



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 519/2005

Date of decision: December 08, 2005

COMMISSIONER OF INCOME TAX ..... Appellant  
Through Mrs. P.L. Bansal, Mr. Vishnu Sharma,  
Advocates

versus

M/S J.B. EXPORTS LTD. .... Respondent  
Through Mr. M.S. Syali, Sr. Adv. with  
Mr. Satish Khosla, Adv.

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**CORAM:**  
**HON'BLE MR. JUSTICE T.S. THAKUR**  
**HON'BLE MR. JUSTICE B.N. CHATURVEDI**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

yes

: **T.S. THAKUR, J.**

This is an appeal under Section 260A of the Income Tax Act, 1961 against an order passed by the Income Tax Appellate Tribunal, Delhi bench, whereby the Tribunal has partly allowed the assessee company's appeal and held it entitled to deduction under Section 80-1 of the Act on the duty drawback amount of Rs.46,66,113/-.

2. The assessee filed an income tax return for the assessment year 1991-92 declaring an income of Rs.8,71,055/- and claiming



deductions including a deduction on the duty drawback amount of Rs.46,66,113/- under Section 80-I of the Act. The Assessing Officer denied the deduction on the said amount of duty drawback on the ground that the same did not constitute income of the assessee derived from industrial undertaking. Aggrieved the assessee appealed to the Commissioner of Income Tax (Appeals) who upheld the view taken by the Assessing Officer. The assessee then filed a further appeal before the Income Tax Appellate Tribunal which, relying upon its earlier order passed in the case of the assessee for the assessment year 1992-93 to 1995-96, allowed the deduction claimed by the assessee on the amount of duty drawback received by it. The present appeal filed by the Revenue assails the correctness of the said order and raises the following substantial question of law for consideration of this court :

"Whether the ITAT was correct in law in allowing any deduction under Section 80-I to the assessee on the amount of duty drawback of Rs.46,66,113/-?"

3      Appearing for the appellant, Mrs. P.L. Bansal argued that the Tribunal had committed an error in holding that the duty drawback was income derived from an industrial undertaking so as to entitle the assessee to a deduction under Section 80-I. She urged that the expression income 'derived from' an industrial undertaking appearing in Section 80-I was narrower in meaning as compared to the term 'attributable'. She urged that a Division Bench of this Court had in Commissioner of Income Tax v. Ritesh Industries Ltd. 274 ITR



income derived from an industrial undertaking so as to entitle the assessee to a deduction under Section 80-I. She further submitted that the order passed by the Tribunal in the case of the respondent assessee for the assessment years 1992-93 to 1994-95 upon which the Tribunal had placed reliance had not been accepted by the Revenue and that the said orders had also been separately assailed in appeals which were pending disposal in this court.

4. In Ritesh Industries Ltd.'s case (supra), a similar question was formulated by this court for determination. The assessee, in that case also, had received duty drawback on the export of garments. The question was whether the amount so received by the assessee be considered to be profits and gains derived from an industrial undertaking within the contemplation of Section 80-I of the Act. Relying upon a Division Bench's decision of the Madras High Court in CIT vs. Jameel Leathers and Uppers 246 ITR 97 and CIT vs. Viswanathan and Co. 261 ITR 737 and the decision of the Supreme Court in CIT vs. Sterling Foods 237 ITR 579, the court found that duty drawback received by the assessee could not be regarded as profits or gains derived from the industrial undertaking. The Court observed :

"In our view, this would apply with equal vigour to duty drawback. It is required to be understood that on the raw materials utilised as inputs, the assessee pays duty (D) and on the total component of costs the assessee adds his profits component (P) to arrive at the sale price. It is this profit (P) which is included in the expression "profits and gains derived from an industrial undertaking". Merely because under the scheme to encourage exports the duty (D) is refunded subsequent to the payment of "duty



gain "derived" from the industrial undertaking. It may constitute profits or gains of the business by virtue of section 28 of the Act, but, it cannot be construed as profits or gains "derived" from the industrial undertaking for, its immediate and proximate source is not the industrial undertaking but the scheme for duty drawback. Whether duty drawback is or is not allowed, the profit "derived" from the industrial undertaking remains to be the profit (P). On account of the duty drawback, business profit may be increased, but so far as profits and gains "derived" from an industrial undertaking is concerned, it will not increase. It will remain the same."

5. The question that falls for our consideration thus stands squarely answered against the assessee and in favour of the Revenue by the above decision. The duty drawback on exports is a benefit flowing under the Scheme formulated by the Government to encourage exports. While any such receipt in the hands of the assessee would certainly constitutes profits or gains of the business in terms of Section 28 of the Act the same would not amount to profits or gains "derived from the industrial undertaking". That is because the gain that arises to the assessee is not directly out of the industrial undertaking but on account of the scheme for refund of duty drawback paid on the raw material utilized as inputs by the assessee.

6. Our attention was drawn by learned counsel for the respondent to a Division Bench's decision of the High Court of Gujarat in Commissioner of Income Tax vs. India Gelatine and Chemicals Ltd. 275 ITR 284. A reading of the said decision would show that the Gujarat High Court has taken a contrary view and held



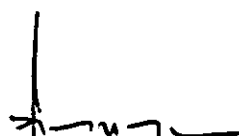
that duty drawback under the scheme is entitled to reduce the cost of production and was therefore an integral part of the price of goods. Any benefit in the form of duty drawback was thus held to be income derived from the industrial undertaking. There are two reasons why these decisions would be of no help to the assessee. Firstly because sitting in coordinate jurisdiction, we are bound by the view taken by this court in Ritesh Industries case (supra). That apart, the decision of the Supreme Court in Sterling Food's case (supra), in our opinion, makes a distinction between gain or profit which has a direct nexus with the industrial undertaking on the one hand and any benefit which the assessee may derive under the prevalent export promotion scheme on the other. The apex Court was in that case dealing with import entitlements as a benefit earned by the assessee under the scheme. The court ruled that any such benefit could not be said to be derived from the industrial undertaking within the meaning of Section 80-I, for a direct nexus was necessary between the profits and gains on the one hand and the industrial undertaking on the other. The import entitlement was, declared the court, only an indirect or incidental benefit which could not qualify for deduction. Taking the same logic further, the Madras High Court declared that cash assistance, duty drawback or import entitlements were all attributable to the business carried on by the assessee, as the assessee would not be entitled to any such benefits had it not been carrying on business, but the income or the benefits derived under the scheme which envisaged the grant of



would, with respect to the judges, who took a contrary decision in the Gujarat case, follow the line of reasoning adopted by this court in Ritesh Industries case (supra) and that adopted by the Madras High Court in the cases referred to earlier in preference to the view taken by the High Court of Gujarat.

7. The answer to the question formulated above accordingly is in the negative. This appeal succeeds and is hereby allowed and the order passed by the Tribunal to the extent the same held the assessee entitled to a deduction under Section 80-I on the amount of duty drawback set aside.

8. No costs.



T.S. THAKUR  
(JUDGE)



B.N. CHATURVEDI  
(JUDGE)



December 08, 2005  
pk.