



\* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 22.09.2008

+ **ITA No. 824/2008**

**COMMISSIONER OF INCOME  
TAX, DELHI-II**

..... **Appellant**

**-versus-**

**MOSER BAER INDIA LTD**

..... **Respondent**

**Advocates who appeared in this case:**

For the Appellant : Mr R. D. Jolly  
For the Respondent : Mr Ajay Vohra & Ms Kavita Jha

**CORAM :-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED  
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal is directed against the Income Tax Appellate Tribunal's order dated 30.11.2007 passed in ITA No. 4992/Del/2003 pertaining to the assessment year 2000-01.



2. The Assessee is engaged in the business of manufacturing of computer related products including floppies and compact discs. The said business is carried on through its industrial undertakings which are, inter alia, 100% export oriented undertakings. The assessee had claimed exemption under Section 10A/10B of the Income Tax Act, 1961, in respect of the profits earned by it. According to the Assessing Officer, out of the total sales of Rs 148.75 crores of the assessee's three units, direct export sales were only to the extent of Rs 72.78 crores and the remaining sales were on account of stock transfer to the assessee's Rotterdam unit amounting to Rs 73.46 crores. There was a certain amount of domestic sales amounting to Rs 2.33 crores and sale of scrap amounting to Rs 0.18 crores. The Assessing Officer was of the view that the assessee was not entitled to the exemptions under Section 10A/10B of the Act, since its direct exports were less than 75% of the total sales made during the year under consideration. The Assessing Officer did not accept the assessee's explanation that the stock transfers to the Rotterdam unit were actually export sales. It was the view of the Assessing Officer that this did not constitute direct exports as the same was not backed



by actual sale. Consequently, the Assessing Officer held that the profits of the assessee's undertakings were not eligible for the exemptions claimed under Section 10A/10B of the Act.

3. On appeal by the Assessee, the Commissioner of Income-tax (Appeals) accepted the plea of the Assessee and allowed the exemptions. He directed the Assessing Officer to re-compute the said exemptions in the light of the observations given by him in the detailed order passed by him.

4. The matter was looked at by the Income Tax Appellate Tribunal from two stand points. The first being from the stand point of its earlier decision in the case of Virage Logic International v. Dy Director of Income Tax wherein, under similar circumstances, the Tribunal was of the view that the transmission of computer software from the Indian entity to its head office situated outside, since it was a arms length price amount to export, entitled the assessee therein to claim exemption under Section 10A of the said Act. Following this decision, the Tribunal agreed with the plea raised by the Assessee and rejected the Revenue's contention that the Assessee was not entitled to exemptions under Section 10A/10B of the Act.



5. Apart from this, the Tribunal also considered the fact that in the year in question, although, the entire stock which had been transferred from the three units in India to the Rotterdam unit only stock worth Rs 4,43,42,500/- was lying at the Rotterdam unit at the end of the year. In other words, the Tribunal was of the view that the rest of the stock which had been transferred during the year had actually been sold by the Rotterdam unit and therefore, would have to be construed as actual exports by the said units of the assessee. Since that constituted more than 75% of the total sale, the Tribunal came to the conclusion that there was no reason to deny exemptions claimed by the assessee under Section 10A/10B of the Act. This is a finding of fact which has not been shown to be perverse. The provisions as they stood for the relevant time in relation in the assessment year 2000-01 permitted the export oriented undertakings to claim exemption provided 75% of the total sales comprised of exports. In the factual background narrated above, we find that 75% of the assessee's total sale by the eligible units comprised of exports. This is a pure finding of fact and based upon this, the Tribunal has confirmed the order of the Commissioner of Income-



tax (Appeals) allowing the assessee's exemption claimed by him in respect of its units under Section 10A/10B of the Act.

6. We see no reasons to interfere with this finding of fact. In any event, no substantial question of law arises for our consideration. The appeal is dismissed.

*Badar Durrez Ahmed*  
BADAR DURREZ AHMED, J

*Rajiv Shaktiher*  
RAJIV SHAKDHER, J

September 22, 2008  
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