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

**+ INCOME TAX APPEAL NO. 1279/2007**

Date of decision: 4<sup>th</sup> October, 2013

**KRISHAK BHARATI COOPERATIVE LTD.**

..... Appellant

Through Mr. S. Ganesh, Sr. Advocate with  
Ms. Surekha Raman, Advocate.

versus

**JOINT COMMISSIONER OF INCOME TAX**

..... Respondent

Through Mr. Rohit Madan, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**SANJIV KHANNA, J. (ORAL):**

This appeal by the assessee, which relates to Assessment Year 1995-96, raises the following substantial questions of law, which were admitted for hearing vide order dated 6<sup>th</sup> September, 2011:-

“ (1) Whether in the facts and circumstances of the case, the Tribunal was justified in holding that service charges received from the Heavy Water Board of Department of Atomic Energy could not be considered as profit derived from the industrial undertaking to qualify for deduction under Section 80-I of the Act?

(2) Whether-

(i) interest income from employees on advances;



- (ii) service charges from Heavy Water Plan;
- (iii) equipment hire charges;
- (iv) crane hire charges;
- (v) Ammonia Tanker hire charges; and
- (vi) interest income from banks and financial institutions are the items of income eligible for deduction under section 80-I of the Income Tax Act.”

2. The said order dated 6<sup>th</sup> September, 2011 records that in an earlier decision dated 15<sup>th</sup> November, 2006 in the case of the appellant, reported as (2008) 300 ITR 92 (Delhi), service charges, equipment hire charges and interest on loans to employees, it was held would not be entitled to special deduction under Section 80-I of the Income Tax Act, 1961 (Act, for short). On an appeal filed by the appellant-assessee, the Supreme Court remanded the case to the tribunal in respect of service charges. Insofar as equipment hire charges and interest on loan to employees were concerned, the same were not pressed having regard to the small amount involved. The order dated 6<sup>th</sup> September, 2011 records; whether earlier decision reported in (2008) 300 ITR 92 (Delhi) would be applicable or not, was a question, which would be examined at the time of final arguments.

3. Having heard learned counsel for the appellant, we feel that the aforesaid decision in the case of the assessee, which pertains to Assessment Year 1994-95, squarely applies as far as equipment hire charges and interest on loan to employees are concerned. It has been



held in the said decision reported in (2008) 300 ITR 92 (Delhi) that the two amounts do not constitute profits and gains “derived from” industrial undertaking as mentioned in sub-section (1). Section 80-I stipulates that the profit and gains derived by an assessee must directly relate to gains/income of an industrial undertaking engaged in manufacture or production of articles or things. The said decision of the Division Bench is binding on us and the issue raised is squarely covered. The same question/issue raised was considered and the claim/contention of the appellant-assessee was rejected. We accordingly following the said judgment reject the said claim. We also record that crane hire charges would be also covered by the aforesaid decision, which refers to equipment hire charges.

4. Ammonia tanker hire charges are also covered by decision of this Court in the case of the appellant-assessee in ITA No. 955/2008 and other connected appeals, which were disposed of on 23<sup>rd</sup> April, 2012. In the said decision, we have referred to the concept of “derived from” and it was held that income earned from tanker hire charges were not covered by the term “profits and gains derived from an industrial undertaking”. Learned counsel for the appellant has submitted that a wrong factual statement was made by the appellant that the carriage wagons were owned by the Railways. He submits that carriage wagons were owned by the appellant and ammonia had



to be transported to the consumer/customer in the specialis container wagons. Ammonia had to be transported in highly compressed and liquefied form.

5. Paragraph 14 of order dated 23<sup>rd</sup> April, 2012 in ITA No. 955/2008 reads as under:-

“14. Tank hire charges were received by the appellant-assessee from the consumers to whom Ammonia was supplied. It represents payment for transportation. On query, it is accepted/stated by the appellant that these tank hire charges were separately billed and these tanks were the carriage wagons owned by the Railways. Transportation charges when separately billed and charged cannot be included in the profit and gain from manufacturing activity undertaken by an industrial unit. There is no evidence or material that the transport charges paid and received were intrinsically connected and linked with the manufacturing activity and have to be treated as sale proceeds for the goods sold. Normally, transportation is after or post manufacture. The onus was on the appellant assessee to show and establish that in the present case, because of the peculiarity of facts, transportation charges should be treated as sales proceeds or part of sale proceeds of the goods manufactured and were intrinsically connected and had live link with the manufacturing activity. In the absence of aforesaid evidence and material placed by the appellant assessee, the transportation charges cannot be treated as profit and gain derived from the manufacturing activity, which qualifies for deduction under Section 80-I”

6. Even if we accept the contention of the appellant that the railway wagons were owned by the appellant-assessee, we do not think the



final outcome as held in ITA No. 955/2008 requires reconsideration.

The words “derived from” are much narrower and restrictive than the words “attributable to”. Income is said to be derived from an industrial undertaking only if it is directly related to the running of the industrial undertaking itself. It would not include income or gains from any other commercial activity undertaken by the assessee. Section 80-I specifically refers to and covers profit and gain derived from an industrial undertaking. Sub-section (2) stipulates that the industrial undertaking should manufacture or produce an article or thing as specified. Thus, the emphasis is on the profits and gains of the industrial undertaking, which manufactures or produces an article or thing as specified. Transportation of ammonia, as in case of other products, may require specialised container vessels or wagons/transport vehicles, but the income derived would be earned from transportation. Transport charges were specifically and separately paid, would not be income or profits derived from an industrial undertaking, which manufactured or produced articles or things. Transportation even in specialised vehicles or wagons, was/is a separate commercial activity. The said activity could be undertaken by a third person, other than the appellant. The third party transporters could/can have specialised vehicles or wagons for transportation of ammonia. The aforesaid activity of transportation



was post-manufacture and relates to activities outside the four walls the industrial complex or undertaking where manufacture or production took/takes place. The Supreme Court in *Liberty India versus Commissioner of Income Tax*, (2009) 9 SCC 328 had examined the question whether duty drawbacks etc. payable could be treated as profits and gains derived by an industrial undertaking under Sections 80-I, 80(IA) and 80(IB). It has been held that the said amounts received do not qualify and cannot be treated as profits and gains derived from an industrial undertaking. Referring to sub-Section (5) of Section 80(IA) it was observed that for computation of profits of eligible undertaking, we have to only look at the source of income of the assessee relating to the eligible undertaking and exclude any other income arising from other commercial activities indulged in by the said assessee. It was elucidated:-

“**33.** On perusal of sub-section (5) of Section 80-IA, it is noticed that it provides for the 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 80-I, 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.

**34.** On an 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”.

(emphasis supplied)

7. To examine whether the income was derived from an industrial undertaking, it is imperative to trace the source of profit or income to manufacture/production. Transportation, as noted above, is post-manufacture and takes place after the goods or articles have been manufactured in the industrial undertaking. They relate to activity of transportation of the said articles or goods from the factory to the place of the consumer/customer. It is a service and does not partake character and is not a part of manufacture. Question No. 2(ii) in respect of ammonia tanker hire charges is, therefore, to be decided against the appellant-assessee.

8. Question No. (1) and item No. (ii) of question No. (2) are interconnected. The said issue is covered in favour of the appellant-assessee and against the revenue vide judgment dated 24<sup>th</sup> July, 2013



in ITA No. 1248/2010 titled *Krishak Bharti Cooperative Limit versus Deputy Commissioner of Income Tax and Another*. In the said judgment after examining the nature and character of the service charges, the agreement between the appellant and Heavy Water Board, Department of Atomic Energy, Government of India, a Division Bench has opined that the appellant-assessee would be entitled to benefit under Section 80-I in respect of service charges received and the same were profits and gains derived from an industrial undertaking. Question Nos. (1) and (2)(ii) are accordingly answered in favour of the appellant-assessee and against the Revenue. The appeal is disposed of. No order as to costs.

**SANJIV KHANNA, J.**

**SANJEEV SACHDEVA, J.**

**OCTOBER 04, 2013**  
**VKR**