

Indian Communication Network Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Apr-29-1994

Reported in : (1994)50ITD411(Delhi)

Judge : A Kalyanasundharam, R Gupta

Appellant : Indian Communication Network

Respondent : inspecting Assistant

Judgement :

1. The assessee. a limited company, has filed this appeal and has raised twelve grounds in this appeal, claiming reliefs under different provisions of Income-tax Act, 1961. The assessee-company is engaged in the business of manufacture of electronic typewriters.

Amongst the few issues that have been raised in this appeal, there are five important issues. The first issue, relates to the claim of investment allowance on the ground that, it is a small scale industrial undertaking. The second issue, is claim of deduction under Section 80-1, that is dependent on the outcome of the claim of investment allowance. The third issue, is claim of deduction under Section 80HH, that is dependent the profit derived from the industrial undertaking.

The fourth issue, of classification as a manufacturing company for levy of tax at a lower rate, is dependent on the outcome of the third issue.

The fifth issue is whether, the excise duty actually paid in the accounting year, which is so allowed to be deducted on payment basis only, could be included as part of the value of unsold stocks at the close of the accounting year.

2. We shall first deal with the issue of the valuation of closing stock of finished goods. It is an accepted position that, on these finished goods, excise duty had been paid, at: the time of removal of the goods.

The objection raised by the assessee, is that, when Section 43B of the Income-tax Act, 1961, allows deduction of duty, on the consideration of it having been paid in the accounting year, relevant to the assessment year, then so much of the duty as paid in the accounting year, should not be included in the value of unsold stocks, because, otherwise it would amount to not allowing of deduction of the duty according to the provisions of that section of the Act.

The counsel for the appellant, Shri Ganesan, placed on our record, a copy of the order of the Special Bench of the Tribunal in the case of the appellant company for the assessment year 1984-85 in ITA No.3483/Delhi of 1983, dated 28-1 -1994. He submitted that, the Special Bench, had examined the indential claim and it had been held that, the valuation of stocks of finished goods on which excise duty had been actually paid in the year, has to be so made, by excluding the element of excise duty, by giving active consideration to the provisions of Section 43B of the Act, which permitted allowing of deduction of duties, paid in the accounting period, irrespective of the fact, as to which year it relates to or pertains to. The Senior Departmental Representative (Sr. DR), Mrs. Sinha, submitted that, the claim as advanced by the appellant company, in the present appeal stands squarely covered by the said decision of the Special Bench of the Tribunal.

The rival submissions on this issue have been very carefully considered and the order of the Special Bench in the case of the assessee also, is perused. The excise duty of Rs. 59,99,463, has been paid on the stocks manufactured in the year, that remained unsold at the close of the accounting year. Section 43B of the Act (effective from assessment year 1984-85), provides that, duties, etc., would be allowed to be deducted, in computing the income from profits or gains from business or profession, on the sole consideration that, they are actually paid in the

accounting year relevant to the assessment year. The decision of the Special Bench (supra) is that, in valuating unsold stocks at the close of the accounting period, the element of excise duty so paid in the year, relatable to such unsold stocks, has to be excluded.

Respectfully following the said decision, we hold in the instant case that, the valuation of the unsold stocks as at the end of accounting period, should be reduced by Rs. 59,99,463, which is the element of duty relatable to such unsold stocks. This would have the corresponding effect of reduction in the value of the opening stock for the following accounting period, by the like amount. This issue, is accordingly decided in favour of the assessee, and against the revenue.

3. Shri Ganesan did not press the issues relating to the non-allowing of deduction by the application of Section 43B, represented by unpaid taxes, etc., penalties & fines, the disallowance of Rs. 12,060 and the levy of interest under Section 20(1A) of the Act, and accordingly, these four issues are dismissed.

4. The learned Counsel for the assessee-company, Shri Ganesan submitted that, Section 37(3A) of the Act, had been invoked about the expenses of Rs. 2,26,217 incurred on conferences for training of company's officials. He fairly submitted that, the identical claim of the appellant company, for the earlier assessment year, did not find favour with the Special Bench (supra). Therefore, respectfully following the said decision, we reject this claim of the assessee, for the present assessment year under appeal.

5. Shri Ganesan submitted that, Section 37(3A) of the Act, had been applied on the conveyance expenses and two-thirds had been considered for purposes of disallowance under that section. This issue was also considered by the Special Bench (supra) and it was held that, conveyance expenses to the extent of fifty per cent of two-thirds, could be considered for disallowance under the said section. Therefore, respectfully following the decision of the Special Bench (supra), we have to hold that, fifty per cent of two-thirds of the conveyance expenses are liable to be considered for purposes of disallowance under Section 37(3A) of the Act.

6. Shri Ganesan submitted that, the appellant company had claimed deduction of Rs. 54,347 under the heads 'advertisement and printing expenditure'. The parties had supplied the bills in the accounting year only and on that basis, the deduction was claimed. He submitted that, the assessee did not claim deduction of these expenses in the earlier year. Mrs. Sinha, the learned Sr. DR contended that, these being expenses of the earlier year, could not be allowed deduction in the present assessment year.

On this, in our view, the claim of deduction should be examined by the Assessing Officer (AO), concerning the fact, whether, in the earlier year, the assessee had claimed deduction on accrual basis or not. If the appellant company had not claimed the deduction, then, considering the pleas of the assessee that, the bills were received from the parties in the accounting year only and the fact that, the bills are of small amounts, the Assessing Officer may consider allowing deduction in the assessment year under appeal.

7. The claim for deduction of the investment allowance, is being raised with reference to Explanation 2 to Sub-section (2) of Section 32A of the Act. Shri Ganesan, submitted that, the assessee-company is manufacturing electronic typewriters, and are office appliances, within the provisions of Schedule XI of the Act. He submitted that, any industry manufacturing articles as are specified in that schedule, is ineligible for deduction of investment allowance. However, the small-scale industries, even if they manufacture the articles so specified in the said schedule, they would be allowed investment allowance. He contended that, the revenue has no dispute to the fact that, the appellant-company, is registered as a small scale industrial unit by the Directorate of Industries (DOI) and this recognition by the DOI is effective for the assessment year under appeal and for the subsequent assessment years, as well.

Shri Ganesan submitted that, Clause 2 of the Explanation to Sub-section (2) of Section 32A, has defined the term "small-scale industrial undertaking", as those units,' whose aggregate value of machinery and plant (other than tools, jigs, dies and moulds) installed, as on the last day of the previous year for the purposes of the business of the undertaking, does not exceed Rs. 20 lakhs'. He contended

that, the dispute between the appellant and the revenue is limited to the determination of the aggregate value of machinery and plant. The claim of the appellant is that, the aggregate value of machinery and plant has to be determined with reference to only that machinery and plant, that are actually involved in the production or manufacturing process.

The department's contention, he submitted is that, all items that are installed in the factory premises, with the exception of tools, jigs, dies and tools, are to be aggregated. He contended that, on this basis, the department had' concluded that, since, the value of machinery and plant exceeds Rs. 20 lakhs, therefore, the assessee, could not be categorised as a small-scale industry. Accordingly, the department had resorted to the Schedule XI of the Act and had denied the claim of investment allowance.

He contended that, PHD Chamber of Commerce had issued for the benefit of its members, broad guidelines for determining the value of the plant & machinery of small-scale units, copy of which, he had placed at pages 37 to 39. According to this guideline, the value of equipment used for research & development, power generating sets, airconditioning equipment used for maintaining temperature, moulds, dies, jigs, tools and consumable articles have all to be excluded. He contended that, the said guideline had been so issued concerning the policy of the Govt to ensure the development of small-scale units and for their continued Recognition.

Shri Ganesan contended that, the Ministry of Industries had issued a notification by which, the aggregate value of the plant & machinery has been enhanced to Rs. 35 lakhs from the earlier limit of Rs. 20 lakhs and the said, enhancement was to be affective from a period eliding before 18-3 1985. He submitted that, the intention of the Govt. to maintain uniformity between its various departments or wings, are clear from the reading of the memorandum explaining the Finance Bill of 1986.

He pleaded that, in the memorandum explaining the provisions of the Bill, on the amendment to Sections 32A, 80HHA, 80-1 of the Act, it was stated that, since, the Ministry of Industries had enhanced the aggregate value of the machinery and the plant from Rs. 20 lakhs to Rs. 35 lakhs, the same is being adopted, that too with

retrospective effect from assessment year 1985-86. He contended that, the Govt. in the implementation of its policy to promote the growth of small-scale units, and with that intention, had extended the benefits to those units under the Income-tax Act. He contended that, this extension of benefits under the Income-tax Act, was effected by adopting the definition of the term small-scale industry from the one defined by the Ministry of Industries and allowing such units to manufacture articles, which articles if manufactured by units other than small-scale units, are ineligible for any benefit. This is in recognition of the fact that, the authority concerning the recognition of a unit as a small-scale unit is the Directorate of Industries, Ministry of Industries, he contended.

He contended that, so long as a unit is continued to be recognised by the Directorate of Industries as a small scale unit, then, for purposes of the Income-tax Act also, the same treatment should be given to that unit. He pleaded that, since, the definition of the term small-scale industry given in Explanation 2 to Sub-section (2) of Section 32A of the Act, was borrowed from the definition given to it by the Ministry of Industries, the various notifications issued by that Ministry for recognition and continued recognition laying down the criterias for small-scale units, should be given due consideration. He contended that, this plea of adoption of all the notifications as issued by the Ministry of Industries, is fully justified in the light of the observation made in the abovementioned memorandum explaining the Finance Bill.

He filed copies of various notifications issued in this behalf, to support his contention that, equipments of research & development, generating sets, dies, jigs, moulds, tools, airconditioners, etc., are to be excluded for determining the aggregate value of plant & machinery of the small-scale unit. He also filed a chart showing the value of items of machinery, etc., which would have to be excluded, based on which, he claimed that., the aggregate value of machinery falls within the permissible limits. He pleaded that, the assessee having satisfied the pre-requisites for recognition as a small-scale industry, it should be allowed the claim of investment allowance.

Shri Ganesan submitted that, he derives support from the decision of Calcutta High Court in CIT v. Technico Enterprise (P.) Ltd. [1994] 206 ITR 36. He submitted that, to categories all items of assets installed in the factory premises as plant & machinery is therefore wrong and it should be limited to only those machinery, that process the various materials to bring out the end-product. He contended that, recognising this principle only that, the notifications had been issued by the authority for the small-scale units, for exclusion of testing equipments, research equipments, generating sets, pollution control units and many more. He contended that, keeping in mind the policy of the Govt. of promotion of small-scale units, these units are provided benefits under the Act also and therefore, giving the meaning to the term small-scale units according to the accepted definition by the Ministry of Industries would be only proper, which, he contended, has been so exhibited from the memorandum explaining the provisions of the Finance Bill, 1986.

Shri Ganesan submitted that, the claim for deduction under Section 80-1 of the Act, stands on the same lines as that of investment allowance.

He pleaded that, all the arguments addressed on investment allowance may be treated as so addressed towards the claim for deduction under Section 80-1 of the Act.

8. Smt. Surabhi Sinha, the learned Sr. DR submitted that, the small-scale industrial unit has been defined specifically under the Act and therefore, the meaning to that term has to be limited to that extent only. She contended that, the term small scale unit, might have been so borrowed from the definition given to it by the Ministry of Industries, but, since, it has not. been indicated under the Act that, the notifications as had been issued by the Ministry of Industries would ipso facto apply to the Income tax Act, stretching the meaning of that term would be improper. She contended that, the Act is concerned with the levy of tax, on the income of a person, and in the instant case, if it were the intention of the Legislature, to bring the provisions of the Act, in parallel with the policy of the Govt. for promotion of the small-scale units, they would have stated so by incorporating an explanation to that effect. She referred to the memorandum explaining the

provisions of Finance Bill, 1986 and submitted that, the Legislature had only extended the meaning by enhancing the limit of the aggregate value of plant & machinery from Rs. 20 lakhs to Rs. 35 lakhs. She insisted that, the meaning of the term should be confined to the provisions of the Income-tax Act.

She submitted that., the identical issue cropped up before the Tribunal in Hilton Rubbers (P.J Ltd. v. ITO [1982] 1 ITD 106 (Delhi) and the identical claim of stretching the meaning was made, but, it was held that, the meaning should be confined to the Act alone. She submitted that, in that case, the assessee desired exclusion of certain machinery on the pretext that, they form part of the tools and it was held that, such exclusion was not permissible.

She contended that, in Electrolytic Foil Ltd. v. ITO [1984] 7 ITD 635 (Hyd.) it was held that, the assessee though was treated as a small-scale unit by the Directorate of Industries, since, it did not satisfy the conditions laid down under the Act, it could not be granted the benefit, of investment allowance. She referred to the decision in UBS Publishers Distributors Ltd. v. IAC [1991] 36 ITD 457 (Delhi) and submitted that, the recognition by the Ministry of Industries as a small-scale unit is not the criteria, but, it is on the satisfaction of the condition laid down under the Act, that, the assessee could be treated as a small-scale unit. She contended that, the definition of the term small-scale unit concerning the value of plant & machinery, states that, only four items, namely, dies, jigs, moulds and tools are not to be considered. She pleaded that, unless the items of assets installed in the factory, could fall under either of these four excluded categories, their value could not be omitted, for arriving at the total value of plant & machinery. She contended that, the acceptance or rejection of the claim of investment allowance, would decide the fate of claim of deduction under Section 80-1 of the Act.

9. The rival submissions, the materials that have been placed on our record and the decisions relied upon by the parties, have been very carefully considered. At the outset, we may observe that, the three Tribunal decisions referred to by the learned Sr. DR has taken a uniform view that, the categorisation of a unit as a small-scale unit has to be made according to the definition given under the Act. The Calcutta High Court in Technico Enterprise (P.) Ltd.'s case (supra), has only

reiterated that, an asset if installed in the office, and contributing to the manufacturing process, is not entitled to investment allowance.

The Ministry of Industries, had recognised that, an industry requires in addition to the machinery, and plant that carry out the manufacturing or production operations, several other assets, equipments, etc., for carrying out its business. It is in recognition of this fact that, it had issued clarifications, as to which machinery and plant are to be taken into consideration, for the determination of the aggregate value of machinery and plant of a small-scale unit. The Bombay High Court in CIT v. Reunion Engg. Co. P. Ltd. [1993] 203 ITR 274, had held that, for purposes of determining the aggregate value of machinery & plant of a small scale industry, the value of motor cars, trucks, cycles, typewriters, calculators had to be excluded because the machinery & plant excludes office appliances and road transport vehicles. This is suggestive of the proposition that, not all assets installed in a factory are to be aggregated under one head, the machinery and plant. The words in the Finance Bill, 1986 concerning the enhancement in the aggregate value of machinery and plant as related to the policy of the Government to promote the growth of small-scale units, being fresh material, we are giving a fresh look into the present claim of investment allowance.

10. The legislative history indicates that, investment allowance came into the statute of Income-tax Act, by the Finance Act, 1976. This was substituted for the then existing provision for development rebate.

Under the provisions for development rebate, there was no mention of small scale unit being eligible for the deduction. It was for the first time that, the deduction was permitted along with the introduction of Investment Allowance by the Finance Act, 1976. The Notes on Clauses and the Memorandum explaining the provisions of the Finance Bill, 1976 do not throw much light on the intention behind the grant of investment allowance to the small scale unit.

The Press Note issued by the Ministry of Industries in 1975, throws some light on the policy of the Government concerning the small scale units. This Press Note state that, the success of the small scale units in the country's overall economic development had been recognised in the 32nd meeting of the Small Scale

Industries Board, held in November 1974 and it was unanimously decided to revise the definition of Small Scale Industries. Considering the steep increase in prices, the limits that were prescribed for value of machinery to be held by a unit to be recognised had become unrealistic, which was the reason for upward revision of the value of the machinery to be held by those units from the limit of Rs. 7.5 lakhs to Rs. 10 lakhs. The new definition given was that, (a) the calculation of the value of the machinery would be based on the original price paid by the owner, irrespective of the fact, whether, they are new or second hand; (b) cost of equipment such as tools, jigs, dies, moulds and spare parts for maintenance, cost of consumable stores and the cost of installation of the machinery shall be excluded; (c) in case of imported machinery, import duty, shipping charges, custom clearance charges, sales tax would be included, but not the cost of transportation from port to site, expenses of demurrage, and insurance; (d) cost of generating sets, extra transformer installed at the direction of the State Electricity Board would be excluded; and (e) bank charges and service charges paid to National Small Industries Corporation or to State Small Industries Corporation would be excluded.

In October 1978, the definition small-scale industry was revised again by means of No. IC(SSl)/Reg. Policy. In this circular letter addressed to District Industries Centre by the Industries Commissioner, the definition of the small scale industry as in 1975 was repeated, with the addition of inclusion of cost of electric motors forming part of the machinery, and exclusion of items of equipments & machinery such as control panel boards, electric installation, cabling, charges paid for technical know-how for creation of plant & machinery, machinery & equipment used for research & development exclusively and the machinery used for pollution controls. In March 1985, the only change effected was for the enhancement of the value of the plant & machinery to Rs. 35 lakhs from Rs. 20 lakhs. This change was notified by the Ministry of Industry & Company Affairs, Department of Industrial Development vide Notification dated 18th March, 1985.

This increase in the values of machinery was taken note of in the Finance Bill, 1986. For the sake of facility, the observations as made in the memorandum explaining the provision of the Finance Bill, 1986 are reproduced below: Under the

existing provisions of the Income-tax Act, the following tax concessions are given to small-scale industrial undertakings, namely : (i) Under Section 32A(2)(b)(u) of the Income-tax Act, investment allowance is admissible in respect of any machinery or plant installed in such an undertaking for the purposes of the business of manufacture or production of any article or thing including any article or thing of low priority specified in the list in the Eleventh Schedule to the Income-tax Act. A concern which does not fall under the category of a small-scale industrial undertaking is denied the benefit of investment allowance if it is engaged in the manufacture or production of any article or thing listed in the Eleventh Schedule.

(ii) Under Section 80HHA of the Income-tax Act, a taxpayer is entitled to a deduction in the computation of his taxable income of an amount equal to 20% of the profits and gains derived from a small scale industrial undertaking set up in a rural area for ten initial assessment years.

(iii) Under Section 80-1 of the Income-tax Act, a taxpayer owning a small-scale industrial undertaking is entitled to a deduction, in the computation of his taxable income, of an amount equal to 20 per cent of profits and gains (25 per cent in the case of a company) derived from a small-scale industrial undertaking which may be engaged in the manufacture or production of any article or thing, including an article or thing of low priority specified in the list in the Eleventh Schedule to the Income-tax Act, for eight initial assessment years (ten years in the case of a co-operative society).

For the purpose of the above-mentioned tax concessions, a "small scale industrial undertaking" has been defined as an industrial undertaking in which the aggregate value of the machinery and plant installed as on the last day of the previous year does not exceed Rs. 20 lakhs. With a view to promote the growth of small-scale sector, the limit of investment in the case of small-scale industrial undertakings has been increased from Rs. 20 lakhs to Rs. 35 lakhs by the Department of Industrial Development vide their Notification dated 18th March, 1985.

In view of the increase in the aforesaid qualifying monetary limit for a small- scale industrial undertaking, the Bill seeks to make an amendment in. Sections 32 A and

80HHA of the Income-tax Act to provide that an industrial undertaking will be regarded, as a small scale industrial undertaking if the aggregate value of the machinery and plant (other than tools, jigs, dies and moulds) installed on the last day of the previous year ending after 17th March, 1985, does not exceed Rs. 35 lakhs. In view of Explanation 3 to section 80-1(2), the amended definition will also apply for purposes of that section. [Emphasis supplied] The proposed amendments will take effect retrospectively from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years.

11. The policy of the Government, to promote the small-scale units, by providing various concessions, through the Ministry of Industry, considering their contribution to the overall growth and economic development of this country, is echoed in the above memorandum explaining the provisions of the Finance Bill. The benefits as are extended to the small-scale units by the Industries Ministry was considered under the Income-tax Act, for the first time in 1976, which was the grant of investment allowance to such units and this continued over the years. In 1986, through the Finance Bill, 1986, it was observed that, the upward revision of the value of machinery and plant is being made in the light of the upward revision made by the Department of Industrial Development through the Notification dated 17th March, 1985, to be effective from 1-4-1985.

The Finance Bill, 1986, does not make any further reference to the other contents of the notification so issued by the Department of Industrial Development, such as the determination of the aggregate value of investment in machinery and plant. In our view, this was felt unnecessary because, through the Income-tax Acts, only some more benefits are extended to such small-scale units. From the time, small-scale units were given concessions under the Income-tax Act, there was never any explanation or provision added to the Act, as to manner of determination of the aggregate value of the machinery and plant, that was contrary to the one laid by the Ministry of Industry.

We may assure that unlike the provisions of Sections 80-1, 80HH, etc., where, the pre-requisites for a new industrial undertaking had been defined, there are no

conditions specified in Section 32A of the Act for grant of recognition as a small-scale unit, other than, borrowal of the definition from the one recognised by the Ministry of industries.

This, in our view suggests that, the only authority, which has the power to grant recognition to a unit as a small-scale unit being the Industries Ministry or the concerned department under that Ministry, so long as, a unit is recognised by that authority, for purposes of harmonious construction of the term small-scale unit, the same should be adopted for the purposes of this Act. as well.

As observed above, the intention being to promote the small-scale units, the concessions are granted by Ministry of Industries, were complimented with concessions under the Income-tax Act. The definition of the term 'small-scale industrial unit' not only was borrowed as recognised by the Ministry of Industry, but, ii was retained as it is, under the Income-tax Act, with the only addition of the words 'as at the end of the previous year', which was necessary to keep in line with the provisions of the Act, which determined the income for (he assessment year with reference to the income of the previous year.

In the absence of any specific explanation or provision for the determination of the aggregate value of machinery and plant, under the Income-tax Act, it would be only proper that, the manner of computation of the aggregate value of the machinery and plant as recognised by that Ministry is also adopted, so that, uniformity for the same class or category, under different Acts could be maintained. In our view, such" uniformity of the view, is what is intended by the legislature and would only be proper, for achieving the objective of the growth of these units and their contributions to the over all economic development of this country and last but not the least, to reduce avoidable litigation.

We have to observe that, we have arrived at the above conclusion, by considering the additional material, namely, the reasons given in the memorandum explaining the provisions of the Finance Bill, 1986, with the emphasis that, in the light of the upward revision to the term by the Ministry of Industries, the definition is being revised under the Income-tax Act. We, therefore, accept the plea of the assessee, that, the aggregate value of machinery and plant should be determined in the like

manner as done by the Directorate of Industries. Since, the Directorate of Industries, had accorded recognition to the assessee, as a small-scale industrial unit, the claim of investment allowance on such items as are installed in the factory premises, is accordingly upheld. Since, the AO had never examined the quantum of the claim, he is only directed to verify the same and the other conditions of creation of reserve, etc., are satisfied and allow the claim, in accordance with law.

Before we part, on this issue, we may observe that, by the Finance Bill, 1992, the definition of the term 'small-scale industrial undertaking' in Section 80-IA has been amended to the effect that, the said expression cover only those small-scale industrial undertakings which are regarded as such undertakings under Section 1 IB of the Industries (Development and Regulation) Act, 1951. This further fortifies our view that, the intention of the Government is only to give uniform treatment to small-scale industrial undertakings under different statutes.

The claim of deduction under Section 80-1, which is on identical lines as those of investment allowance, for the reasons given therein, we direct the AO, to examine the satisfaction of other requirements of that section and the quantum of deduction allowable, and allow deduction, in accordance with law.

12. The claim of determination of profit derived from the undertaking for purposes of deduction under Section 80HH of the Act, is based on the plea, that income shown under the head services, is from the industrial undertaking. The assessee, while selling the electronic typewriters, had charged for the price of the typewriters separately from the technical service charge, that represented the value of the software provided, as part of the typewriters. This was so done, because, the assessee had felt that, no excise duty is leviable on the software supplied as part of the typewriters. The excise authorities, however, had rejected this contention and had levied excise duty on the entire cost, including the cost of the software. The CIT(A), rejected the claim of the appellant that, technical service charges are part of the machine, though billed separately, by observing that since, the appellant itself had treated it separately, it could not be included as part of the profit of the undertaking for deduction under Section 80HH of the Act.

Shri Ganesan, the learned Counsel for the appellant company, submitted that, the typewriter, without the brain in it, which is billed as technical service charges, is inoperable. He contended that, the brain, which is the software, controls the operation of the typewriter, which the company felt was non-excisable, had charged it customers separately. But, nonetheless, it remains the important part of the typewriter and therefore, the income there from, must be aggregated to the income from sale of typewriters, for arriving at the profit derived from the undertaking. He placed a short note on the brain or the software.

Smt. Sinha, the learned Sr. DR, submitted that, the action of the assessee to treat the sale value as distinct from the value of the typewriters, suggests that, they could not be so combined. She laid strong emphasis on the finding of the authorities below.

The rival submissions on the issue, have been very carefully considered. The brief note on the electronic typewriters, gives out broadly the operations that are carried out for bringing out one unit of electronic typewriter. The various components that made it are the body, the motor, the key board, the roller, the daisy wheel holder, the plastic daisy wheels containing various letters, numbers, signs, etc., the liquid crystal display for displaying few typed lines the ribbon, the main board containing electronic parts and the brain. It is an accepted position that, electronic typewriters function differently from the manual typewriters. Apart from the fact, they are driven by electric current, they carry out several operations that are not possible in an electric or manual typewriter.

The electronic typewriters on being switched on for the electric current, sends the current to the main board. The keyboard, the daisy wheel, the liquid crystal display, etc., are linked with the main board by the use of electric cables. The main board is stated to have a controller, which controller is called as the Central Processing Unit (CPU) and as the brain. The assessee, had separated the value of this brain from the value of the typewriters in its sale invoices, which for excise duty purposes, was claimed as services, not attracting excise duty. The submission of the appellant before the authorities was that, without the software, the typewriter remains a dumb box only.

The so-called software, is impressed into a silicone chip (CPU) or the brain, with the aid of a machine called EPROM writers. The various letters of the keyboard of the typewriters, send electronic signals to the brain, which in its turn activates and responds to the various commands, translates them into various letters, by selecting and pressing the corresponding letters in the plastic daisy wheels, which, with the aid of the inked ribbon, leaves the impression of the letters on the paper. In addition to the normal operations, such as impressing the typed letters, there are several operations, that are controlled by the brain. It retains in its memory, few lines or few pages of the typed matter, depending upon the size of the memory available in the said brain, which could subsequently be impressed on the paper. There are other operations, such as aligning the left column and the right column, which gives the appearance of printed matter. If the brain, is not present, the typewriter could not be operable even as a manual typewriter, though, the electric motor may receive the necessary electric current.

The above shows that, the brain or the CPU is the main driving force behind the electronic typewriters and the sale of the typewriters would be incomplete without the brain or the CPU. The treatment of the CPU or the brain as software services, does not in any way change its true nature, which is it is part of the machine and both of them need each other, to form one complete composite unit. The maintaining of separate account, for the value of the brain, as technical service charges, in our view, for the reasons mentioned earlier, does not affect the true classification as the main strength of the electronic typewriters.

We, therefore, hold that, the profit derived from the industrial undertaking, has to be worked out, including the income from sale of technical service charges and on that profits, assessee, should be allowed deduction under Section 80HH. We have therefore only to direct the AO to check up the calculation of profit derived from the undertaking, as directed above.

Since, it is accepted by both parties before us that, the quantum of income from the manufacturing operations of the undertaking, is dependent on, whether technical service income, could be treated as income from the manufacturing operations, and having held that, the technical service charges are part of the

manufacturing operations carried out by the appellant company, the consequential effect on this issue has to be necessarily given. The AO, is only directed to check up the necessary calculations in this behalf and allow the lower rate of tax, only if, such income so derived, accounts for 51% of the total income.

The claim of levy of interest is stated to be consequential in nature and we have therefore, only to direct the AO, to rework the interest, after giving effect to the above.

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