduction of other income amounting to Rs.99,097/- was not pressed and hence, the same is dismissed as not pressed.

6. Ground No. 6 is with regard to sustaining the addition of Rs 10,08,618/- in respect of alleged bogus purchases made by the assessee out of undisclosed sources.

7. The facts of the case are that the Assessing Officer made addition u/s. 69 of the Act of the differentials between the amounts being expenses debited in the

books of accounts and the amounts substantively supported by invoices, which amounts relate to the transactions carried out with its sister concerns being unexplained differential of Rs. 5,54.845/- and unexplained differential of Rs. 4,53,773/-.

8. On appeal, the CIT(A) confirmed the addition made by the Assessing Officer.

9. Against this, the assessee is in appeal before us. The Ld. AR submitted that the Assessing Officer had not carried out sufficient inquiries and investigations regarding the above issue. The Ld. AR negated the AO's statement that the invoices should "contain payment details like cheque no., draft no. dale of payment etc." and the observation of the AO that "all invoices were found to be intact and none of them were cancelled".

9.1 The Ld. DR relied on the order of the lower authorities.

10. We have heard the rival submissions and perused the material on record. In our opinion, the lower authorities had not given an opportunity to the assessee to reconcile the difference between the actual purchases made as per the invoices produced by the assessee and actual entries shown in the books of account of the assessee. Being so, we are of the opinion that it is appropriate to opportunity to the assessee to reconcile the same before the Assessing Officer. Hence, this issue is remitted to the file of the Assessing Officer with a direction to

the Assessing Officer to give opportunity to the assessee to reconcile the same and decide thereof. Hence, the appeal of the assessee in ITA No. 325/Coch/2017 is partly allowed for statistical purposes.

11. The grounds raised in assessee's appeal in ITA No. 326/Coch/2017 are as follows:

> 1. The learned officers ought o have held that income by way of subsidies, lease rent, job work charges and sale of scrap amounts to profit of business for the purpose of deduction u/s. 80IB of the Act.
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> 2. The learned officers failed to note that the above receipts are directly connected to the manufacturing activity of the assessee and therefore, qualified for deduction u/s. 80IB of the Act.
>
> 3. The learned officers ought to have appreciated that all the receipts for which deduction u/s. 80IB was claimed are based on the activities of the appellant firm and that the industrial undertaking though leased out, carried out manufacturing activity which is sufficient compliance of law for the purpose of deduction u/s. 80IB of the Act.

However, the Ld. AR did not press grounds relating to denial of deduction of job work charges and sale of scrap and hence, they are dismissed as not pressed.

12. With regard to the ground relating to denial of deduction of subsidies u/s. 80IB of the Act, as discussed earlier in para 4, the assessee is entitled for the same and accordingly, this ground of appeal of the assessee is allowed.

13. The next issue is with regard to denial of deduction of lease rent u/s. 80IB of the Act.

14. The facts of the case are that the assessee had received lease rent to the tune of Rs.63 lakhs by leasing/renting of factory and one building and claimed it as income from business and on the profit, the assessee claimed deduction u/. 80IB of the Act. The Assessing Officer was of the opinion that since the assessee was not actually involved in manufacturing or production of an article or thing so as to claim deduction u/s. 80IB of the Act, the claim of the assessee was rejected.

15. The Ld. AR submitted that in case of lease rentals, it was income from leasing out of the unit as a whole to ECPL, which continues the manufacturing activity. The assessee had offered the lease rentals under the head profits and gains of business or profession and the AO had also assessed the same under 'business'. According to the Ld. AR, the subsidy income received for the industrial unit, as also the job work charges are for work undertaken by the unit, the scrap is derived from the unit and so has direct nexus to the manufacturing activity.

15.1 The Ld. AR relied on the judgment of the Madras High Court in the case of CIT Vs. Universal Radiators (P) Ltd. (128 ITR 531) wherein it was held that there

is nothing in sec 80IB which requires that the assessee themselves should manufacture. The unit should be involved in manufacturing. In the assessee's case, ECPL was carrying out the same activity of manufacturing in the unit and also the assessee had offered lease rental under the business head and therefore the assessee was entitled to deduction u/s 80IB in respect of the lease rentals. Also, subsidy income was received for the production carried out by the assessee and hence, it had direct nexus with the business of the assessee. The Ld. AR also relied on the judgment of the Supreme Court in the case of CIT vs. Vikram Cotton Mills Ltd. (169 ITR 597) wherein it was held that when an assessee leases out its assets and the intention of the assessee is not to discontinue the business but to lease out its assets for a temporary period as part of exploitation, lease rent received from letting out the assets is assessable as income from business and not as income from other sources. Therefore, the assessee would be eligible for deduction u/s. 80IB of the Act and the profit derived from the factory either by lease or otherwise would be attributable to the priority industry. The assessee must have something to do with the factory and the income earned must have nexus with the priority industry. If these attributes are satisfied, then the assessee would be eligible for deduction u/s. 80IB of the Act. Therefore, the rental income would have to be taken as eligible for relief u/s. 80IB of the Act.

16. On the other hand, the Ld. DR submitted that the relevant part of Section 80-IB of the Act reads as follows; "(1) Where the gross total income of an

assessee includes any profits and gains derived front any business ..... . a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.". According to the Ld. DR, Section 80IB provides for a deduction from the profits and gains of an amount equal to a certain percentage and for a certain number of assessment years as specified in sub-section (3) and sub-section (4) of that section. One of the conditions of eligibility is that the assessee must be an industrial undertaking which manufactures or produces an article or thing not being an article or thing specified in the list in the Eleventh Schedule or operates one or more cold storage plant or plants in any part of India. The Ld. DR relied on the judgment of the Supreme Court in the case of Cambay Electrical Supply Co. Ltd. (113 ITR 84) wherein it was held that the expression 'attributable to" has a much wider import than the expression 'derived from' thereby intending to cover receipts from sources other than the actual conduct of the business of the industrial undertaking. In other words, it can be understood to mean that there can be receipts which are incidental to the actual conduct of the" business of industrial undertaking yet the same may not fail within the expression of 'derived from' so as to be eligible for the benefits envisaged under Section 80-IB of the Act. Therefore, according to the Ld. DR, as per the judgment of the Apex Court, to be eligible as deductible, the incomes need to be directly derived from the business

activities of production or manufacturing and not merely correlated or associated with them.

16.1 The Ld. DR relied on the judgment of the Supreme Court in the case of Sterling Food (237 ITR 53) wherein it was held that the nexus between the income and the industrial undertaking was not direct but was only incidental, it would not fall within the expression "profits derived from industrial undertaking". The Ld. DR relied on the judgment of the Apex Court in the case of Pandian Chemicals Ltd. (262 ITR 278) in which the question was whether the interest derived from the deposit made with the Electricity Board could be construed as a profit derived from the industrial undertaking of the assessee for the purposes of deduction under Section 80HH. According to the Apex Court, the said income was not eligible for the purposes of the claim under Section 80HH of the Act. Therefore, certain incomes falling within the parameters of being incidental to business can fall within the scope of the business of the assessee, and yet it cannot be said to have been derived from the eligible industrial undertaking of the assessee, so as to be eligible for deduction under Section 8O-IB of the Act.

17. We have heard the rival contentions and perused the record. The main contention of the Ld. AR is that the industrial undertaking was closed down and let out to other assesses and consequently, earned lease rent from the industrial undertaking. According to the Ld. AR, the lease rent was earned from the

eligible industrial undertaking and hence, deduction u/s. 80IB is to be granted. Thus, the controversy before us is centred around the interpretation of the word “derived from” used by the legislature u/s. 80IB of the Act. The Hon'ble Supreme Court in the case of Cambay Electrical Supply Co. Ltd. 113 ITR 84 (SC) held that the expression 'derived from' is much narrower than the expression “attributable to". According to the Court, whenever legislature intended to give narrower meaning, it has used the word “derived from”. In view of the above judgment of the Supreme Court, let us now examine the scope of word “derived from” used by the Legislature u/s. 80IB of the Act. Section 80-IB provides for deduction in respect of profits and gains derived from industrial undertaking to which section 80IB(1) applies. Sub section (2) to the said section prescribes various conditions which are to be fulfilled for claiming the deduction. One of the conditions of eligibility is that the assessee must be an industrial undertaking which manufactures or produces an article or thing not being an article or thing specified in the list in the Eleventh Schedule. A reading of the section shows that deduction is available in respect of profits and gains which are derived from industrial undertaking which is engaged in the activity of manufacture or production of an article or thing. Applying the test laid down by the judgment of the Supreme Court cited supra, we are of the view that deduction u/s. 80IB is available only in respect of such profits and gains which have direct proximity and nexus with the activities of manufacturing or production of an article or thing. In other words, profits and gains attributable to the business of the

industrial undertaking would not be entitled for deduction u/s. 80IB of the Act. In our view, the profits and gains accrue to the assessee only in the course of business of manufacturing or production of an article or thing. Viewed from this angle, the lease rent earned by the assessee by letting out the industrial undertaking to other parties cannot be equated with the profits and gains derived from the industrial undertaking. The Ld. DR relied on the judgment of the Apex Court in the case of Pandian Chemicals Ltd. (262 ITR 278) wherein it was held that interest derived from industrial undertaking of the assessee on deposits made with the Electricity Board for supply of electricity for running the industrial undertaking cannot be said to flow directly from the industrial undertaking and therefore, was not profits and gains derived from the industrial undertaking for the purpose of special deduction u/. 80HH of the Act.

18. Contrary to this, the Ld. AR relied on the judgment of the Madras High Court in the case of CIT Vs. Universal Radiators (P) Ltd. (128 ITR 531). In that case, the assessee leased out certain machinery belonging to it to another Company to manufacture certain component parts, which were automobile accessories. The products so manufactured by the other company were made available to the assessee. The assessee's claim that the rent received by it from the lease of the machinery was to be treated as profits attributable to the priority industry and hence, would qualify for deduction u/s. 80I of the I.T. Act, 1961, was accepted by the ITO. The Addl. Commissioner, however, held that the

assessee was not entitled to the relief and revised the order by the ITO. The Tribunal, in the appeal by the assessee, restored the order of the ITO. In the present case, the assessee leased out the entire industrial undertaking to another company for the business of manufacturing and production. There were no payments made to the lessee by the present assessee (lessor) for making available those components used as accessories for manufacturing or production of its products. However, in the case of CIT vs. Universal Radiators (P) Ltd. cited supra, the products manufactured by the lessee was made available to the lessor (assessee) so as to enable manufacture or production of its products. Being so, the ratio laid down by the judgment of the Madras High Court in the case of CIT vs. Universal Radiators (P) Ltd. cited supra cannot be applied to the facts of the present assessee's case. Further, in the case of Vikram Cotton Mills Ltd. (169 ITR 597) (SC), the issue was with regard to leasing out assets to another assessee for a temporary period as part of exploitation and temporary suspension of business without any intention to permanently closing down of the business. In that case, the question was whether receipt of lease of commercial asset is business income or income from other sources. There was no issue relating to granting of deduction u/s. 80IB of the Act. The ratio laid down in this case cannot be applied to the facts of the present case.

18.1 In view of this, the lease rent received by the assessee by letting out the industrial undertaking is not having any direct connection with the manufacture or production of an article or thing by the assessee and the same cannot be considered as business income eligible for deduction u/s. 80IB of the Act. This ground of appeal of the assessee is dismissed.

19. In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on this 01st March, 2019

sd/-	sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 01st March, 2019

GJ
Copy to:
1. Navas M. Meeran, Adimaly Agro Food Industries, Adimaly.
2. The Assistant Commissioner of Income-tax, Circle-1(2), Kochi.
3. The Commissioner of Income-tax(Appeals-I, Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin