



§-8

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

+ ITA 1153/2009

COMMISSIONER OF INCOME TAX Appellant

Through Ms. Rashmi Chopra, Sr. Standing
Counsel.

versus

S.M.FLANGES P.LTD. Respondent

Through None.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT****HON'BLE MR. JUSTICE R.V.EASWAR****ORDER**% **13.09.2012****Review Pet.711/2011**

In the interest of justice, this Court is of the opinion that Review Petition should be allowed. Ordered accordingly.

ITA 1153/2009

The office reports states that notice was received on 05.09.2012 by one Sanjay Kumar Rustagi on behalf of respondent-assessee. The service is deemed complete.

Following substantial questions of law were framed in this case for consideration: -

- (i) Whether the deduction u/s 80-IB and 80HHC be treated independently or the deduction be calculated only under the residuary section under the present facts and circumstances of



the case?

- (ii) Whether Id. ITAT is correct in its findings that the provisions of Sec-80IA and Sec-80IB are in *pari materia*?

The first question is answered in favour of the Revenue in terms of *CIT vs. S.K.G. Engineering (P) Ltd.* (2006) 285 ITR 423 (Del). Such reasoning appears to have been affirmed by the Supreme Court in *Jt. CIT v. Mandideep Engg. & Packaging Industry*, (2007) 292 ITR 1.

The second question is answered in favour of the Revenue in view of the decision of the Supreme Court reported as *Liberty India Vs. CIT* (2009) 317 ITR 218 (SC), which held as follows: -

“Continuing our analysis of Sections 80-IA/80-IB it may be mentioned that sub-section (13) of Section 80-IB provides for applicability of the provisions of sub-section (5) and sub-sections (7) to (12) of Section 80-IA, so far as may be, applicable to the eligible business under Section 80-IB. Therefore, at the outset, we stated that one needs to read Sections 80I, 80-IA and 80-IB as having a common Scheme. On perusal of sub-section(5) of Section 80-IA, it is noticed that it provides for manner of computation of profits of an eligible business. Accordingly, such profits are to be computed as if such eligible business is the only source of income of the assessee. Therefore, the devices adopted to reduce or inflate the profits of eligible business has got to be rejected in view of the overriding provisions of sub-section (5) of Section 80-IA, which are also required to be read into Section 80-IB. [see Section 80-IB(13)]. We may reiterate that Sections 80I, 80-IA and 80-IB have a common scheme and if so read it is clear that the said sections provide for incentives in the form of deduction(s) which are linked to profits and not to investment. On analysis of Sections 80-IA and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying sub-section(2), would be entitled to deduction under sub-section (1) only to the extent of profits derived from such industrial



undertaking after specified date(s). Hence, apart from eligibility, sub-section(1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the importance of the words "derived from industrial undertaking" as against "profits attributable to industrial undertaking".

DEPB is an incentive. It is given under Duty Exemption Remission Scheme. Essentially, it is an export incentive. No doubt, the object behind DEPB is to neutralize the incidence of customs duty payment on the import content of export product. This neutralization is provided for by credit to customs duty against export product. Under DEPB, an exporter may apply for credit as percentage of FOB value of exports made in freely convertible currency. Credit is available only against the export product and at rates specified by DGFT for import of raw materials, components etc.. DEPB credit under the Scheme has to be calculated by taking into account the deemed import content of the export product as per basic customs duty and special additional duty payable on such deemed imports. Therefore, in our view, DEPB/Duty Drawback are incentives which flow from the Schemes framed by Central Government or from Section 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business under Section 80-IB. They belong to the category of ancillary profits of such Undertakings."

The appeal is partly allowed in the above terms.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

SEPTEMBER 13, 2012

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