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

Judgment reserved on : 29.09.2008

% Judgment delivered on : 21.11.2008

\+ **ITA Nos. 1009 & 1012 of 2007**

THE COMMISSIONER OF INCOME TAX-V ..... Appellant

-versus-

NATRAJ STATIONERY PRODUCTS (P) LTD ..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Rashmi Chopra
For the Respondent : Mr Anil Sharma

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 ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

RAJIV SHAKDHER, J

1. These appeals under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') are preferred by the Revenue against a common judgment dated 05.01.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred as the 'Tribunal') in ITA No. 313/Del/2006 and ITA No. 3509/Del/2003, in respect of the assessment

years 2000-01 and 2001-02 respectively. These two appeals are being disposed of by this common judgment.

2. The short issue which arose for consideration before the Tribunal was whether the respondent/assessee was entitled to deduction as claimed, in respect of the profits derived from an industrial undertaking set up in assessment year 1994-95.

3. The Tribunal came to the conclusion that the respondent/assessee was entitled to the claim made by it for the reasons given in the impugned judgment. We are of the view that the impugned judgment of the Tribunal deserves to be sustained for the reasons given hereinafter. Before we elucidate the reasons for arriving at such a conclusion, the following undisputed brief facts require to be noted :-

3.1 The respondent/assessee in the previous year 1993-94 had set up an industrial undertaking for the purpose of manufacture of photo albums. The respondent/assessee commenced manufacture on 24.03.1994. The respondent/assessee also got itself registered as a small scale industrial undertaking.

3.2 In the assessment year 1994-95, which was the first and the initial year, the assessee suffered a loss. The respondent/assessee continued to suffer losses till assessment year 1997-98. Consequently, the assessee did not claim any deduction, in particular under Section 80-IA of the Act,

as it appeared on the statute book at the relevant point in time, till the assessment year 1997-98. In the assessment years 1998-99 and 1999-00, the respondent/assessee having earned profits, filed a return claiming a deduction under the relevant provision as it then stood, by filing a return of income. The return was processed by the Revenue under Section 143 (1) (a) of the Act. Similarly, in the assessment year 2001-02, the assessee claimed deduction in the first instance under Section 80-IA of the Act. It was when the Assessing Officer required the respondent/assessee to give a detailed note with respect to its claim for deduction under Section 80-IA of the Act, that the, respondent/ assessee vide a response dated 19.12.2002 informed the Assessing Officer that it had wrongly claimed deduction under Section 80-IA, even though, it was entitled to deduction under Section 80-IB. The assessee stated that this mistake had occurred due to a typographical error.

4. The Assessing Officer vide an order dated 30.12.2002 disallowed the claim of the assessee for deduction both under Section 80-IA and Section 80-IB of the Act. The Assessing Officer was of the view that the stand of the respondent/assessee that it had claimed a deduction under Section 80-IA of the Act on account of a typographical error could not be accepted on the ground that it had consistently in the documents filed with the Revenue; which included, a letter dated 07.10.2002,

acknowledgment sheet of the return of income for the assessment year 2001-02; computation of income filed alongwith the return; audit report (Form 3CD) and, in returns for the assessment year 1998-99 and 1999-00, claimed deductions under Section 80-IA. The Assessing Officer came to the conclusion that a deduction under Section 80-IA was granted to an industrial undertaking which was engaged in the business of infrastructural development and since, the assessee was in the business of manufacturing of photo albums, the same deduction was not available to it.

4.1 The Assessing Officer thereafter proceeded to examine the respondent/assessee's claim under Section 80-IB on an assumption that the respondent/assessee's claim of typographical error was bonafide. In examining the claim under the provisions of Section 80-IB (3) (ii), the Assessing Officer noted that in order to be eligible for deduction, an undertaking which was a small scale industrial undertaking had to commence the production at any time during the period beginning on 01.04.1995 and ending on 31.03.2000. The Assessing Officer having noted the fact, based on certificate dated 11.05.1994 granted by the Government of Haryana, that the assessee commenced the production on 24.03.1994, came to the conclusion that it was not entitled to the deduction as it had commenced production outside the defined statutory

period. Consequently, the respondent/assessee's claim for deductions both under Sections 80-IA and 80-IB was disallowed and a sum of Rs 8,46,602/- was added back to the income.

5. Aggrieved by the order of the Assessing Officer, the respondent/assessee preferred an appeal to the Commissioner of Income-tax (Appeals)-XVI, New Delhi [hereinafter referred to as 'CIT(A)']. The CIT(A) dismissed the appeal of the respondent/ assessee and, in particular, rejected the plea of the respondent/ assessee that it was entitled to a deduction under sub section 3 (i) of Section 80-IB on the ground that when there was a specific clause and provision for a Small Scale Industrial (in short 'SSI') unit, the assessee could not take benefit of the general clause and this being a beneficial clause, strict compliance will have to be made for being accorded benefit under the Act. The CIT(A) sustained the order and reasoning of the Assessing Officer, in respect of, the respondent/assessee's claim under sub-section (3) (ii) of Section 80-IB, as well as, 80-IA.

6. The respondent/assessee being aggrieved, preferred an appeal to the Tribunal. The Tribunal after noting the submissions of the respondent/assessee, in paragraph no. 4 of the impugned judgment, arrived at a conclusion that the respondent/assessee was entitled to deduction under Section 80-IB (3)(i) as it was pari-materia with the

provisions contained in Section 80-IA (2) (iv) as it stood in the initial year i.e., assessment year 1994-95. The Tribunal noted that the respondent/assessee had foregone its claim of extra benefit granted to a SSI unit. The Tribunal, further observed, that in these circumstances, if the condition as mentioned in Section 80-IA (2) (iii) of the Act, as applicable in the initial year, which is, that it produces or manufactures any article or thing not being an article or thing specified in the list in the 11th Schedule, is satisfied, then the assessee will be entitled to deduction for a period of ten years starting from the assessment year 1994-95 provided the other condition regarding the employment of requisite number of persons is also satisfied. The Tribunal, thus, directed the Assessing Officer to verify the respondent/assessee's eligibility for deduction in the year under consideration in terms of articles or things produced and the number of persons employed in the process of manufacture, and if the said conditions were satisfied, the Assessing Officer was directed to grant deductions to the assessee under Section 80-IB of the Act.

7. Having heard the learned counsel both for the revenue, as well as, the assessee and perused the record, our reasons for arriving at the conclusion, which we have, are as follows.

8. The deduction with respect to the 'profits and gains' from industrial undertaking in certain stated cases as enumerated in the Section was brought on the statute book by virtue of the Finance Act (No.2), 1991 by insertion of Section 80-IA with effect from 01.04.1991. This provision has undergone amendment several times. For the purpose of the disposal of the present appeal, it would be sufficient, if a note is made of the fact that the Section was amended by the Finance Act, 1992 with effect from 01.04.1993, thereafter by the Finance Act, 1993 with effect from 01.04.1994, then the Finance Act, 1994 with retrospective effect from 01.04.1994 and with effect from 01.04.1995, then by Finance Act, 1995 with effect from 01.04.1996, then by Finance Act (No. 2), 1996 with effect from 01.04.1997, by Finance Act, 1997 with retrospective effect from 01.04.1996 and with effect from 01.04.1998, and then the Income Tax (Amendment) Act, 1998 with retrospective effect from 01.04.1995 and with effect from 01.04.1998 and the Finance Act (No. 2), 1998 with retrospective effect from 01.04.1998 and with effect from 01.04.1999 etc.

8.1 In the present case, even though it is an admitted fact that the respondent/assessee commenced production on 24.03.1994 it did not claim deduction in the initial year relevant to the assessment year 1994-95, and thereafter, till the assessment year 1997-98 in view of the fact

that both in the initial year and the three succeeding years, it had not earned any profit. In the fifth and sixth year relevant for the assessment years 1998-99 and 1999-00, the respondent/assessee had claimed deductions under Section 80-IA and the Assessing Officer accepted the return under Section 143 (1) (a) of the Act. The Assessing Officer, however, disallowed the deductions as claimed by the respondent/assessee for the assessment year 2001-02.

8.2 In these circumstances, it would be relevant to note the provision for deduction as it stood from 01.04.1991 till its amendment by the Finance Act, 1993 with effect from 01.04.1994. The same reads as follows :-

> **"80-IA**(1) Where the gross total income of an **assessee includes any profits and gains derived from any business of an industrial undertaking or a hotel or operation of a ship** (such business being hereinafter referred to as the eligible business), to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to the percentage specified in sub-section (5) and for such number of assessment years as is specified in sub-section (6).
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> (2) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-
>
> (i) xxxxxxxxxxxxxxx
> (ii) xxxxxxxxxxxxxxx
> (iii) xxxxxxxxxxxxxxx

(iv) it begins to manufacture or produce articles or things or to operate such plant or plants, at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking."

The followi1ng clause (iv)(a) was substituted for the existing clause (iv) by the Finance Act, 1993 with effect from 01.04.1994:-

(iv)(a) in the case of an industrial undertaking not specified in sub clause (b), it begins to manufacture or produce articles or things or to operate such plant and plants, at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking."

9. It would be relevant for the purpose of present appeals to note that by virtue of the Finance Act, 1999 with effect from 01.04.2000, Section 80-IA of the Act was bifurcated into two sections namely 80-IA and 80-IB. The deductions which were available under Section 80-IA (2) (iv) (a) were made available under Section 80-IB (3) (i). The relevant extract of Section 80-IB (3) (i) & (ii) are reproduced herein below :-

"80-IB (1) **Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11) (such business being hereinafter referred to as the eligible business)**, there shall, in accordance with and subject to the provisions of this section, be allowed, in computation the total income of the assessee, a deduction from such profits and gains of an amount equal to the percentage and for such number of years as specified in this Section.

(2) xxxx xxxxxxxxxx

(3) The amount of deduction in the case of an industrial undertaking shall be twenty-five percent (or thirty per cent where the assessee is a company), of the profits and gains derived from such industrial undertaking for a period of ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a cooperative society) beginning with the initial assessment year subject to the fulfilment of the following conditions, namely :-

(i) it begins to manufacture or produce articles or things or to operate such plant or plants, at any time during the period beginning on the 1st day of April, 1991 and ending on the 31st day of March, 1995, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(ii) where it is an industrial undertaking being a small scale industrial undertaking, it begins to manufacture or produce articles or things or to operate its cold storage plant (not specified in

> sub-section (4) or sub-section (5) at any time during the period beginning on the 1st day of April, 1995 and ending on the 31st day of March, 2000.''

9.1 It is not disputed that the relevant provisions of Section 80-IB (3) (i) & (ii) have not undergone any change in the assessment years 2001-02.

10. In view of the aforesaid state of the provisions at the relevant points in time, both in the initial year relevant to the assessment year1994-95 and the years under consideration in the present appeals, it is clear that in the initial year there was no distinction drawn between a small scale undertaking and any other industrial undertaking. In the assessment year 1994-95, relevant to the initial year, the assessee would have been entitled to a deduction, subject to his fulfilling other conditions as prescribed under Section 80-IA, if it had commenced the production of an article or thing which was not an article or thing specified in the 11th Schedule of the Act at any time during the period beginning from the 1st day of April 1991 and ending on 31st March 1995. The respondent/assessee had admittedly commenced the production on 24.03.1994 and was thus eligible for deductions under Section 80-IA of the Act, subject to as stated above, fulfilment of other conditions under the provisions of Section 80-IA of the Act. The fact that the

respondent/assessee had not earned profit till the assessment year 1997-98 resulted in a situation when the respondent/assessee did not claim a deduction with respect to the industrial undertaking set up by it on 24.03.1994. The first year in which the assessee earned profit was the assessment year 1998-99. **The respondent/assessee claimed deduction in the said assessment year. Similarly, in the assessment year 1999-00, the assessee once again claimed deduction as it had earned profits. In both these years, the Assessing Officer as noted herein above, accepted the return under Section 143 (1) (a) of the Act**. The respondent/assessee continued as evident from the narration herein above, to claim deduction in the assessment year 2000-01 and 2001-02. The rationale advanced by the Assessing Officer that the assessee was not entitled to deductions either under Section 80-IA or 80-IB (3) (ii) was erroneous for the reason that the Assessing Officer overlooked the fact that in the initial year relevant to the assessment year 1994-95, the deduction to the assessee would have been available under Section 80-IA (2) (iv) (a) of the Act as it then obtained in the assessment year 1994-95. There was no distinction between a small scale undertaking and any other undertaking. The Assessing Officer in our view, wrongly rejected the claim of the respondent/assessee for the assessment years under consideration i.e., assessment years 2000-01 and 2001-02 under the

provision of Section 80-IB (3) (ii). The Assessing Officer failed to note that by virtue of the Finance Act,1999 with effect from 01.04.2000, Section 80-IA had been bifurcated, and consequently, substituted by Sections 80-IA and 80-IB. In these circumstances, the respondent/assessee was entitled to deduction as the legislature in its wisdom continued that original deduction available to an assessee under Section 80-IA (2) (iv) (a) by retaining the provision under Section 80-IB (3) (i) of the Act. Unfortunately, for the assessee, a specific plea to the effect made before the CIT(A) that, it was entitled to claim under Section 80-IB (3) (i), was rejected on a specious ground that the SSI unit could not take benefit under a general clause forgetting thereby, that the, initial year for claim of deduction in respect of the assessee was the assessment year 1994-95 and hence, the state of the law was required to be traced from that year as, the deduction was thereafter available for ten consecutive years ending with the assessment year 2003-04. In our view, the Tribunal correctly appreciated the respondent/assessee's contention with respect to the state of the law relevant to the initial year of its production i.e., assessment year 1994-95 and the changes that were brought about with the enactment of the Finance Act 1999, with effect from 01.04.2000. Considered in the background of these facts and circumstances, the Tribunal has rightly held that the respondent/assessee

was not required to file a revised return since it had not made any 'new claim' and hence, the ratio of the judgment of the Supreme Court in ***Goetz (India) Ltd v. CIT* : (2006) 284 ITR 323** was not applicable.

11. In these circumstances, the Tribunal, in our view, has correctly held that the assessee is entitled to deduction under Section 80-IB (3)(i), in regard to other industrial undertakings, the provision of which are pari-materia with the provisions of Section 80-IA (2)(iv) as obtaining in the initial year. The Tribunal's direction to the Assessing Officer to ascertain as to whether the respondent/assessee had fulfilled the conditions set out in Section 80-IA (2) (iii) of the Act as applicable in the initial year, that is, whether the respondent/assessee produces or manufactures any article or thing not being an article or thing specified in the 11th Schedule to the Act, in order to be eligible for deduction under Section 80-IB for a period of ten years commencing from the assessment year 1994-95, provided the other condition, such as, employment of requisite number of persons is also satisfied by the respondent/assessee; cannot be faulted with.

12. In the foresaid circumstances, we are of the view that both the Assessing Officer, as well as, the CIT (A) had failed to appreciate the facts and circumstances obtaining in the present case, as well as, the state of the law. The Tribunal's judgment over-turning the said view of the authorities below cannot be faulted and hence, does not require any

interference. No question of law, much less a substantial question of law has arisen for our consideration.

13. In the result, the appeal is dismissed.

RAJIV SHAKDHER, J

BADAR DURREZ AHMED, J

November 21, 2008
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