



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

+ **W.P(C) No. 8265/2008**

24th August, 2009

NORTHERN STRIPS LIMITED & ANOTHER

...Petitioner s

Through: Mr. Salil Aggarwal and Mr. Prakash
Kumar, Advocates.

VERSUS

INCOME TAX OFFICER WARD (13(3), NEW DELHI

...Respondent

Through: Mr. Subhash Bansal, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

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VALMIKI J.MEHTA, J

1. The present writ petition seeks quashing of the notice dated 27.3.2008 and the order dated 10.11.2008 passed by the respondent under Section 147/148 of the Income Tax Act, 1961.



2. The petitioner company is engaged in the business of manufacturing cutting and slitting of polyester films. It has its industrial undertaking at Silvasa which is a notified backward area as specified in the Eighth Schedule of the Income Tax Act. For the Assessment Year 2001-2002, the petitioner company filed a return of income under Section 139(1) declaring an income of Rs.3,37,167/- under the normal provisions of the Act and an income of Rs.2,58,98,479/- under Section 115 JB of the Act. The petitioner company claimed a deduction of Rs.2,18,17,975 under Section 80IA of the Act. The return of income was processed under Section 143(1) and selected for scrutiny by issuance of notice under Section 143(2) of the Act.

3. During the course of assessment proceedings, the Assessing Officer asked the petitioner company to explain the basis of the claim of deduction and to which a detailed note was filed by the petitioner company with respect to allowability of deduction under Section 80IA of the Income Tax Act. The petitioner company by its letter dated 10.12.2002 furnished a note before the Assessing Officer, on the business activity and allowability of deduction under Section 80IA of the Act. The petitioner company also furnished another reply dated 24.3.2003, inter alia, with respect to allowability of deduction under Section 80IA. Vide order dated 31.3.2003, the Assessing Officer allowed the deduction under Section 80IA to the petitioner/assessee. The income was assessed at Rs.4,37,450/-, however, the income declared at Rs.2,58,98,479/- under Section 115JB of the Income Tax Act was taken for taxation purposes.



4. It is thereafter that the impugned notice was issued to the petitioner under Section 148 of the Act dated 27.3.2008 and to which by letter dated 21.4.2008, the petitioner company requested the respondent to furnish a copy of the reasons recorded for initiating proceedings under Section 147 of the Income Tax Act. Through the letter dated 29.4.2008, the respondent supplied the reasons recorded to the petitioner company for initiating proceedings under Section 147/148 of the Act. The petitioner by letter dated 22.10.2008, filed the objections to the initiation of the reassessment proceedings on receiving the copy of the reasons. On 10.11.2008, the respondent passed an order dismissing the objections raised by the petitioner company to the initiation of reassessment proceedings. Hence this writ petition.

5. We may straightaway refer to the reasons given by the respondent for reopening of the assessment and which are as under:

“Reasons for reopening the case u/s 147 of the Income Tax Act in the case of M/s Northern Strips Ltd. in Asstt. Year-2001-02

The return of income in this case was filed on 31-10-2001 declaring an income of Rs.3,37,167/- and Book Profit u/s 115 JB of the Act of Rs.2,58,98,479/-. Return was processed u/s 143(1) of the IT Act on 25-02-2003 and assessment u/s 143(3) of the Act was made on 31-03-2003.

On perusal of the assessment records it has been found that during the year assessee has claimed deduction u/s 80IB of the Act for Rs.2,18,17,975/-. As per section 80IB(2)(iii) of the Act, one of the basic conditions for claim of deduction under this section is that **‘it manufactures or produces any articles or thing not being any 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.’** During the year under consideration the assessee was engaged in cutting and slitting of polyester film of various sizes, weight and micron. In fact the assessee has been engaged in mere processing and packing business and not any manufacturing or production of any article or thing.



In view of the above facts, I have reason to believe that the assessee is not entitled to claim deduction u/s 80IA of the Act, and by claiming the same the income has escaped assessment in the AY 2001-02. Since four years has expired from the end of the relevant years, and security assessment was completed u/s 143(3) of the IT Act., therefore, the statutory approval of the Ld. CIT, Delhi-V, New Delhi is required u/s 151(1) of the IT Act. in the case of the assessee for the said assessment year, the reasons recorded above for the purpose of reopening of assessment is put up for kind satisfaction of Addl. CIT, Range-13, New Delhi in terms of the proviso to Section 151 of the Act.

Put up for your kind perusal and forwarding to Ld. Commissioner of Income Tax, Delhi-V, New Delhi for necessary approval please.

(R.K.Sharma)
Asstt. Commissioner of Income Tax
Circle-13(1), New Delhi.”

6. The counsel for the writ petitioner has urged four submissions before this court:

(i) The reasons given for the assessment do not show any averment that the assessee has failed to fully and truly disclose all material particulars. This averment was necessary in as much as the proceedings for reassessment were initiated after the expiry of a period of four years and hence covered by proviso to Section 147(2) of the Act. The counsel for the petitioner relies upon the judgment reported as *JSRS Udyog Ltd. Vs. ITO, 313 ITR 321* in support of this proposition.

(ii) A reference to the reasons reproduced above show that no new fact has been referred to as the reason for reopening of the assessment and therefore, this amounts to a mere change of opinion which cannot form the basis for initiation of proceedings under Section 147/148 of the Act.



(iii) The Assessing Officer has allowed deduction both in the preceding assessment years 1999-2000 and 2000-2001 and also for the subsequent years 2002-2003, but after first allowing the same, this is now sought to be deleted pursuant to proceedings under Section 147/148 of the Act.

(iv) With respect to a group company of the assessee namely M/s Super Plastic Coats Pvt. Limited, the Assessing Officer has held the same process to be a manufacturing activity and has allowed deduction under Section 80IA. Copy of this order is placed at pages 196 to 198 of the writ petition. Even in the case of the group company, proceedings were initiated under Section 147 /148 of the Act, and which proceedings were dropped by holding that the activity which was carried on by the group company, and which is similar to the activity as in the present case, was a manufacturing activity.

It was therefore contended that there is no ground whatsoever for initiation of proceedings under Section 147/148 of the Act.

7. In response, the counsel for the respondent has basically placed reliance upon the order dated 10.11.2008 passed by the Income Tax Officer under Section 147 of the Act. He has more particularly relied upon the following portion of the order:-

“The perusal of the assessment record of the assessee company it has been found that during the year assessee has claimed deduction 80IB of the Act for Rs.2,18,17,975/-. As per section 80IB (2) (iii) of the Act, one of the basic condition for claim of deduction under this section is that **“it manufactures or produces any article or thing not being any 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”. During the year under consideration the assessee was engaged in cutting and slitting of polyester film of various sizes, weight and micron. In fact the assessee has been engaged in mere processing and packing business and not any manufacturing or production of any article of thing. Hence the assessee is not entitled for claiming of deduction u/s 80IA.”

8. The contents of the petition are well founded and we have no hesitation in allowing the present writ petition. The law is well settled that the proceedings under Section 147/148 cannot be initiated merely because there is a change of opinion and there are no new facts for justifying the initiation of reassessment proceedings. A reference to the portion of the final order dated 10.11.2008 quoted above simply states that according to the Assessing Officer, the activity carried on by the assessee is not a manufacturing activity. In view of the fact that this very issue was duly considered and the assessee furnished detailed note as also its letter dated 10.12.2002 and 24.3.2003 justifying the allowability of deduction under Section 80IA and which was duly allowed by an order passed under Section 143(3)(3) of the Act, it is clear that there is no basis for initiating proceedings under Section 147/148. The very fact that deduction has been allowed in the preceding assessment years as also in the subsequent assessment years clearly points to the fact that the assessee was entitled to deduction under Section 80IA. Thus, even on the principle of consistency, there is no reason to disallow the deduction for the subject Assessment Year 2001-2002. In the case of the group company of the assessee which carries on similar activity, similar proceedings were initiated under Section 147/148 and which were ultimately



dropped by holding the entitlement to deduction under Section 80IA with respect to the same manufacturing activity.

9. The contention of the counsel for the respondent, by reference to the final order dated 10.11.2008, clearly carries no weight because the relevant portion of the order reproduced above does not show any new material or even an averment of failure on the part of the assessee to fully and truly disclose material particulars.

10. We, therefore, allow the writ petition and quash the impugned notice dated 27.3.2008 and the order dated 10.11.2008 in the proceedings under Section 147/148 of the Act. Writ in the nature of certiorari is issued quashing the reassessment proceedings initiated by the respondent in pursuance to the notice dated 27.3.2008 for the Assessment Year 2001-2002.

A. K. SIKRI, J

VALMIKI J.MEHTA, J

August 24, 2009

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