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

\+ ITA Nos. 315/2013, 316/2013, 317/2013, 318/2013 & 319/2013

COMMISSIONER OF INCOME TAX-V

..... Appellant

Through Mr. Kamal Sawhney, Sr. Standing Counsel.

versus

QUADRANT INFOTECH INDIA (P) LTD.

..... Respondent

Through Counsel (presence not given).

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 26.07.2013

Having heard learned counsel for the parties, we do not think any substantial question of law arises for consideration in view of the factual findings recorded by the tribunal, which are not disputed and/ are accepted. The factual findings recorded by the tribunal are:

(i) The respondent had set up a new unit at Gurgaon in a technology park after making investment of Rs.1.19 crores towards electric installation which was also a part

of plant and machinery.

(ii) The unit at Gurgaon was separately registered under the Employees' State Insurance Act and Provident Fund Act.

(iii) It was allotted a separate TAN number by the Income Tax Department.

(iv) Separate Form D was obtained under Shop and Establishment Act, 1958 and a licence was obtained for providing bounded warehouse under the Customs Act.

(v) The said unit was set up pursuant to agreement with the software technology park and was registered as 100% export oriented unit.

(vi) The new unit had 182 employees whereas, the unit of the respondent-assessee in Delhi had 8 employees.

2. The tribunal has rejected the contention of the Revenue that the new unit was formed by using or utilising assets from the old undertaking to the extent of 51.78%. The tribunal has recorded that the Assessing Officer while computing the said percentage had only taken written down value of the computers as on 31st March, 2000 in the old unit and not the total value of the entire plant of the new unit. The tribunal has recorded that the Assessing Officer should have taken into consideration the value of the entire plant and machinery installed in the Gurgaon unit. The entire value of the new plant and machinery

installed in the new unit when computed and calculated, showed the correct percentage of old plant and machinery used in the new unit was merely 9.87%.

3. Further, the Assessing Officer did not contest or deal with the contention of the respondent-assessee, which has been accepted that the computers purchased earlier were for and installed at the Gurgaon unit. The Assessing Officer ignored the said contention of the assessee by observing that the bills for the computers, which had been installed in the Gurgaon unit, were issued in the name of the assessee's Delhi unit. This cannot be a justification to ignore the factual position as installation reports produced, stated and recorded that the computers were installed in Gurgaon and were not installed in Delhi. Purchase bills may have been issued in the name of the Delhi unit for several reasons, but this does not mean that the computers were installed in Delhi. The size and man power deployed at the Delhi unit was 8 persons. It is obvious that installation of large number of computer was not required at Delhi.

4. The aforesaid findings are findings of fact and in view of the factual findings, the tribunal, we feel has reached the right conclusion that the unit established at Gurgaon was a new unit and not a mere reconstruction or splitting up of the business in existence. The aforesaid finding is in accord with the decision of the Supreme Court

in ***Textile Machinery Corporation Limited versus Commissioner of Income Tax, West Bengal***, (1977) 107 ITR 195 wherein the Supreme Court upheld the contention of the assessee therein that a new industrial undertaking had been established as it was housed in a separate building, industrial licence had been obtained and new and independent plant and machinery had been installed. It was observed as under:-

> ".....No hard and fast rule can be laid down. Trade and industry do not run in earmarked channels and particularly so in view of manifold scientific and technological developments. There is great scope for expansion of trade and industry. The fact that an assessee by establishment of a new industrial undertaking expands his existing business, which he certainly does, would not, on that score, deprive him of the benefit under section 15C. Every new creation in business is some kind of expansion and advancement. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under section 15C or not. In order that the new undertaking can be said to be not formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit. An undertaking is formed out of the existing business if the physical identity with the old unit is preserved. This has not happened here in the case of the two undertakings which are separate and distinct.

> It is clear that the principal business of the assessee is heavy engineering in the course of which it manufactures boilers, wagons, etc. If an industrial undertaking produces certain machines or parts which are, by themselves, identifiable units being marketable commodities and the undertaking can exist even after the cessation of the principal business of the assessee, it cannot be anything but a new and separate industrial undertaking to qualify for appropriate exemption under section 15C. The principal business of the assessee can be carried on even if the said two additional undertakings cease to function. Again, the converse is also true. The fact that the articles produced by the two undertakings are used by the boiler division of the assessee will not weigh against holding that these are new and separate undertakings. On the other hand, the fact that a portion of the articles produced in these two new industrial undertakings had been sold in the open market to others is a circumstance in favour of the assessee that the new industrial units can function on their own. Use of the articles by the assessee is not decisive to deny the benefit of section 15C."
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> (emphasis supplied)

5. The Supreme Court opined that we have to consider whether the two units can be identified by themselves as separate and independent units or not. This is the true test and this is satisfied in the present case.

6. On the question of reconstruction, the Supreme Court in ***Textile Machinery Corporation Limited*** (supra) has observed that reconstruction of business involves an idea of substantially the same

persons carrying on substantially the same business. Concept of reconstruction of business would not be attracted, when a company which is already running one industrial unit, set up a different and separate industrial unit. The fact that an assessee is carrying on business of the same type does not prevent the said assessee from setting up a new industrial unit. When a distinct industrial unit is set up, it is not reconstruction or splitting of the existing business of the assessee. There is no finding or facts which show and establish that the said criteria is not satisfied or is violated in the present case. The facts recorded by the tribunal and noted above, do not require any examination. The ratio expounded in ***Textile Machinery Corporation Limited*** (supra) has been followed in ***Bajaj Tempo Limited, Bombay versus Commissioner of Income Tax, Bombay, City-III***, (1992) 3 SCC 78.

7. No substantial question of law arises for consideration in the present appeal and the same is dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

JULY 26, 2013
VKR