

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री वी. दुर्गा राव, न्यायिक सदस्य केसमक्ष

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER AND
SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1274/Mds/2013

निर्धारण वर्ष /Assessment Year : 2009-10

The Deputy Commissioner of
Income Tax,
Company Circle – I(1),
Chennai - 600 034.

M/s Arun Plasto Moulders India
Pvt. Ltd.,
v. No.3C, Phase-III,
Thiru Vi.Ka. Industrial Estate,
Reddy Street, Ekkaduthangal,
Chennai - 600 097.

(अपीलार्थी/Appellant)

PAN : AAECA 8066 H

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. Pramod Nangia, CIT

प्रत्यर्थी की ओर से/Respondent by : Sh. Philip George, Advocate

सुनवाई की तारीख/Date of Hearing : 13.01.2015

घोषणा की तारीख/Date of Pronouncement: 25.02.2015

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-III, Chennai, dated 20.02.2013 relevant to the assessment year 2009-10.

2. Facts are in brief that the assessee is in the business of manufacture and sale of plastic injection mouldings and plastic tubing. The assessee filed its return of income declaring a total income of ₹ 27,41,328/- on 30.09.2009. The return filed by the assessee was initially process under Section 143(1) of the Income-tax Act, 1961 (in short 'the Act'). Thereafter, the assessment was completed under Section 143(3) of the Act and the A.O. has disallowed the claim of the assessee under Section 80-IC of the Act and also disallowed mould amortization charges. During the course of assessment proceedings, the A.O. has observed that the assessee has claimed deduction under Section 80-IC of the Act, for the first time, to the tune of ₹ 5,44,39,211/-. The Form 10BBA filed along with the return of income revealed that the assessee claimed deduction under Section 80-IC of the Act for its unit at Haridwar and the initial assessment year for which the deduction was claimed is assessment year 2009-10. On examination of the details filed by the assessee with regard to the allowability of its claim under Section 80-IC of the Act and based on the facts and circumstances of the case, the A.O. discussed the claim of deduction under Section 80-IC of the Act as under:-

- (i) *The assessment year 2009-10 is the first year for the Haridwar unit for which the assessee has claimed deduction under Section 80-IC of the Act.*
- (ii) *For all these years, the assessee was doing business as only one unit at Chennai whereas this is the first year in which the assessee declare that the business activities were carried on from two units, one at Chennai and the other at Haridwar for which the deduction under Section 80-IC of the Act has been claimed.*
- (iii) *on the analysis of the details for financial years 2005-06, 2006-07, 2007-08 and 2008-09 (which is extracted at page no.2 of the assessment order), the percentage of turnover in the Chennai unit got declined to the extent of 47.96% over that of the previous year figure which means that the assessee has shifted its business activity from Chennai unit to Haridwar unit.*
- (iv) *The incremental increase in the sales also reveals the splitting up of its business activity from its erstwhile unit of Chennai to Haridwar unit.*
- (v) *The total sales for the financial year 2007-08 was at 37.13 crore which was attributable to Chennai unit whereas for the financial year 2008-09, the total sales of ₹ 44.28 crore was attributable to both the units at Chennai & Haridwar. The total sales of ₹ 44.28 crore for the relevant period got split into ₹ 23.87 crore for Chennai unit (already existing) and ₹ 20.41 crore (new unit). It clearly indicates that the profits of Haridwar unit which is allegedly claimed as a new unit by the assessee is nothing but a split up of the assessee's business which is already in existence.*
- (vi) *For Haridwar unit, the assessee had recorded a whopping net profit @ 26.41% on the turnover whereas it has recorded only a meager percentage of net profit @ 2.12% on the turnover for the Chennai unit for the relevant period, though the turnover of the Chennai and Haridwar units as reported by the assessee are almost equal. It is a clear indication that the assessee had shifted its expenditure to the Chennai unit and recorded a higher profit for the Haridwar unit so as to claim deduction under Section 80-IC of the Act.*
- (vii) *For all these years including this relevant period, the assessee had business transactions mainly with Hindustan Unilever Ltd. for supply of plastic components. The assessee has also admitted the same. The assessee manufactures according to the specifications of Hindustan*

Unilever Ltd. There is no change in the customer made since the assessee manufactures plastic produced mainly to Hindustan Unilever Ltd.

With the above observation, the A.O. came to a conclusion that the Haridwar unit is formed by splitting up of the business already in existence and also in the process of shifting the business of Chennai unit to Haridwar by way of reconstruction. It is apparent that the assessee's case does not fulfill the conditions laid down in Section 80-IC(4)(i) of the Act. Hence, the deduction claimed by the assessee under Section 80-IC(4) was denied.

3. The assessee carried the matter in appeal before the Ld. CIT(Appeals). Before the Ld. CIT(Appeals), the assessee filed the details of the assets of Haridwar unit as under:-

Details of Asset	Amount in ₹
200 Kw Electrical Generator	12,52,160.00
Air Cool Compact Water Chiller Model - 20L	4,46,400.00
Air Cool Compact Water Chiller Model - 40L	5,81,541.00
b/f	22,80,101.00

Details of Asset	Amount in ₹
c/f	22,80,101.00
Control Injection Moulding M/c E C280N 2-B	88,45,112.64
Fixed Asset - Building	4,32,71,138.42
Fixed Asset - Cooling Tower	93,337.50
Fixed Asset - Electrical Weighing Scale	39,375.00
Fixed Asset - Freight Elevator	8,65,200.00
Fixed Asset - Land	69,07,572.39
Fixed Asset - Machinery	42,50,106.00

Fixed Asset - Power Transformer	11,64,375.00
Toshipa Machine Injection Moulding Machine	2,37,65,804.50
Grand Total	9,14,82,122.45

Based on the observation of the above details filed by the assessee, the Ld. CIT(Appeals) allowed the claim of the assessee under Section 80-IC(4) of the Act.

4. On being aggrieved by the order of the Ld. CIT(Appeals), Revenue came in appeal before the Tribunal. The Ld. D.R. pointed out that the details of the assets of Haridwar unit were not filed before the A.O. and those details were filed only before the Ld. CIT(Appeals). He further submitted that the details of the assets of the assessee including all equipments and machineries are necessary to be examined to allow the claim of the assessee under Section 80-IC of the Act. Therefore, he requested that the matter may be remanded back to the A.O.

5. On the other hand, the Ld.counsel for the assessee submitted that the details were filed before the Ld. CIT(Appeals) and he strongly supported the order of the Ld. CIT(Appeals).

6. We have heard both sides and perused the records and gone through the orders of the authorities below. The assessee is in the business of manufacture and sale of plastic injection

mouldings and plastic tubing. The assessee is having two units one at Chennai and the other is at Haridwar. The unit at Haridwar is a new unit and the assessee is eligible to claim benefit under Section 80-IC(4) of the Act. The A.O., after examining the entire facts and circumstances of the case, has come to a conclusion that the assessee by splitting the Chennai unit, it has established the Haridwar unit. Therefore, the assessee is not eligible under Section 80-IC(4) of the Act and for the reason that the net profit of Haridwar unit is at 26.41% on the total turnover whereas the net profit of Chennai unit is at 2.12% on the total turnover. We also find that the assessee has not filed any details with regard to machineries, equipments and assets in respect of newly established Haridwar unit, before the A.O. These details were filed before the Ld. CIT(Appeals). Under these circumstances, we are of the opinion that all the details such as machineries, equipments and other assets purchased/acquired by the assessee, including bills, in respect of Haridwar unit established by the assessee have to be produced before the A.O. The A.O. is directed to decide the issue de novo.

7. In view of the above, we set aside the order passed by the Ld. CIT(Appeals) and remit the matter back to the file of the A.O. for fresh examination.

8. Regarding the other issue raised by the Revenue pertaining to disallowance of mould amortization charges, the A.O. has observed that the assessee has debited a sum of ₹ 1,43,08,556/- towards mould amortization charges in the Profit & Loss account claiming it as revenue expenditure. It is seen from the details filed by the assessee that these are nothing but lease rentals paid to M/s Hindustan Level Ltd. (HLL) on the moulds. The A.O. asked the assessee why this expenditure should not be treated as a capital expenditure and only eligible depreciation shall be allowed. The assessee has replied that the mould is being supplied by HLL and the assessee to pay a fixed amount of money for every component sold to them. The details filed by the assessee also reveal that the assessee has not deducted any tax at source on the lease rentals paid to HLL. Therefore, the A.O. is of the opinion that it attracts provisions of Section 40(a)(ia) of the Act. Thus, on both the counts, the above expenditure is disallowed and added back to the income of the assessee.

9. Assessee carried the matter in appeal before the Ld. CIT(Appeals). The assessee submitted before the Ld. CIT(Appeals) that the charges were paid to M/s Hindustan Unilever Ltd. (HUL) and other parties for mould or die provided by them. The mould

cost has been included in the product cost and amortised after taking CENVAT credit by the assessee. The assessee further submitted that the moulds last for a limited time and therefore do not provide any enduring benefit to the assessee. The fact that the mould cost paid is being recovered from M/s HUL by way of cost being included in the sale price makes it clear that the said expenditure is not in the nature of capital expenditure. The Ld. CIT(Appeals) held that the amount is paid towards cost of the production and hence provisions of TDS are not applicable. Thus the Ld. CIT(Appeals) allowed this ground raised by the assessee.

10. On being aggrieved, the Revenue is in appeal before the Tribunal. Ld. D.R. submitted that the moulds have enduring benefit since they are not consumed within a year. He also submitted that the payment made to M/s HUL for the moulds supplied by it is in the nature of lease rentals which attract the provisions of Section 40(a)(ia) of the Act.

11. On the other hand, the Ld.counsel for the assessee strongly supported the order of the Ld. CIT(Appeals).

12. We have heard both sides and perused the records and gone through the orders of the authorities below. We find that the

Ld. CIT(Appeals) without discussing anything on the matter simply allowed the ground raised by the assessee. Necessary document like agreement between the assessee and M/s HUL and the life time of the moulds provided by M/s HUL are required to be examined to decide the issue. Therefore we set aside the order passed by the Ld. CIT(Appeals) and remit the matter back to the file of the A.O. to examine the agreement between the assessee and M/s HUL and other details. The A.O. is directed to decide the issue afresh after giving reasonable opportunity of being heard to the assessee.

13. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on Wednesday the 25th of February, 2015
at Chennai.

Sd/-	sd/-
(ए. मोहन अलंकामणी)	(वी. दुर्गा राव)
(A. Mohan Alankamony)	(V. Durga Rao)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 25th February, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-III, Chennai
4. आयकर आयुक्त/CIT, Chennai-I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.