

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos.1340 & 1341/PUN/2017

निर्धारण वर्ष / Assessment Years : 1995-96 & 1997-98

Thermax Surface Coatings Limited.
(Now known as Thermax Sustainable
Energy Solutions Limited.)
Thermax Limited,
14, Mumbai Pune Road,
Wakdewadi, Pune-411 003.
PAN : AAAC3907G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-10, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri H.P. Mahajani

Revenue by : Shri Hoshang B. Irani

सुनवाई की तारीख / Date of Hearing : 14.11.2019

घोषणा की तारीख / Date of Pronouncement : 15.11.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These two appeals preferred by the common assessee emanates from the order of the Ld. CIT(Appeals)-6, Pune dated 28.03.2017 for the assessment years 1995-96 and 1997-98 respectively as per the grounds of appeal on record.

2. These cases were heard together. Since issues common and facts and similar, these cases are being disposed of vide this consolidated order.

In both these appeals, the only grievance of the assessee is that the Ld. CIT(Appeals) rejected the assessee's claim for deduction u/s.80-IA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in respect of profits derived from its new industrial undertaking of manufacturing surface coating systems.

3. The facts demonstrate that for the assessee, in the first round of litigation, the Tribunal had remanded the issue of deduction u/s.80-IA of the Act to the Assessing Officer for fresh adjudication. The relevant directions of the Tribunal are in Para 3.13 of its order. The case of the Department in the first round of litigation was that the assessee has not set up a new industrial undertaking and that the activity undertaken by the assessee did not amount to manufacture or production of an article or thing. The Tribunal took particular exception to the action of the then CIT(A) visiting the factory premises of a customer of the assessee and coming to certain conclusions behind the back of the Assessing Officer (though these conclusions were adverse to the assessee). The Tribunal also took exception to certain drawings being presented to them during the course of the hearing, which drawings were not submitted to the Assessing Officer. The Tribunal therefore directed the issue back to the Assessing Officer to enable the assessee to demonstrate the fact of establishment of the new industrial undertaking.

4. In the first round of litigation, the Assessing Officer in pursuant to the said directions of the Tribunal, first of all reproduced extracts from the

original order u/s. 143(3), the order of the CIT(A) and the order of the Tribunal. He has then extracted from the submissions made by the assessee vide letter dated 09.05.2007. On page 11 of the assessment order under challenge the Assessing Officer has referred to various annexures filed by the assessee along with the said submissions. On pages 12 to 15 the Assessing Officer has analyzed the various requirements of Section 80-IA and whether the assessee has fulfilled those conditions. The Assessing Officer denied the claim of deduction u/s.80-IA of the Act to the assessee of Rs.13,06,751/- for the assessment year 1995-96 and Rs.40,42,621/- for the assessment year 1997-98 and the reasons for not granting of deduction u/s.80-IA of the Act by the Assessing Officer are as follows:

- (i) The assessee has failed to prove investment of fresh capital in the industrial undertaking;
- (ii) Assessee has nowhere claimed that it has set up a new industrial undertaking for manufacture of surface coating system;
- (iii) The assessee does not own plant and machinery but gets the equipment manufactured from others and does not itself directly manufacture the surface coating systems.
- (iv) The assessee has not given details of which type of actual manufacturing work was being done by its own employees in its premises.
- (v) Assessee has not itself carried out the manufacturing activity and major part of the work was done by the subcontractors, though admittedly it was supervised by the assessee.
- (vi) Since the assessee has not itself directly conducted the actual manufacturing activity by its own employees but that it has done so through sub-contractors, it cannot be said that it has employed ten or more workers in the manufacturing process.
- (vii) The assessee has thus failed to prove that it has satisfied all the conditions laid down in Section 80-IA.

That on perusal of the order passed by the Assessing Officer, it is evident that the findings of the Assessing Officer is that all the works said to be done by the assessee, were outsourced to other persons and that they were not done by the assessee himself. The assessee further failed to produce details of actual manufacturing works done by its own employees and therefore, the Assessing Officer came to the conclusion that major part of the work was done by the subcontractors and the assessee failed to establish that he himself conducted the actual manufacturing activity by its own employees.

5. That further, when we peruse the Ld. CIT(Appeals)'s order, he has altogether gone into a different footings while adjudicating the case of the assessee. The Ld. CIT(Appeals) has not accepted the view of the Assessing Officer directly but simply he has stated that according to his opinion the assessee has conducted only minor modifications of the existing product and therefore, the assessee is not eligible for claiming deduction u/s.80-IA of the Act.

6. We have perused the case records and analyzed the facts and circumstances in this case. We find that the Assessing Officer rejected the claim of deduction u/s.80-IA of the Act to the assessee on the ground that according to his analysis, most of the manufacturing works are outsourced by the assessee and that therefore, the criteria for claiming deduction u/s.80-IA of the Act has not been fulfilled by the assessee.

The Ld. CIT(Appeals) on the other hand, though rejected the claim of deduction u/s.80-IA of the Act but on different premises that there was

neither fresh manufacturing unit of the assessee nor any different products were manufactured by the assessee. The Ld. CIT(Appeals) is of the opinion that the surface coating system is nothing but providing spray painting equipments at the site of the assessee with additional accessories and it is only minor modifications of the existing product. Therefore, the deduction u/s.80-IA was not granted to the assessee by the Ld. CIT(Appeals).

7. On perusal of the case records, we find that the assessee is engaged in the business of design, fabrication, assembly, supply of industrial painting systems and their erection and commissioning at the site of the customers of the assessee. For this purpose, the assessee set up a new industrial undertaking for the assessment year 1995-96 fulfilling the required conditions as stipulated under the applicable provisions of Section 80-IA of the Act. A typical painting system includes sections which take care of pretreatment of the surface to be painted; the painting booth where the actual painting takes place and baking oven for drying the painted surface at optimal temperature. The entire manufacturing process consists of various activities which are the integral part of the whole manufacturing activity carried on by the assessee. Like all engineering products a painting system is an amalgamation of bought out components and manufactured or fabricated components which are finally assembled to create a distinctly new product which is the hallmark of any manufacturing activity. The typical nature of the end product which has to be integrated with the manufacturing set up of the buyer and the procurement, fabrication, manufacturing and assembly activities take place at different places within and outside the assessee's premises. Therefore, the location of the manufacturing action had to be therefore primarily outside the four walls of the assessee's establishment but

by that fact the sanctity of the business of manufacturing is not lost. Thus, merely because some components are bought out or the parts are got fabricated under the direct supervision and control of the assessee on the basis of own drawing and designs cannot mean that the undertaking was not set up or it constitutes **'reconstruction of the existing business'** rather the drawing and designs constitutes the heart of the manufacturing process. The Ld. CIT(A) has not dealt with the manufacturing processes/details and it is also not apparent from his order as to how he has come to a conclusion that **(i)** the surface coating systems is nothing but providing spray painting equipments at the site of the assessee with additional accessories; **(ii)** it is only minor modification of the existing product; **(iii)** surface coating systems constitutes as a reconstruction of the existing business.

8. That further on careful perusal of the Ld. CIT(Appeals)'s order and the findings arrived therein, he has not dealt with specifically as to why he has not accepted the analysis of the Assessing Officer. He has not passed a speaking order nor has reasons backing his order which is not apparent from his order. These issues (i) whether the factual parameters for getting deduction u/s.80-IA of the Act are complied by the assessee or not; (ii) whether surface coating systems constitutes "reconstruction of the existing business" requires detailed factual analysis and verification coupled with a speaking order.

In view of the matter, we set aside the orders of the Ld. CIT(Appeals) for both the assessment years and restore them back to his file for necessary adjudication as per law after following principles of natural justice. That given the old nature of the cases relating to assessment years 1995-96 and 1997-

98 and the time already consumed for adjudication, it is advisable that the Ld. CIT(A) may adjudicate this matter in expedite and time bound manner.

9. In the result, **both the appeals of the assessee for the assessment years 1995-96 and 1997-98 are allowed for statistical purposes.**

Order pronounced on 15th day of November, 2019.

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 15th November, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-6, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	14.11.2019	Sr.PS/PS
2	Draft placed before author	15.11.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		