IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.05.2014

W.P.(C) 830/2013 & CM No.1599/2013

COMMISSIONER OF INCOME TAX (C)-III ..... Petitioner

versus

M/S FLAKES-N-FLAVOURZ NEW DELHI AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr N.P. Sahni and Mr Nitin Gulati, Advocates

For the Respondents : Mr Parag Tripathi, Sr. Advocate with Mr Vivek Kohli, Mr Kunal Bahri, Ms Shivambika Sinha and Mr Shwetank Tripathi, Advocates for R-1

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 21.05.2012 passed by the Income Tax Settlement Commission, Principle Bench, New Delhi on an application for settlement under Section 245C(1) of the Income Tax Act, 1961 ('the said Act'). The only point urged by Mr Sahni appearing on behalf of the petitioner/Commissioner of Income Tax is that the Settlement Commission did not consider the material placed by the Commissioner of Income Tax in his report under Rule 9 and wrongfully allowed the claim of the respondent of deduction under Section 80-IB of the said Act. His

submission is that the finding of the Settlement Commission on the elements of Section 80-IB are contrary to the record and are perverse, particularly because the Settlement Commission had not examined the material that was placed before it, which according to Mr Sahni would indicate that the respondent was not entitled to the deduction under Section 80-IB of the said Act.

2. On the other hand Mr Parag Tripathi, the learned senior counsel appearing on behalf of the respondent submitted that the respondent had made a disclosure of ₹1.765 crores which it had not earlier disclosed as part of its income which it had earned from the sale of scrap in respect of the period covered by the assessment years 2003-04 to 2009-10. Mr Tripathi further submitted that it is wrong to state that the Settlement Commission had not examined the issue of allowing of deduction under Section 80-IB of the said Act. He submitted that the entire report under Rule 9 had been examined by the Settlement Commission threadbare as would be evident from the impugned order itself. He further submitted that all the conditions necessary for the grant of deduction under Section 80-IB of the said Act were satisfied and there was no material placed by the Revenue to contradict the same. He further submitted that the Assessing Officer, in respect of the assessment years 2005-06, 2006-07 and 2007-08, under

regular assessments done under Section 143(3) of the said Act, had, after going into all the facts and circumstances and verifying the details, allowed the deduction under Section 80-IB of the said Act. Furthermore, no materials were found during the search and seizure operation which could contradict the finding of the Assessing Officer with regard to the respondent's eligibility for deduction under Section 80-IB of the said Act.

3. Mr Tripathi also submitted that the scope of review under Article 226 of the Constitution, of an order passed by the Income Tax Settlement Commission, was very limited and this Court could only interfere if the conclusion of the Settlement Commission was contrary to the Income Tax Act, 1961. Mr Tripathi placed reliance on the following four decisions of the Supreme Court:-

1. ***R.B. Shreeram Durga Prasad v. Settlement Commission & Another:*** ***(1989) 1 SCC 628;***
2. ***Jyotendrasinhji v. S.I. Tripathi & Ors.:*** ***1993 Supp (3) SCC 38;***
3. ***Shriyans Prasad Jain v.Income Tax Officer & Ors.:*** ***1993 Supp (4) SCC 727; and***
4. ***Union of India & Others v. Ind-Swift Laboratories:*** ***(2011) 4 SCC 635***

4. He also placed reliance on our recent decision in the case of ***CIT v. Gopal Gupta: W.P.(C) 1208/2013*** decided on 16.05.2014 wherein after

examining the aforesaid four Supreme Court decisions it was observed as under:-

> "13. It is apparent that the power of interference under Article 226 is limited. It is evident that this Court under Article 226 can only interfere with the Settlement Commission if it is found to be contrary to the provisions of the Act and that even if the Court disagrees with an interpretation placed by the Settlement Commission on a document, it cannot substitute its view in place of that of the Settlement Commission unless and until the interpretation given by the Settlement Commission is clearly arbitrary and perverse.
>
> xxxx xxxx xxxx xxxx
>
> 15. …..From all these decisions it is abundantly clear that the scope of review under Article 226 of the Constitution insofar as an order passed by the Settlement Commission under Section 245 D (4) of the Income Tax Act is concerned, is a very limited one. This Court certainly cannot substitute its view in place of the Settlement Commission particularly on point of interpretation of a particular document. Interference can only be made if there is a fault in the decision making process and not with the decision itself. Even if this Court feels that it would have arrived at a different decision, it cannot interfere with the conclusion arrived at by the Settlement Commission because this Court does not sit in appeal over the decision of the Settlement Commission."

5. It is, therefore, clear that as this Court does not sit in appeal over the decision of the Settlement Commission, we cannot interfere with the findings of fact or law rendered by the Settlement Commission and we certainly cannot substitute our view in place of the Settlement Commission

unless and until the interpretation given by the Settlement Commission is clearly arbitrary or perverse.

6. In the present case, we find that the issues raised in the Rule 9 report and the respondent's rejoinder thereto have been set out in detail in paragraph 20 of the impugned order passed by the Settlement Commission. We need not repeat the same for the sake of brevity. The submissions of the parties have also been noted in paragraphs 21 to 23 of the impugned order. After going through the same, the conclusions arrived at by the Settlement Commission are to be found in paragraph 24 to 26 which are set out hereinbelow:-

> "24. The contentions of the learned CIT(DR), learned AR and facts on record are considered carefully. The case of the Department is that during the search and seizure operations, incriminating documents/papers were seized and certain facts came to the notice which showed that the applicant was not manufacturing chewing tobacco at the factory premises at Baddi, H.P. but outside this area and therefore, the applicant is not entitled for deduction under section 80IB of the Act. From the facts on record, it is observed that the such claim of the Department is without any basis or evidence. The Department is not able to produce any incriminating evidence either found during the search of later which may substantiate their claim. It is found that allegations were raised by the Department on the basis of series of presumptions which have been satisfactorily rebutted by the applicant by bringing out facts and figures which show that the applicant was manufacturing chewing

tobacco as recorded in the books of account at Baddi unit (H.P.) and entitled for deduction u/s. 80IB of the Act on the amounts claimed by it. During the hearing the applicant has brought out sufficient material to show that it satisfied the conditions laid down in the 80IB of the Act. The applicant has paid Central Excise duty of Rs.310.27 crores on manufacturing done by it at Baddi unit on sales of Rs.573.58 crores during the financial years 2004-05 to 2008-09. The CIT(DR)'s contention that the manufacturing was done outside Baddi factory and the Central Excise Duty was paid for manufacturing at Baddi unit cannot be accepted. The applicant has also submitted the returns of Excisable goods and availment of cenvat credit in respect of certain months which contain details of registration number, manufacture clearance and duty payable. While working out the electricity consumption, the learned CIT (DR) has relied on incomplete information. He has worked out the production during the financial year 2004-05 on the basis of some electricity bills enclosed by the applicant. However, it is seen that the learned CIT(DR) has not considered the consumption of diesel of Rs.17.55 lakhs which was used in the generator for manufacturing of chewing tobacco. The total power and fuel consumption in manufacturing was Rs.24.2 lakhs as against Rs.4.46 lakhs taken by the CIT(DR). It is seen from the wages sheet for the month of February, 2005 submitted by the applicant on 07.03.2012 that there were 25 workers in the factory with some Supervisors. Besides, there were 136 contract workers also who worked in the factory in February, 2005. It is noted that assessments for assessment years 2005-06, 2006-07 and 2007-08 were done under section 143 (3) of the Act after necessary verification by the Assessing Officer who allowed deduction under section 80IB of the Act in the aforesaid assessment years.

25. After examining the facts on records and the legal position, we find that the contentions of the Department

> for disallowance of the deduction under Section 80IB is without any basis or material on records whereas the applicant has furnished overwhelming materials/evidences to justify the allowance of such deductions. Therefore, we are of the considered view that the applicant is entitled for deduction under Section 80IB of the Act as claimed by it.
>
> 26. The learned CIT(DR) submitted that for the A.Y.2004-05 the factory premises had run for less than 6 months and, therefore, depreciation claimed by the applicant may be allowed at the rates as per law. The submission is accepted and the depreciation is to be allowed accordingly."

7. From the above extracts it can be found that one of the issues that was raised was that no manufacturing activity or very little manufacturing activity was carried out by the respondent at its unit at Baddi, Burhanwala District, Himachal Pradesh and, therefore, the respondents would not be entitled to a deduction under Section 80-IB of the said Act. It is to be noted that the Settlement Commission had observed that the respondents have brought out sufficient material to show that it had satisfied the conditions laid down in Section 80-IB of the said Act. The respondents have paid Central Excise duty to the tune of ₹310.17 crores in respect of the manufacturing activity carried out by it at Baddi unit in respect of the sales of ₹573.58 crores during the financial years 2004-05 to 2008-09.

8. It is in this context that the Settlement Commission rejected the contention of the Revenue that the manufacturing was done outside the Baddi factory though Central Excise duty was paid in respect of the clearances made at the Baddi unit. The Settlement Commission came to this conclusion inasmuch as the department had not been able to produce any incriminating evidence either found during the search or later which could substantiate their claim that the respondent was not entitled to the deduction under Section 80-IB of the said Act.

9. We do not agree with the submission made by Mr Sahni that the Settlement Commission had not examined and overlooked the material placed before the Settlement Commission in support of their contentions that the respondent was not entitled to the deduction under Section 80-IB of the said Act. On examining Section 80-IB of the said Act it is evident from the three conditions stipulated in sub-section (2) thereof that until and unless those three conditions are satisfied, the assessee would not be entitled to the deduction under Section 80-IB of the said Act. Essentially, the new unit should not have been made by splitting up or reconstructing an already existing business; the new business should not have been formed by transfer if the plant or machinery which had been previously used for the purpose; the goods manufactured at the new unit should not be included as an article

specified in the Eleventh Schedule and the new unit should employ 10 or more employees when it manufactures with the aid of power or employ 20 or more employees when the manufacturing activities are carried on without the aid of power. Insofar as these conditions are concerned, there is no material to show that they have not been satisfied. On the contrary, there is evidence of the fact that the Assessing Officer, in respect of the assessment years 2005-06, 2006-07 and 2007-08, has allowed the deduction under Section 80-IB of the said Act. The presumption is that an Assessing Officer is aware of the conditions stipulated in sub-section (2) of Section 80-IB of the said Act and that he verifies that those conditions have been met. It is his duty to do so. In the present case the Assessing Officer allowed the deduction under Section 80-IB of the said Act for the three assessment years – 2005-06, 2006-07 and 2007-08. It can safely be assumed that he had checked and verified that the conditions stipulated in Section 80-IB (2) had been satisfied. There is nothing on record to rebut this presumption. Therefore, it cannot be contended that the conclusion arrived at by the Settlement Commission that the respondent was entitled to the deduction under Section 80-IB of the said Act was arbitrary or perverse.

10. In view of the foregoing discussion and in the backdrop of our limited power of review, no case for interference with the order passed by the

Settlement Commission has been made out. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J.

SIDDHARTH MRIDUL, J.

MAY 22, 2014
dn