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

% Date of Decision : 26th July, 2012.

\+ ITA 1130/2011

CIT ..... Appellant
Through Mr. Sanjeev Rajpal, sr. standing counsel

versus

PAWAN KANSAL ..... Respondent
Through Mr. Ved Jain, Adv.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

S. RAVINDRA BHAT,J: (OPEN COURT)

The revenue is aggrieved against the order dated 1.3.2011 of the ITAT (Tribunal for short) by which its appeal challenging CIT(A)'s order was dismissed. This Court had framed the following question of law in the order dated 17.1.2012:-

> *"Whether for the purpose of Section 80 IB (3), the investment in Unit-I and Unit-2 has to be taken into consideration or investment in Unit-I only is to be taken into consideration?"*

2. The assessee is a proprietor of two units i.e. "Jagdamba Industries" (Unit No.1) and "Jagdamba Exports (Unit No.2). Both units are located opposite to each other at Haryana. The Assessing Officer held that the total investment in the two units was Rs.1,26,90,532/- as on 31.3.2005 and since the amount exceeded Rs.1 crore, the assessee was not eligible to be characterized as a "small-scale industrial undertaking" within the meaning of Section 80IB(3)(ii) of the Income Tax Act, 1961, (Act for short) read with Section 11B of the Industries (Development & Regulation) Act, 1956. The

first unit was claimed and was granted benefit under Section 80IB of the Act. The Assessing Officer held that deduction was no longer admissible as the two units have been clubbed together as one industrial undertaking and therefore fell outside the purview of the industrial undertaking. It may be added here that the investment in plant and machinery in respect of first unit was Rs.86.5 lakhs and in respect of second unit it was Rs.38.36 lakhs. The Assessing Officer clubbed both the units and held that the assessee was ineligible for deduction under Section 80IB. The assessee's appeal was accepted and the order of the Assessing Officer, was set aside by the CIT(A) vide order dated 26.5.2010. Thereafter revenue appealed and; by the impugned order dated 1.3.2011 the Tribunal rejected its contentions.

3. The Tribunal after noticing the text of Section 80IB and analyzing the facts, held as follows :

> *"2.5 It is clear from the above discussion that the claim of deduction u/s 80IB is allowable in respect of industrial unit and not with respect to individual assessee. An assessee may have more than one industrial unit. He is entitled for claim of deduction u/s 80IB in respect of each of its industrial undertakings provided such industrial undertaking fulfils the conditions as laid down u/s 80IB of the Act. As per the finding recorded by the learned Commissioner of Incometax (sic) (Appeals), the investments in old unit M/s Jagdamba Industries and M/s Jagdamba Exports were below Rs.1 crore. Therefore, the deduction declined by the Assessing Officer in respect of M/s Jagdamba Industries on the plea that plant and machinery purchase for M/s Jagdamba Exports was by the same proprietor, therefore, the investment is to be seen with respect to the individual assessee. As both the units were separately located, the deduction is to be seen with respect to investment made in each unit separately not-with-standing the fact that proprietor of both the units is the same. Accordingly, we do not find any infirmity in the order of the learned Commissioner of Incometax (sic) (Appeals) in allowing the claim of deduction in respect of the assessee's industrial unit M/s Jagdamba Industries.*
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> *2.6 In view of the above, for examining the eligibility of deduction u/s 80IB in respect of Unit No.1, namely, Jagdamba Industries, the value of plant and machinery amounting to Rs.33,42,334/- acquired for*

unit no.2, namely, Jagdamba Exports had to be execluded (sic) and once it is excluded the value of plant and machinery in the existing unit, M/s Jagdamba Industries will be within Rs.1 crore and hence such undertaking will be eligible for deduction u/s 80IB."

4. It is urged by the revenue that Tribunal fell into error since there is commonality in the units, in terms of source of fund and type of products. It is also submitted that if the assessee is allowed the benefit, there would soon be a time where multiple units would be set up and all of them would be claiming deduction. On behalf of the assessee reliance was placed upon the decision of this Court in ***Commissioner of Income Tax Vs. Dewan Kraft System (P) Ltd.*** (2008) 297 ITR 305 (Del.). It was contended that the Court had occasion to consider Section 80IB(7) of the Act as it stood then. The benefit granted to a small scale unit, in terms of Section 80IA and 80IB of the Act, is based upon the Central Government's policy that such undertakings should receive treatment in uniform manner to promote and encourage industrial growth in that sector. This is pursuant to Section 11B of the Industries Development and Regulation Act, 1951. In the judgment of *Dewan Kraft System (P) Ltd.* (supra) the Court was confronted with the fact situation where profits of two eligible units were sought to be clubbed and adjusted towards the loss claimed in the unit which had been granted the benefit under Section 80IA. The Court noticed the provision of Section 80IA(7). The relevant part of the reasoning of the Court is as follows :

"12. It is an admitted fact that Kalamb Unit is the only unit of the assessed which is eligible for benefits available under S.80-IA of the Act during the years under consideration, whereas the other units situated at Delhi and Noida are not eligible for this benefit. It is also not in dispute that profits derived by the assessed from Kalamb Unit amounted to Rs. 20,92,221/- whereas the other units at Delhi and

Noida resulted in the loss of Rs. 9,11,270/-. Provision of sub-s. (7) of S. 80-IA of the Act which is relevant in this case, is reproduced below:

> *"(7) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-s. (1) apply shall, for the purpose of determining the quantum of deduction under sub-s. (5) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessed during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.*

13. Perusal of the above provision shows that it is a distinct and separate deeming provision which lays down the special method of computing the profits and gains entitled to deduction under s. 80-IA of the Act. Moreover, this provision is of overriding nature providing specifically that during each of the assessment years in the tax holiday, period in which the assessed is entitled to deduction under s. 80-IA of the Act, this provision will be applied as if the industrial unit is an independent unit and is the one and only source of income possessed by the assessed.

14. It is clear that while computing deduction under Section 80IA of the Income Tax Act, 1961, the profits and gains of Kalamb unit for the purpose of determining the quantum of deduction under s. 80-IA(5) of the Act is to be computed if such eligible business of the said unit is the only source of income of the assessed. The AO mixed the profits of the Kalamb unit with the profits of units at Delhi and Noida and, thus, he erroneously restricted the deduction to the extent of business income

and this was done by him in total disregard of the provisions of sub-s.(7) of s. 80-IA of the Act as mentioned above.

15. Thus, the Kalamb unit being the only unit of the assessed eligible for deduction under s. 80-IA of the Act is to be treated as an independent unit and the same is to be treated as the only source of income for assessed for the purpose of computing deduction under s. 80-IA of the Act. The deduction claimed by the assessed under s.80-IA of the Act, thus, is in accordance with the said provisions and as such we find that there is no infirmity in the impugned order passed by the Income Tax Appellate Tribunal."

5. In the present case too the assessee has not admittedly claimed the benefit under Section 80IA of the Act for the relevant assessment year in respect of Unit No.2. In these circumstances, the question of clubbing the investment for purpose of common undertaking does not arise. Section 80-IA(5) directs the income tax authorities to treat the initial unit as an entirely separate entity to the extent the benefit has to be given. In these circumstances, the Court is of opinion that there is no merit in the appeal. ITA 1130/2011 is dismissed.

S. RAVINDRA BHAT, J.

R.V.EASWAR, J.

July 26, 2012
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