IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD

[Coram: Pramod Kumar (Vice President)
and Madhumita Roy (Judicial Member)]

ITA No.: 1208/Ahd/18
Assessment year: 2012-13

Manpasand Beverages Limited **…….……Appellant**
E 62, Manjusar GIDC, Manjusar Savli Road
Vadodara 391 775
[PAN: AAHCM1210E]

Vs

Deputy Commissioner of Income Tax
Circle 2(1)(2), Vadodara **……..…..…....Respondent**

Appearances by
Mukund Bakshi *for the appellant*
MSA Khan *for the respondent*

Date of concluding the hearing : March 25, 2019
Date of pronouncement : June 24 , 2019

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 20th March 2018 passed by the learned Principal Commissioner of Income Tax, in the matter of revision under section 263 r.w.s. 143(3) of the Income Tax Act, 1961, passed by the learned Principal Commissioner of Income Tax for the assessment year 2012-13.

2. Grievance of the assessee, in substance, is that the learned Principal Commissioner of Income Tax erred in assuming jurisdiction under section 263 on the facts and in the circumstances of the case, and that, in any event, learned Principal Commissioner of Income Tax was in error in holding that the Assessing Officer had wrongly allowed deduction under section 80IB(11A) to the assessee on the facts and in the circumstances of this case.

3. The issue in appeal lies in a rather narrow compass of material facts. The assessee before us is engaged in the business of manufacturing and processing fruit juices. The assessment in this case, under section 143(3), was completed on 28th October, 2015. Subsequently, however, the assessment records came up for perusal by the learned Principal

Commissioner. The PCIT was of the view that the assessee has claimed deduction under section 80IB(11A) claiming that it 'derives profit from the business of processing, preservation and packaging of fruits or vegetables', though the assessee has not consumed any fruit at all. He was of the view that the raw material used by the assessee is fruit pulp which is not the same thing, "even in the common parlance", as the fruit, and, therefore, the deduction under section 80IB was not admissible. It was in this backdrop that the proceedings under section 263 on the ground that the order passed by the Assessing Officer as "erroneous in so far as it is prejudicial to the interests of the revenue" were initiated. The assessee was issued a show cause notice as to why the deduction under section 80IB(11A) not be withdrawn, and the submissions of the assessee, on this aspect, were duly considered. The reports were also called from the concerned Additional Commissioner of Income Tax and the Assessing Officer. On a perusal of all this material, the PCIT formed his view that the order passed by the Assessing Officer, granting deduction under section 80IB(11A), was indeed erroneous in so far as it is prejudicial to the interests of the revenue. The PCIT begun by noting that "in common parlance, fruit is not the same thing as pulp". He referred to the website of thee Agricultural and Processed Food Products Development Authority which specifically defined mango pulp as "prepared from fresh mango fruit" and described the whole process of preparing the same. He then referred to the findings in the assessment order for the assessment year 2014-15. The main points in this regard were that the assessee did not purchase any fruits during the relevant previous year and that "processing, preservation and packaging of which is the precondition for availing deduction under section 80IB(11A) of the Act", that "the suppliers of the mango pulp to the assessee purchased fruit (mango) and processed, preserved and packaged it in aseptic bag" and "claimed deduction under section 80IB(11A) of the Act for the previous year under consideration", that "simultaneous deduction to two or more undertakings for successive processing in any manner is not allowable", that "the activities of the assessee donot generated intended employment opportunities as compared to the suppliers of mango pulp who purchase, process, preserve and pack their finished product" and that "manufacturing of mango sip soft drink from mango pulp which is processed……by different suppliers, after having claimed deduction under section 80IB(11A) of the Act in their respective ITRs for the year under consideration, does not entitle the assessee to further claim deduction under section 80IB(11A)". The PCIT thus concluded that the assessee was not eligible for deduction under section 80IB(11A). As for the contention that the matter was examined during the scrutiny assessment proceedings, the PCIT observed that "mere general enquiries regarding the deduction claimed donot amount to examination of this issue". The assessee had also contended that the same deduction was all along allowed in the earlier years, and, for this reason also, denial of deduction at this stage was not warranted. On this plea, learned PCIT referred to Hon'ble Delhi High Court's observations in the case of Krishak Bharati Cooperative Ltd Vs DCIT [(2013) 350 ITR 24 (Del)], inter alia, to the effect that "Similarly, erroneous or mistaken views cannot fetter the authorities into repeating them, by application of a rule such as estoppel, for the reason that being an equitable principle, it has to yield to the mandate of law. A deeper reflection would show that blind adherence to the rule of consistency would lead to anomalous results, for the reason that it would engender the unequal application of laws, and direct the tax authorities to

adopt varied interpretations, to suit individual assesses, subjective to their convenience, - a result at once debilitating and destructive of the rule of law" As regards the plea of the assessee that incentive provisions need to be construed liberally, learned PCIT observed that "the deduction is allowable in case of fruit, not pulp" and that "this deduction does not extend to the downstream products". In support of this approach, he referred to Hon'ble Supreme Court's observations in the case of Novopan India Ltd Vs CCE (Civil Appeal No, 3556 of 1984; judgment dated 14.9.1994) to the effect that "the principle that in case of ambiguity, a tax statute should be construed in favour of the assessee- assuming the said principle is sound and good- does not apply to the construction of an exception or an exemption provision; they have to be construed strictly". A reference was then made to Hon'ble Supreme Court's judgment in the case of State of Gujarat Vs Essar Oil Limited [2012-TIOL-05-SC-CT] wherein the same principle was reiterated. He also referred to, and extensively reproduced from, judicial precedents in the cases of Goetze India Ltd [(2014) 361 ITR 505(Del)], CIT Vs Ashok Logani [(2012) 347 ITR 22 (Del)] and Rajlakshmi Mills Ltd Vs ITO [(2009) 121 ITD SB 343 (Chennai)]. It was thus concluded that the assessment order in question was passed, *inter alia*, "without considering the above facts which show that deduction under section 80IB is not allowable". The assessment order was thus set aside, and the Assessing Officer was asked to decide the matter afresh in accordance with the law after taking into account all the relevant facts and after giving a fair and reasonable opportunity of hearing to the assessee. However, as the PCIT had, after an elaborate analysis, already given a conclusive finding on non applicability of deduction under section 80IB(11A), in effect, the matter was remitted to the file of the Assessing Officer for withdrawal of the deduction already granted under section 80IB(11A). The assessee is aggrieved of the stand so taken by the PCIT, and is in appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. Section 80IB (11A), as it stood at the material point of time, provides that "The amount of deduction in a case of an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables ……..shall be hundred per cent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after the 1st day of April, 2001". This deduction is available for a limited period of time and whether or not an assessee is eligible for deduction in the subsequent years is *de facto* determined by the treatment extended in the first year of eligibility. In the case of **Simple Food Products Pvt Ltd Vs CIT [(2017) 84 taxmann.com 239 (Bom)]**, Hon'ble Bombay High Court has observed that "……once deduction is granted in the initial Assessment Year, the same would continue for the period of 10 consecutive year unless the relief for initial year is also withdrawn at the time of withholding the relief under Section

80IA/IB of the Act". There is no dispute that on the facts of the present case, the first assessment year in which the deduction in question was granted has remained intact and has not been withdrawn. On these facts, in the light of this legal position, and for the short reason that the allowability of claim has received finality in the first year and there is no change in the process involved, the deduction under section 80IB(11A) cannot be withdrawn at this stage. Let us also not lose sight of the fact that we are at present dealing with the revision proceedings, and the proposition thus emerging is at least a reasonably possible view of the matter which is not unsustainable in law. In the case of Malabar Industrial Co Ltd [(2000) 243 ITR 43 (SC)], Hon'ble Supreme Court has observed that, "Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law." We are, therefore, of the considered view that the view adopted by the Assessing Officer, at the minimum, was one of the courses permissible in law, it was not unsustainable in law, and, therefore, while exercising powers under section 263, learned Principal Commissioner could not have substituted the said view with his different view of the matter. Viewed thus, the impugned revision order does not meet our judicial approval.

6. In any case, the matter regarding eligibility for deduction under section 80IB(10) was examined at the assessment stage and even unit wise claim came up for examination. Once such a detailed examination is done, whether the resultant assessment order contains the detailed analysis or reasoning, it cannot be said that the matter was not examined at all, and for that reason, the assessment order was erroneous and prejudicial to the interest of the revenue. Be that as it may, that aspect of the matter is not really much relevant because the learned PCIT has given categorical findings about inadmissibility of deduction under section 80IB(11A), and the Assessing Officer's fresh adjudication, on that issue, is now an empty formality with foregone conclusions.

7. We have noted that section 80IB(11A) refers to the profits derived by "an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables". There is no dispute that when the process of making pulp from fruit and fruit drink from pulp is done by the same unit, the benefit of deduction under section 80IB(11A) will be available to the whole process. In the case of **Mrs Delma Rustom Boyce In Re [(2009) 318 ITR 455 (AAR)]**, the Authority for Advance Ruling, dealing with this question, observed as follows:

> ……. ***The only aspect which needs some elaboration is whether the ingredient of processing is satisfied. Is it a business of processing (including preservation) of fruits? Whether the series of steps taken to produce fruit based drink mixes or concentrates or fruit powder amount to processing of fruits or do they cross the boundaries of processing as commonly understood? In other words, whether the finished/packaged product is the result of something that cannot be appropriately characterized as processing? Or, is it something more than processing?***

7. The import of the expression 'processing' can be better understood by referring to the decisions of the Supreme Court interpreting the said expression occurring in the taxing enactments. In the case of Delhi Cold Storage (P.) Ltd. v. CIT [1991] 191 ITR 6561, the Supreme Court was concerned with the question whether the assessee-company running a cold storage could be held to be an industrial company for the purposes of section 2(7)(c) of the Finance Act, 1973. An industrial company has been defined to mean a company which is mainly engaged in the manufacture or processing of goods and other activities specified therein. The question was whether the cold storage of the appellant can be said to be engaged in the processing of goods? The Supreme Court answered the question in the negative for the reason that the stored articles cannot be said to have undergone a process mainly because there was reduction of moisture content as a result of long storage. At the same time, the Supreme Court observed that processing "is a term of wide amplitude and has various aspects and meanings". It was pointed out that in common parlance 'processing' is understood as an action which brings forth some change or alteration of the goods or material which is subjected to the act of processing. Another case which deserve reference is the case of Chowgule & Co. (P). Ltd. v. Union of India [1981] 47 STC 124. The three-judge Bench of Supreme Court held that the blending of iron-ore in the course of loading through the mechanical ore handling plant amounted to processing of ore within the meaning of section 8(3)(b) of the Central Sales Tax Act and the mechanical ore handling plant fell within the description of machinery, plant, equipment used in the processing of ore for sale. The following pertinent observations were made while explaining the connotation of the word 'processing' :

> *". . .The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in Sri Om Prakas Gupta v. Commissioner of Commercial Taxes [1965] 16 STC 935. What is necessary in order to characterize an operation as processing is that the commodity must, as a result of the operation, experience some change. Here, in the present case, diverse quantities of ore possessing different chemical and physical compositions are blended together to produce ore of the requisite chemical and physical compositions demanded by the foreign purchaser and obviously as a result of this blending, the quantities of ore mixed together in the course of loading through the mechanical ore handling plant experience change in their respective chemical and physical compositions, because what is produced by such blending is ore of a different chemical and physical composition. When the chemical and physical composition of each kind of ore which goes into the blending is changed, there can be no doubt that the operation of blending would amount to 'processing' of ore within the meaning of section 8(3)(b) and rule 13...." (p. 131)*

Earlier, it was observed that the blending of different qualities of ore did not amount to manufacture.

8. In the case of CWT v. Mohinibai Kanaiyalal [1999] 240 ITR 6361, the Gujarat High Court observed that in order to characterize an operation as processing, it is necessary that the commodity must, as a result of the operation, experience some change.

> *9. The principle that runs through the above decisions is that notwithstanding the extent of processing and the changes that occur to the original commodity by reason of series of operations, it could still amount to processing of that original commodity.*
>
> *10. Processing and preservation are two distinct expressions used side by side. Processing may be for the limited purpose of preservation of fruits without bringing about much change in the form of the fruit. But, 'processing' in the context in which it occurs ought not to be confined only to the operations that would ensure the preservation of fruits as they are or in the form of slices. In other words, the expression should not be confined to minimal processing that would not change the identity of the fruit. If processing and preservation is to be confined only to fruits as such and not to the derivatives from the fruits, the benefit intended to be given to agro-processing industries will operate in a very limited sphere, thereby defeating the very object of the provision. The extraction of juice and oil from the fruits or further converting the homogenized juice into fruit powder and adding the substances meant for preservation would legitimately fall within the sweep of the expression 'processing'. The fact that the fruit assumes a different form or that a series of operations are involved in preparing the mixed juices and concentrates which could be preserved for long does not take it out of bounds of processing. Processing in its wider sense would still be aptly applicable.*

8. We are in well considered agreement with the views of the Hon'ble Authority for Advance Ruling, and we have no hesitation in adopting the same.

9. Learned PCIT's objection is that when the process is carried out by different units, deduction under section 80IB(11A) will not be available to both the units, as "simultaneous deductions *[under section 80IB (11A)]* to two or more undertakings for successive processing in any manner is not allowable". That approach, however, is not understandable. In our considered view, when the process of making fruit drink from fruit is such that it can be split into different segments and such different segments of work are carried out by different units, entire work so done is integral part of fruit processing- even if carried out by both the units separately. The work done by these different units cannot be considered in isolation in view of its interdependence and artificial split of the integrated process. The work done by the unit processing fruit drinks from fruit pulp is an extension, and natural extension, of the work done by converting fruit pulp from fruits inasmuch as fruit pulp is only an intermediate product and not the end product. If fruit processing involves taking the fruit from stage A to stage C, and this journey has a stop at an intermediate stage B where the hands processing fruits change, the nature of work from stage B to stage C will not be any different. The character of the work remains the same. As for the apprehension of the learned PCIT is that it will amount to double deduction of Section 80IB(11A) is not really correct inasmuch as the deduction will be admissible only for the profit of the respective units and it is the total of profits earned by all the units involved in the process, where the units involved are more than one, that is to be termed as profits derived from processing of fruits. There is no double deduction as such, and the activity of all the related units involved in the chain of activities involving fruit processing is fruit processing activity. In our considered view, the deduction under section 80IB(11A) is admissible for the assessee even though the assessee was engaged

in only a part, though integral part, of the whole process of processing fruit from the basic stage to the end consumption stage. As regards learned PCIT's analysis about strict interpretation of exemption provisions, and reliance on Novopan decision *(supra)* on this issue, it is not really relevant inasmuch as the provision that we are dealing with is an incentive provision for deduction- not exemption. There is a qualitative difference between exemption and deduction provisions, and these expressions cannot be used interchangeable as the learned PCIT has chosen to do. The exception, laid down in Littman v. Barron 1952 (2) AIR 393 and followed by apex Court in Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commr. of CCT [1992] Suppl. (1) SCC 21 and Novopa India Ltd. v. CCE & C 1994 (73) ELT 769 (SC), has been summed up in the words of Lord Lohen, "in case of ambiguity, a taxing statute should be construed in favour of a tax-payer does not apply to a provision giving tax-payer relied in certain cases from a section clearly imposing liability". That is not the case before us. It is not an exemption provision that is being invoked in the present case. What is before us is an incentive provision providing for deduction in the case involving a particular type of activity, and there is no doubt that the nature of activities of the assessee involve that activity. There can hardly be any dispute that the incentive provisions need to interpreted liberally to advance the purpose for which these are enacted, and, therefore, once there is no dispute that the assessee is involved in activity which is integral part of the fruit processing, it is a plausible view of the matter that the deduction is admissible to the assessee. Such a view cannot be disturbed in the course of revision proceedings under section 263 of the Act.

10. In view of these discussions, as also bearing in mind entirety of the case, we hold that the impugned revision order passed by the learned PCIT deserves to be vacated. We direct so.

11. In the result, the appeal is allowed. Pronounced in the open court today on the 24th day of June, 2019.

Sd/- Sd/-

Madhumita Roy **Pramod Kumar**
(Judicial Member) (Vice President)
Ahmedabad, dated the 24th day of June, 2019

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

True Copy

Assistant/Deputy Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad