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

\+ **ITA No.1324/2010**

% **Reserved On: 28.04.2011**
Date of Decision: 03.06.2011

Commissioner of Income Tax .... **APPELLANT**
Through: Ms.Prem Lata Bansal, Sr. Advocate with Mr.Ruchir Bhatia, Advocate

Versus

Continental Engines Ltd. .... **RESPONDENT**
Through: Mr.Rajat Navet, Advocate

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1.	Whether reporters of Local papers be allowed to see the judgment?	NO
2.	To be referred to the reporter or not?	NO
3.	Whether the judgment should be reported in the Digest?	NO

M.L. MEHTA, J.
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1. The Revenue has preferred this appeal against the judgment dated 21st July, 2009 of the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). Vide the impugned judgment, the Tribunal disallowed the appeal of the Revenue

preferred against the order of the CIT(A) in respect of the assessment year 2003-04, 2004-05 and 2005-06. The present appeal is filed by the Revenue in respect of the impugned order relating to assessment year 2003-04 only.

2. The assessee filed return of income of ₹1,67,04,890/-. The case was processed and taken up for scrutiny. Notice under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued.

3. The assessee company is an export oriented unit and is engaged in the manufacturing of machined aluminium cylinder heads which includes cylinder heads, cylinder blocks, dies and moulds, manifolds, etc. During the assessment year 2003-04, the assessee made purchases of ₹4.93 crores from its sister concerns, M/s. Continental Brakes Ltd. and ₹5.58 crores from M/s.L.P. Casting Pvt. Ltd. Since the bulk of purchases were made from the sister concerns, the transactions of the assessee were extensively investigated by the Assessing Officer (AO). Notice under Section 133(6) was also sent to ascertain the genuineness and veracity of the purchases made. The assessee is running its business at two places having an old unit at Gurgaon termed as 'CEL-I' and the second unit at Bhiwadi termed as 'CEL-II'. The

assessee claimed deduction under Section 80HHC of the Act for CEL-I and exemption under Section 10B for unit at Bhiwadi, CEL-II. The assessee had shown net profit of ₹8,56,49,780/- on a turnover of ₹ 26,49,90,680/-

4. The AO disallowed the claim of the assessee under Section 10B holding that the assessee failed to establish the fulfilling the conditions under Section 10B of the Act. For arriving at this conclusion, the AO gives reason as under:

> "To conclude it is held that the assessee does not fulfill the conditions for claiming exemptions u/s 10B since no new article or things as claimed by the assessee no article or things has been produced by the assessee during the year under consideration the assessee is getting the job work done from its sister concern i.e. CBL which is charging 50 Rs. Per peace. As no expenses has been claimed on account of labour wages and the expenses claimed on account of power and fuel are 212845/- which appears to be imaginary and which are not in consonance with the export turnover shown by assessee. The assessee was exporting the cylinder manifold in earlier year also there is no new article thing produced by the assessee this year. In fact the newly claimed to be established unit does not have its own staff management workers employees independent machinery etc. it is totally dependent upon the parent unit-I and it is only an arrangement made by the assessee to claim the benefit of Section 10B in the guise of newly established unit at Bhiwadi when it found that its earlier claim of 10B for Gurgaon unit was expiring at the end of A.Y. 2002-03. The submission of the assessee vide letter dated 28.03.2005 where by an offer of the additional income for taxation on account of allocation of admn. finance and salary expense is nothing but an admission of the manipulation of the accounts and making unlawful claim u/s 10B of the act. I am satisfied that the assessee

has furnished inaccurate particulars to that extent and penalty proceedings u/s 271(1)(c) of the act are being initiated on this point.

The claim made by the assessee under section 10B is disallowed considering the non fulfillment of the requisite conditions stipulated under this Section. However, the fact that the assessee is making export is not disputed and the claim of 80HHC is allowable for this unit also."

5. In appeal filed by the Revenue, the CIT(A) allowed the exemption under Section 10B of the Act to the assessee. For arriving at this conclusion, the CIT(A) recorded as under:-

"7. I have gone through the order of Assessing officer and the submissions made by the assessee. It is worthwhile to note that the assessee is an approved EOU unit by the NEPZ authorities which is not in dispute. Further, the assessing officer has accepted the exports made by the assessee from the CEL-II Unit as in the assessment order itself he has admitted and agreed at page – 16 that the assessee is making exports which is not disputed. Now the question remains whether the assessee has manufactured or produced any article or thing within the meaning of Section 10B of the Income Tax Act, 1961. From the facts I find that there are different processes which are carried out in the EOU undertaking listed out at page 110 of the paper book. As a result of this process a raw casing becomes finished goods which is a marketable commodity.

Therefore in my considered opinion the assessee has carried out manufacturing of an article or thing. So far as the assessing officer's observations relating to certain jobs being done by sister concern does not stand in the way of assessee for claiming the exemption under Section 10B as change. If a new substance is brought into existence or if any

> new or different article having a distinct name, character or use results from a manufacture. Whether in a particular case manufacture has resulted by a process or not would depend on the facts and circumstances of the particular case.

There is nothing in the section preventing him from getting job work done from outside.

The assessee has also explained that the proper books of accounts of the unit are been maintained.

The assessee also contended that the other unit namely CEL-I on a stand alone basis, the profitability is comparable with that of the earlier years and that there is no case for booking more expenses in CEL-I and less in CEL-II. However, to buy peace, the assessee during the course of hearing before the Assessing Officer has also fairly given the alternative working of the total expenditure based on the total turnover of CEL-I and CEL-II to the Assessing Officer and also reduced the claim of 10B to an extent of Rs.1 crores approximately by reallocating the expenses based on turnover.

The assessee has also drawn my attention to the assessment order for assessment year 2004-2005 in the assessee's own case wherein the AO himself has categorically mentioned that the conditions for claim of deductions u/s 10B for CEL-II are fulfilled. Consequently the A.O. has allowed the deduction u/s 10B.

Considering all the above facts and the legal case laws I am of the view that the assessee is eligible for claiming exemption u/s 10B of the Income Tax Act, 1961 for its unit No.CEL-II at Bhiwadi. As a result the claim of the assessee under Section 10B of Rs.541,40882/- (as revised by the assessee before the Assessing Officer) is allowed. Consequently the deduction under Section 80HHC while the assessing officer has allowed on the export turnover of CEL-II would be withdrawn.

6. It is also noteworthy that during the course of proceedings before the AO, the assessee also gave alternate working of the total expenditure based on total turnover of CEL-I and CEL-II and consequently reduced the claim under Section 10B to the extent of ₹1.00 crore approximately by relocating the expenses based on turnover.

7. The Tribunal in appeal filed by the Revenue in respect of the relevant assessment year 2003-04 and also other assessment years, namely, 2004-05, 2005-06 maintained the order of the CIT(A) in the following manner.

> "5. We have heard the parties and perused the material placed on record. We are satisfied that the Commissioner of Income-Tax (Appeals) was right and proper in allowing the claim of the assessee u/s 10B for both the assessment years under consideration. We, therefore, uphold the orders of the Commissioner of Income-Tax (Appeals) and allow the claim of the assessee made u/s 10B of the Act in both the appeals."

8. There is no dispute that the assessee is an approved EOU unit approved by the NEPZ authorities and there is also no dispute that the assessee was having two units described as CEL-I and CEL-II and that the assessee was making exports. Both the CIT(A) and the Tribunal have recorded as a matter of fact that

the assessee was involved in manufacturing of an article or thing and that the mere fact that it was getting some works done on job basis from its sister concern would not deprive the assessee of its entity to be an EOU manufacturing unit. It is also recorded by both the authorities below and rightly so that the AO himself has recorded in respect of the assessee's own case for the assessment year 2004-05 that CEL-II fulfilled the conditions under Section 10B and was allowed deductions thereunder. Even for the assessment year 2005-06, the appeal filed by the assessee has already been allowed by the CIT(A) holding the assessee to be entitled to claim deductions under Section 10B.

9. In view of the above, we do not see any reason to interfere with the impugned order of the Tribunal as no substantial question of law arises. The appeal is dismissed accordingly.

M.L.MEHTA
(JUDGE)

A.K. SIKRI
(JUDGE)

JUNE 03, 2011
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