IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

BEFORE SHRI DINESH KUMAR AGARWAL (J.M.)
AND SHRI D. KARUNAKARA RAO (A.M.)

ITA Nos. 8560 & 8561/Mum/2010
Assessment Years : 2002-03 & 2003-04

Plastic & Precision Machine Fabrik Pvt. Ltd., C/o H.N. Motiwalla & Co., 508 Sharda Chambers, 33, New Marine Lines, Mumbai – 400 020. PAN AAACP7051M	Vs.	Dy. Commissioner of Income Tax- Circle 9(2), Mumbai.
(Appellant)		**(Respondent)**

Assessee by: Shri H.N. Motiwalla
Department by : Shri Om Prakash

Date of hearing	**09-10-2012**
Date of pronouncement	**17-10-2012**

O R D E R

PER DINESH KUMAR AGARWAL, J.M.

These two appeals preferred by the assessee are directed against the separate orders dtd. 27-9-2010 passed by the ld. CIT(A) – 20, Mumbai for assessment years 2002-03 & 2003-04. Since the facts are identical and issue involved is common, both these appeals are disposed of by this common order for the sake of convenience.

2. Briefly stated facts of the extracted from ITA No. 8560/Mum/2010 for A.Y. 2002-03 are that the assessee company is engaged in the business of manufacturing of plastic bottles, caps, containers and cans.

It has manufacturing unit at Sarigam, Dist. Valsad, Gujarat. The return was filed declaring total income of Rs. 1,54,84,410/- after claiming deduction u/s 80IB of the Income Tax Act, 1961 (the Act) Rs. 58,99,068/- in respect of its Sarigam unit . The A.O. after processing of the return u/s 143(1) of the Act initiated proceeding u/s 148 of the Act and after recording the reasons for issuance of notice u/s 148 that the claim of the assessee u/s 80IB of the Act is not admissible in view of section 80IB(3)(i) of the Act as the cost of the plant and machinery installed by the assessee for this unit exceeds Rs. 1 crore showing that this is not a small scale industrial undertaking. In response to notice u/s 148 of the Act, the assessee filed return. The A.O. after considering the relevant provisions of section 80IB(3) (i) & (ii) of the Act observed that the assessee by virtue of its first year of establishment being 1995-96 is not eligible for deduction under sub clause (i). He further observed that for the purpose of sub cl. (ii), the two fundamental prerequisites are (a) it should be small scale undertaking, (b) it should have begun manufacturing or production at any time during the period beginning on the Ist day of April 1995 and ending on 31st day of March, 2002. The A.O. also considered the Notification No. S.O. 1288(E) dtd. 24-12-1999, Notification No. 4(1)/2000-SSI Bd. Dtd. 14-03-2000 and Notification No. 4(1)/2000-SSI Bd. & Pol. Dtd. 19-10-2000 relied on by the assessee and observed that while Notification (i) reduced the investment limit for small scale manufacturing in the plant and machinery to Rs. 1 crore, the remaining two Notifications clarified these deduction. Consequently, during the relevant period under consideration "any unit which has received provisional/permanent registration prior to 24th of December, 1999 has taken concrete steps for implementing the project would continue to enjoy the SSI status so long as investment in plant and machinery does not exceed Rs. 3 crores. No time limit is prescribed for such units to reach this ceiling of Rs. 3 crores." In the light of the above observations, the A.O. examined the chart of depreciation filed by the assessee and observed that the total investment of the assessee in plant and machinery including the moulds is exceeded of Rs. 3 crores. However, the assessee for the purpose of calculating total investment in plant and machinery excluded the item of mould for the purpose of working out the investment in the plant and machinery. The A.O. in this regard also observed that Appendix – I Rule 5 of the IT Rules which prescribes rates of depreciation vide Part –A, Section III "Machinery and Plant" and point iii has expressly provided for depreciation of moulds used in rubber and plastic goods factories @ 40% under the head machinery and plant, therefore, the assessee's investment in machinery and plant including the mould is exceeding the limit i.e. Rs. 3 crores set out by the Government to enjoy the benefit of the SSI unit and, hence, the assessee is not eligible for deduction u/s 80IB of the Act. The A.O. after disallowing the same, completed the assessment at an income of

Rs. 2,13,83,478/- vide assessment order dtd. 30-11-2009 passed u/s 143(3) r.w.s. 147 of the Act.

3. On appeal the ld. CIT(A) observed that the appellant can claim its status of SSI based on the permanent registration dtd. 14-8-1995 in terms of Notification dtd. 2-4-1991 when the ceiling on investment in plant and machinery was only of Rs. 60 lakhs. He further observed that the appellant is not covered by any of the later Notifications to claim enhanced ceiling of either Rs. 3 crores or Rs. 1 crore as the case may be. He further observed that admittedly it has crossed the ceiling of Rs. 60 lakhs, there is no question of considering whether the investment in plant and machinery is well within the ceiling of Rs. 3 crores, hence, the appellant is not SSI as on the last date of the previous year in terms of definition given u/s 11B of the Industries (Development and Regulation) Act, 1951 as it does not fulfil the condition prescribed u/s 80IB(3)(ii) and accordingly he held that the A.O. though for different reasons has rightly declined the deduction claimed of Rs. 58,99,068/-.

4. Being aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us challenging in all the grounds the denial of deduction u/s 80IB of the Act.

5. At the time of hearing the ld. Counsel for the assessee submits that the assessee has claimed the deduction u/s 80IB of the Act Rs. 58,99,068/- on its Sarigam unit as per chart of calculation, copy of

balance and P&L account along with schedule of fixed assets appearing at page 1 to 5 of the assessee's paper book. He further submits that the certificate of SSI registration was issued by the Manager (RM), District Industries Centre, Valsad to the assessee on 14-8-1995 and at that time the investment in plant and machinery was Rs. 33,38,000/- as per copy of certificate appearing at page 6-7 of the assessee's paper book. He further submits that as per copy of SSI Circular issued by Ministry of Industry, Department of Industrial Policy and Promotion, New Delhi dtd. 10th December, 1997 the limit for the investment in fixed asset in plant and machinery was upto Rs. 3 crores. He further submits that for the purpose of calculating the value of plant and machinery the cost of equipment such as tools, jigs, dies, moulds and spare parts for the maintenance and the cost of consumable stores have to be excluded vide copy of certificate appearing at page 10 and 11 of the assessee's paper book. He further submits that vide Notification No. 4(1)/2000-SSI Bd, & Pol. appearing at page 12 of the assessee's paper book, it has been clarified that " *Any unit which has received provisional/permanent registration prior to 24th December, 1999 and has taken concrete steps for implementing the project would continue to enjoy the SSI status so long as investment in plant & machinery does not exceed Rs. 300.00 lakhs".* He, therefore, submits that in view of the above Notification, the assessee is a SSI unit and its investment in plant and machinery does not exceed Rs. 3 crores, therefore, the assessee is entitled to deduction u/s 80IB of the

Act. The reliance was also placed on the decision of the Tribunal in Ashirvad Pipes Private Limited vs. CIT in ITA No. 980/Bang/2010 for A.Y. 2006-07 dtd. 3-2-2012 wherein the Tribunal after considering the said Notification has allowed the deduction u/s 80IB of the Act. He also placed a copy of the said order of the Tribunal.

6. On the other hand, the ld. D.R. strongly relied on the order of the A.O. and ld. CIT(A).

7. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that there is no dispute that the assessee unit is registered as SSI unit vide certificate of registration dtd. 14-8-1995 (supra). We further find that the assessee has claimed the deduction u/s. 80IB of the Act Rs. 58,99,068/- in respect of Sarigam unit, Dist Valsad. The A.O. while considering the limit of Rs. 3 crores for the purpose of SSI unit has added the cost of moulds in the value of plant and machinery which exceeded the ceiling limit of Rs. 3 crores and, hence, according to the A.O. the assessee is not entitled to deduction u/s 80IB of the Act. On appeal, the ld. CIT(A) has taken a different view. According to the ld. CIT(A) the subsequent notifications enhancing the limit to Rs. 3 crores are not applicable to the assessee as the assessee got permanent registration on 14-8-1985 in terms of Notification dtd. 2-4-1991 when the ceiling in plant and

machinery was only Rs. 60 lakhs, therefore, according to the ld. CIT(A) the assessee is not entitled to deduction u/s 80IB of the Act.

8. We further find that in the circular No. S.O. 857(E) dtd. 10th December 1997 it has been clarified that an industrial undertaking shall be regarded as a small scale or as an ancillary industrial undertaking for the purpose of the said Act:-

> "Small scale industrial undertaking: An industrial undertaking in which the investment in fixed assets in plant and machinery, whether held on ownership terms of on lease or on hire purchase, does not exceed rupees three crores;".

In the same circular it has been categorically clarified as Note 2 (b) as under:-

> "In calculating the value of plant and machinery, the following shall be excluded, namely:-
>
> (i) the cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;"

From the above circular, it is clear that the cost value of mould has to be excluded and, hence, the A.O. was not justified in including the same for the purpose of determination of limit of Rs. 3 crores. Thus, after excluding the same, the investment in plant and machinery as worked out by the A.O. in para 5.2.3 of the order is less than the limit of Rs. 3 crores.

9. We further find that the ld. CIT(A) after considering various notifications/circulars has not considered the clarification letter No.

4(I)/2000-SSI Bd. & Pol. Dtd. 19th October, 2000 issued by Additional Development Commissioner (SSI), Government of India, New Delhi clarifying that the unit entitled to enjoy the status of small scale industrial undertaking so long in the investment on the plant and machinery installed by the unit is below Rs. 3 crorres.

10. In Ashirvad Pipes Private Limited (supra) the Tribunal on the issue "that the investments in plant and machinery as on 31.3.2006 were only Rs.2,84,02,499/- and the value of (i) Cummins diesel oil engine; and (ii) electronic drive panel motor be excluded for the purpose for determination of limit of Rs.300 lakhs and, thus, the assessee was a small scale undertaking and the claim for deduction u/s 80IB was allowable", after considering various circulars/notifications including the aforesaid circular/notification and the decision of the Tribunal in Indian Communication Network Ltd. vs. IAC (1994) 50 ITD 411 (Delhi) has held that the assessee was entitled to avail the deduction u/s 80IB of the Act.

11. In the absence of any distinguishing feature brought on record by the Revenue and keeping in view the above circulars/notifications/clarifications issued by Additional Development Commissioner (SSI), we are of the view that since the assessee's unit has received the registration on 14-8-1995 i.e. prior to 24-12-1999, the unit is entitled to enjoy the SSI status as investment in plant and machinery excluding the value of mould does not exceed the ceiling limit of Rs. 3

crores and accordingly the Revenue authorities were not justified in disallowing the same. The A.O. is directed to allow the claim of the assessee. The grounds taken by the assessee are, therefore, allowed.

ITA 8561/Mum/2010 for A.Y. 2003-04

12. At the time of hearing both parties have agreed that the facts of the above case are similar to the facts of the case for A.Y. 2002-03, therefore, the plea taken by them in that appeal may be considered while deciding the appeal for the A.Y. 2003-04.

13. After hearing the rival parties and perusing the material available on record and in view of our finding recorded in assessee's appeal for A.Y. 2002-03, we hold that the assessee is entitled to deduction u/s 80IB of the Act as claimed and accordingly the order passed by the Revenue authorities are reversed. The A.O. is directed to allow the same. The grounds taken by the assessee are, therefore, allowed.

14. In the result, assessee's appeals stand allowed.

Order pronounced on 17-10-2012

Sd/-	Sd/-
(D. KARUNAKARA RAO)	(DINESH KUMAR AGARWAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated : 17-10-2012.
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Copy to:
1. The Appellant
2. The Respondent
3. Commissioner of Income Tax (Appeals)- 20, Mumbai
4. Commissioner of Income Tax – 9 Mumbai
5. Departmental Representative, Bench ‘C’, Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI