

IN THE HIGH COURT OF DELHI

ITA No. 745/2011

COMMISSIONER OF INCOME TAX

Vs

GRAVS APPLIANCE PVT LTD

S Ravindra Bhat And R V Easwar, JJ

Dated : August 6, 2012

Appellant Rep. by : Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Puneet Gupta,
Jr. Standing Counsel.

Respondent Rep. by : Mr. Amit Dayal, Adv

JUDGEMENT

Per : S Ravindra Bhat :

The Revenue, in this appeal, seeks to urge the following question of law: -

"Whether the Tribunal was justified in holding that the sum of Rs. 86,76,687/- could be granted the benefit of Section-80IC in respect of the unit in Baddi, Himachal Pradesh, without the deduction of the losses incurred by the Delhi units in the circumstances of the case?"

2. The Assessee had owned three units; two of them located in Delhi and the third at Baddi, Himachal Pradesh. The latter was eligible for benefit under Section 80 IC of the Income Tax Act. For the relevant period i.e. AY 2006-07, the assessee declared a loss of Rs 45,89,621/- in respect of its two Delhi units. In respect of the Baddi unit, it claimed deduction under Section-80IC on the computed profit of Rs. 86,76,687/-. The Assessing Officer adjusted the losses of the Delhi units against the profits of the Baddi unit and arrived at profit eligible for deduction under Section 80 IC at Rs. 40,44,824/- The assessee carried the matter in appeal; the appeal was accepted by the CIT (A) who applied decisions of this Court including *CIT v. Dewan Kraft Systems P. Ltd., 297 ITR 305*. The Revenue's appeal to the ITAT was dismissed by the impugned order. The relevant reasoning of the ITAT is as follows: -

"5. We have duly considered the rival contentions and gone through the record carefully. Hon'ble Delhi High Court, vide its order dated 10.2.2010, has disposed of appeals for assessment years 1992-03 to 1995-96 and 2000-01 in the case of Sona Koyo Sterling Systems Ltd. In that case, the issue relates to computation of deduction admissible under section 80I of the Act. Hon'ble High Court has considered the meaning of gross total income as explained in section 80-B(5) of the Act as well as the conditions enumerated in sub-section (6) of section 80IA of the Act. The Hon'ble Court has also considered its earlier decision in the case of Dewan Kraft Systems (P) Ltd. wherein section 80-IA(5) and (7) were considered. Hon'ble Court has held that sub-section (6) of section 80-I begins with a non-obstante clause, according to this section the quantum of deduction is to be computed as if

the industrial undertaking were the only source of income of the assessee during the relevant year s. While explaining the provisions, Hon'ble Court has observed that in other words, each industrial undertaking or unit is to be treated separately and independently. This was observed because deduction under section 80IA would be admissible only in those units and industrial undertaking which have a profit or gain. In sub-section (7) of section 80IC, it has been provided that provisions contained in sub-section (5) and subsections (7) to (12) of section 80-IA shall, so far as may be, applied to the eligible undertaking or enterprises under this section, meaning thereby that same provision would be applicable in section 80-IC of the Act. Hon'ble Delhi High Court in the case of Dewan Kraft Systems (P) Ltd. and Sona Koyo (supra) has held that each unit will be considered independently. In view of the above, we are of the opinion that Learned First Appellate Authority has rightly applied the ratio of Hon'ble Delhi High Court and has rightly directed the Assessing Officer not to adjust the losses of Delhi Unit while computing the eligible profit in respect of Baddi Unit for granting deduction under section 80-IC of the Act. No other issue was agitated before us. Hence, the appeal of the revenue is dismissed.

6. In the result, the appeal of the revenue is dismissed."

3. This Court has carefully considered the submissions. It is noticed that the ITAT took into account the provisions of Section-80IA (5) which are incorporated into sub-section (7). A similar provision also of Section-80 IC. This provision reads as under:

"80-IA (5) Notwithstanding anything contained in /any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

80-IC (7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of Section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section."

4. This Court is of the opinion that having regard to the express language of Section-80IC (5) as well as Section-80IC (7) which incorporates by reference Section-80IA (5), the approach adopted by the Tribunal cannot be faulted. The Court also noticed that the same reasoning has been indicated in another Division Bench ruling in *CIT v. Sona Koyo Steering Systems Ltd., (2010) 321 ITR 463*.

5. As regards the question whether the assessee can carry forward the losses of the Delhi units, the matter is to be considered appropriately by the Assessing Officer. We express no opinion on the question as it does not arise out of the order of the Tribunal. However, it is clarified that the deduction cannot exceed the gross total income computed by the A.O. in this case, in view of Section-80A (2).

6. No substantial question of law arises for consideration.

7. The appeal is accordingly dismissed.