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

+ ITA 1873/2010

% **Date of Decision : 3rd January, 2012.**

COMMISSIONER OF INCOME TAX-VI Appellant
Through Mr. Sanjeev Rajpal, Advocate
versus

VISUAL TECHNOLOGIES
INDIA PVT LTD Respondent
Through Mr. Salil Kapoor, Mr. Sanat
Kapoor, Mr. Ankit Gupta and
Mr. Vikas Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA,J: (ORAL)

The present appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) impugns the order dated 17th March, 2010 passed by the Income Tax Appellate Tribunal, Delhi (the Tribunal) in the ITA No.3214(Del)2009 for the assessment year 2006-2007. The question relates to deduction of Rs.83,60,017/- claimed by the assessee under Section 80IC of the Act.

2. The Tribunal in the impugned order dated 17th March, 2010 has upheld the findings of CIT(A) that the new industrial undertaking set up by the assessee in the assessment year 2005-06 at Dehradun qualifies for deduction under Section 80IC of the Act and the said



undertaking was not established by re-constructing the business manufacturing activities of M/s Broadcasting Equipment (India) Pvt. Limited.

3. The Assessing Officer had held that the industrial undertaking set up by the assessee at Dehradun did not qualify for deduction under Section 80IC as the said premises was taken on rent at Dehradun; the rent agreement, in writing, was for a short period which had lapsed; the date of installation of electricity connection was 26th October, 2004, whereas, as per the audit report under Rule 18BBB in form No. 10CCV, the date of commencement of operation was mentioned as 01.09.2004. Certain other aspects with regard to minimal expenses incurred by the unit at Dehradun were noticed.

4. The CIT(A), however, deleted the said disallowance after referring to the documents filed before the Assessing Officer by the respondent/assessee to prove the existence of Dehradun unit/undertaking. The said documents are mentioned in paragraph 6.4 of the order of the CIT(A) dated 1st May, 2009, and the same is reproduced below:-

“TDS Certificate on rent.

Details of rent

Confirmation of factory/ rent agreement directly sought by the AO from landlord and site plan.

Photograph of the factory premises furnished to AO.

Direct enquiry by the AO from DDI (Iniv.) Dehradun and reply of the assessee.

Sales registration certificate dtd. 31.08.2004 w.e.f. 19.08.2004, issues after physical inspection of the factory.

Registration certificate with Director of Industries dtd. 26.08.2004.

Pollution clearance certificate dtd. 27.08.2004.

Electricity connection evidence issued after physical inspection.

Registration Certificate from excise Deptt.



Mentioning the commodity being manufactured issued after physical inspector.

Machinery A/c and Machinery purchase bills.

Sales Tax Asstt. Orders

Documents showing purchase of raw material of Dehradun.”

5. With regard to the issue of reconstruction and purchase from M/s Broadcasting Equipment (India) Pvt. Limited, the CIT(A) has held that M/s Broadcasting Equipment (India) Pvt. Limited was never engaged in any manufacturing activity thus, no unit/undertaking was sold. The CIT(A) has recorded that M/s Broadcasting Equipment (India) Pvt. Limited were in the business of trading in audio and video equipments and other electronic goods etc. Accordingly, plant and machinery was sold by M/s Broadcasting Equipment (India) Pvt. Limited to the respondent-assessee and were installed at the Dehradun unit/undertaking. M/s Broadcasting Equipment (India) Pvt. Limited was never engaged in the manufacturing activity and therefore as a trader had only sold the plant and machinery to the assessee company. The respondent-assessee had claimed benefit under Section 80-IC in the assessment year 2005-2006, which was the first year after the unit/undertaking situated at Dehradun was set up and had started operations. The Assessing Officer in the assessment year 2005-06 had accepted the submission of assessee that it was eligible for deduction under Section 80IC. The CIT, however, had issued a notice under Section 263 of the Act. The assessee submitted/furnished its reply vide letter dated 16th March, 2009. Once the documents were produced before the CIT, the revisionary proceedings were dropped.

6. In view of the factual findings recorded by the CIT (A), which have affirmed by the Tribunal, we do not find any infirmity or reason



to interfere with the same. The appellant has not placed any mater or documents on record to show that the factual findings recorded by the CIT (A) and the Tribunal are incorrect and which are required to be interfered with.

7. The next question pertains to quantum of deduction under Section 80IC. Learned counsel for the respondent-assessee has submitted that no such question has been raised by the Revenue in their appeal. Under Section 260A, the said aspect can be raised and answered as a substantial question of law, if the same arises from the order passed by the Tribunal. (see Section 260A(6) of the Act). The said question/aspect does arise for consideration, in view of the findings recorded by the Assessing Officer and the question/issue examined by the Tribunal as is reflected from paragraph 1 of the order of the Tribunal. Accordingly, we are inclined to frame the following substantial question of law:-

“Whether the Income Tax Appellate Tribunal is right in allowing the deduction of Rs.80,63,017 under Section 80-IC of the Income Tax Act,1961?”

8. We have heard counsel for the parties on the said question and proceed to answer the same.

9. The Assessing Officer while examining deduction under Section 80-IC in paragraph 3 of the assessment order has recorded that against an overall turnover of Rs.25.14 crores, the turnover of the Dehradun undertaking as declared was Rs.1.45 crores and as against this, the corresponding profits, before various provisions, were shown as Rs.2.36 crores and Rs.83 lakhs, respectively. After reducing the miscellaneous income, the actual profit from the entire business operations was Rs.1.48 crores, out of which Rs. 83 lakhs were shown



as earned by the Dehradun undertaking eligible under Section 80IC, a turnover of Rs.1.45 crores. The Assessing Officer doubted the turnover of Rs.1.45 crores and the profits of Rs. 83 lakhs as declared. He made reference to the additional information pursuant to the provisions of paras 3, 4C & 4D to Part-II of Schedule 6 and observed that no manufacturing activity was undertaken at the Dehradun undertaking. The Assessing Officer noticed and has recorded that as per profit and loss account of the Dehradun undertaking, nominal amounts were shown as power and fuel expenses (Rs.29,986/-), freight inward (Rs.30,273/-) , freight outward (Rs.18,389/-) etc. He further observed that it was not clear how expenses of Rs.12,34,999/- had been allocated/appropriated to the Dehradun undertaking.

10. The CIT(A) in its order dated 1st May, 2009 did not examine the question of quantum of deduction under Section 80IC. This aspect has also not been examined and dealt with by the Tribunal.

11. The assessee may be eligible under Section 80 IC but the quantum of deduction is an incidental but an important aspect which must be considered and examined. The Tribunal did not examine the said aspect inspite of the factual matrix referred to and stated in the assessment order. The data and details in the assessment order remain uncontroverted and not adversely commented upon. The Tribunal without examination has upheld the order of the CIT(A), which entitles the assessee to claim deduction of Rs.83,60,017/- under Section 80-IC for the assessment year 2006-07. The question of quantum of deduction was not examined by the Tribunal.

12. Accordingly, the aforesaid question of law is answered in favour of the Revenue and against the assessee.

13. The matter is remitted to the Tribunal to decide afresh the



quantum of deduction under Section 80IC of the Act. The appeal disposed of. No costs.

14. Parties will appear before the Assistant Registrar of the Tribunal on 27th February, 2012, when a date of hearing will be fixed.

SANJIV KHANNA, J.

R.V.EASWAR, J.

JANUARY 03, 2012
b/Bisht