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

\+ ITA 955/2017

COMMISSIONER OF INCOME TAX-3 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC with Ms. Pratishtha Chaudhary, Ms. Nivedita and Mr. Aditya Gupta, Advs.

versus

DABUR INDIA LTD ..... Respondent

Through: Mr. M. P. Rastogi, Mr. Kaushik, Mr. Ram Naresh and Mr. Ajay Kumar Jain, Advs.

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\+ ITA 957/2017

COMMISSIONER OF INCOME TAX-3 ..... Appellant

Through: Mr. Aseem Chawla, Sr. SC with Ms. Pratishtha Chaudhary, Ms. Nivedita and Mr. Aditya Gupta, Advs.

versus

DABUR INDIA LTD ..... Respondent

Through: Mr. M. P. Rastogi, Mr. Kaushik, Mr. Ram Naresh and Mr. Ajay Kumar Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 12.03.2024

1. The Commissioner impugns the order dated 12 April 2017 passed by the Income Tax Appellate Tribunal [“**ITAT”**] and has

proposed the following questions of law:

> "1. Whether on the facts and in the circumstances of the case, the ITAT was legally justified in adjudicating that no royalty was payable by Dabur Nepal Pvt. Ltd. to the respondent as against the royalty chargeable at the rate of 7.5 percent on FOB sale value as worked out by the TPO/AO?
> 2. Whether on the facts and in the circumstances of the case, the ITAT was legally justified in adjudicating that royalty was payable by Dabur International Ltd. UAE at a reduced rate of 0.75 percent on FOB Value to the respondent as against the royalty chargeable at the rate of 4 percent on FOB sale value as worked out by the TPO/AO?
> 3. Whether the ITAT under the facts and circumstances of the case and in law was justified in confirming the deletion of the upward adjustment of Rs. 11.64 crores in respect of sale of equity shares of M/s Dabur Nepal Pvt. Ltd. by the respondent?
> 4. Whether the ITAT under the facts and circumstances of the case and in law was justified in directing that for the valuation of shares of M/s Dabur Overseas Ltd., the AO be required to adopt the figure of projected growth as taken by the respondent i.e. average of growth figure at 19% instead of 25% as previously directed by the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] & 89% adopted by the AO?
> 5. Whether the Ld. ITAT's was justified in allowing deduction u/s 80-IB and 80-IC in respect of additions on account of Sale of Scrap, Rental income, Miscellaneous Incomes besides statutory disallowances u/s 40(a)(ia) etc. of the IT Act, more so when income from these activities have no direct nexus with the eligible activities of the industrial undertakings?
> 6. Whether the Ld. ITAT's impugned order suffers from perversity and material error due to non-application of judicial mind on the claim for deduction u/s 80-IB and 80-IC by the assessee and from unlawful abdication of duty to independently determine on facts and law on the said issue, as to whether the said claim was legally justified and correct?"

2. We note that insofar as questions 1, 2 and 4 are concerned and pertain to the rate of royalty, although the assessment on the regular basis was proposed on a total income of approximately INR 52,00,00,000/- the book profits were ultimately worked out in terms of Section 115JB of the Income Tax Act, 1961 ["**Act**"] and the income subjected to tax was quantified at INR 211,42,99,386/-.

3. In that view of the matter, we find that there would be no

justification to entertain these appeals on the aforesaid proposed questions of law.

4. Question 4 also raises no substantial issue bearing in mind the following conclusive findings of fact which have been returned by the ITAT and which reads as under:

> "63. As regards to the valuation of the shares of M/s Dabur Overseas Ltd., It is noticed that the assessee had 100% stake in M/s Dabur Overseas Ltd., an investment company which in turn had 76% stake in M/s Dabur Egypt Ltd. The remaining 24% of stake in M/s Dabur Egypt Ltd. was held by M/s Dabur International Ltd. The assessee sold its 100% stake i.e. 50,000 shares in M/s Dabur Overseas Ltd. to M/s Dabur International Ltd. and since those shares were unquoted, the assessee obtained valuation report from an independent valuer who determined the value at Rs.4.70 crores as on 31.05.2006 by following discounted cash flow method. The said value was adopted by the assessee as an arm's length price. At the time of sale transaction under consideration, the actual figures of financials of M/s Dabur Egypt Ltd. were available upto financial year 2004-05 and for subsequent years, projected sale growth of 19% was taken in the valuation report. However, the TPO had not accepted projected sale growth of 19% for financial year 2005-06 onwards and had taken the figure at 89% based on actual figure of financial year 2004-05, accordingly, he determined the value of shares sold at Rs.12.71 crores. In the present case, the TPO ignored the actual growth figure of (-) 7% and (-) 5% for the preceding two years i.e. FY 2002-03 & 2003-04 respectively. He had also not given any cogent reason to adopt an astronomical figure for several future years at 89% as projected growth. Moreover, he had not altered the corresponding outgoing/ expense for those future years. Therefore, the approach adopted by the TPO was not reasonable, particularly when, in the subsequent valuation report obtained from an independent valuer, the actual financials which were available during the course of assessment proceedings were adopted. In the present case, the ld. CIT(A) although directed the AO to adopt average of growth figure available for three years which came to 25% but ignored the growth rate based on actual figures for the future years. In the instant case, it is not pointed out as to how and in what manner the average growth figure taken by the assessee at 19% for succeeding years, on the basis of valuation report of an independent valuer was wrong. Therefore, we are of the view that the Ld. CIT(A) was not justified in adopting the figure of average growth at 25% instead of 19% adopted by the assessee. Accordingly, we modify the order of the ld. CIT(A) to this extent that the AO for the valuation of shares of M/s Dabur Overseas Ltd.,

shall adopt the figure of projected growth by taking average of growth figure at 19% instead of 25% directed by the ld. CIT(A). Accordingly, this issue is decided in favour of the assessee and against the department."

5. Insofar as questions pertaining to Sections 80IB and 80IC of the Act are concerned, Mr. Chawla could not question or doubt the legal position as enunciated in **CIT v. Sadhu Forging Ltd.,** [2011 SCC OnLine Del 2614], wherein the following was observed: -

"9. From a plain reading of this section, it would be seen that the only essential requisite is that the eligible industrial undertakings should be carrying out manufacture or production of articles or things. This may take us to the question as to whether the activity of the assessee was to be that of manufacture or production of article or thing as envisaged under this clause (iii) of sub-section (2) of section 80-IB. The industrial undertaking, set up by the assessee, was for the purpose of manufacture of steel forging, transmission gears and part and accessories of motor vehicles and the scrap of these items was stated to be a bye-product of manufacturing process. Learned counsel for the assessee explained in detail the process involved in forging and in this regard he drew our attention to the finding of the Tribunal based on the records that the assessee was involved in manufacturing of forging which involved purchase of steel, cutting the same, making of forging parts, giving heat treatment and machining. Die making was stated to be the primary process and is a separate industry by itself. It was noted, and rightly so, that each of the above process could be done in separate industrial undertaking, whereas the assessee had undertaken all these processes in its units. The issue was also that the assessee was doing these works on job basis for other undertakings, by getting the raw material from them. When the assessee was entitled to claim exemption in respect of income derived from such processes doing for itself, we do not see any reason as to why he would not be entitled to so merely because the raw material component was being supplied by other customers and for whom the assessee was doing the job. In fact, deduction under section 80-IB is given on the profits derived from the manufacturing process, being undertaken by the assessee which qualify for deduction.

10. The heat treatment is one of the processes through which the forgings are given the desired temperature and then cooled in a different manner which results in changing the mechanical properties desired by the customers. We are given to understand that there are various industrial undertakings which are specialized

only in the heat treatment processes. Learned counsel for the assessee informed us, without refutation from the Revenue, that the forging involves heating to a desired temperature and then soaking the material at that temperature until the structure become uniform throughout the section and then cooled in a different manner to achieve the desired mechanical and molecular bonding properties. The cooling of the material at some predetermined rates causes the formation of desired structure within the metal for the desired properties with the aim (i) to improve the mechanical property such as tensile strength, hardness, deductibility, shock resistance, etc., (ii) improve machinability, (iii) increase resistance to heat and corrosion (iv) relieve stresses developed due to hot and cold working, (v) modify electrical, magnetic and molecular bonding properties, etc. The heat treatment toughens the forged part for being used as automobile parts. The process of heat treatment is absolutely essential for rendering them marketable. Without the heat treatment, the material is not fit for automobile industry. The learned counsel relied upon CIT v. Tamil Nadu Heat Treatment and Fetting Services (P) Ltd. (No. 2) (1999) 238 ITR 540 (Mad) wherein the activity carried out by the assessee consisted of receiving from its clients untreated crankshafts, forgings, castings, etc., and subjecting them to heat treatment in order to toughen them to the requisite standards, so that they could be sold in the market. The activity was held to be manufacturing and entitled to claim deductions. Similarly in the case of CIT v. Tamil Nadu Heat Treatment and Fetting Services (P) Ltd. (No. 1) (1999) 238 ITR 529 (Mad), it was held that the process of heat treatment to crankshaft, etc., were absolutely essential for rendering it marketable. Automobile parts, as crankshafts, need to be subjected to heat treatment to increase the wear and tear resistance to remove the inordinate stress and increased tensile strength. The raw untreated crankshafts and the like can never be used in an automobile industry. Thus, in the crankshafts subjected to the process of heat treatment, etc., a qualitative change is effected, to be fit for use in automobiles, although there is no physical change in them. In such state of affairs, it cannot at all be stated that the crankshaft, subjected to heat treatment, etc., cannot at all change the status of new products of different quality for a different purpose altogether. In this view of the matter, the activities of the assessee in relation to raw or untreated crankshafts being subjected to heat treatment, etc., is definitely a "manufacturing activity" entitling it to claim "investment allowance" under section 32A.

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12. Thus, in view of the above, we have no hesitation in arriving at the conclusion that the activity of forging was "manufacturing" within the ambit of section 80-IB. It was immaterial that the assessee was doing the job of forging also for customers and was charging them on job work basis or on the basis of labour charges.

It will still be qualified as carrying eligible business under section 80-IB. The same is the ratio of the decisions in the cases of (i) CIT v. Metalman Auto (P) Ltd. (2011) 336 ITR 434 (P&H) ; [2011] 52DTR (P&H) 385 ; (ii) CIT v. Vallabh Yarns (P.) Ltd. (2011) 335 ITR 518 (P&H) ; [2011] 51 DTR (P&H) 236 ; (iii) CIT v. Impel Forge and Allied Industries Ltd. (2010) 326 ITR 27 (P&H), (iv) CIT v. Rane (Madras) Ltd. (1999) 238 ITR 377 (Mad) and (v) Deputy CIT v. Harjivandas Juthabhai Zaveri (2002) 258 ITR 785 (Guj).

13. Keeping in view the activities of the assessee in giving heat treatment for which it had earned labour charges and job works charges, it can thus be said that the appellant had done a process on the raw material which was nothing but a part and parcel of the manufacturing process of the industrial undertaking. These receipts cannot be said to be independent income of the manufacturing activities of the undertakings of the assessee and thus could not be excluded from the profits and gains derived from the industrial undertaking for the purpose of computing deduction under section 80-IB. These were gains derived from industrial undertakings and so entitled for the purpose of computing deduction under section 80-IB. There cannot be any two opinions that manufacturing activity of the type of material being undertaken by the assessee would also generate scrap in the process of manufacturing. The receipts of sale of scrap being part and parcel of the activity and being proximate thereto would also be within the ambit of gains derived from the industrial undertaking for the purpose of computing deduction under section 80-IB."

6. In view of the aforesaid, there is no infirmity in the order of the ITAT. No substantial question of law arises. The appeals shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 12, 2024/p