

Crp Control Panel (P) Ltd. Vs. Ito

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-10-2006

Judge : K Singhal, A Garodia

Appellant : Crp Control Panel (P) Ltd.

Respondent : ito

Judgement :

1. This appeal is directed against the order of the learned CIT dated 19-6-2003, passed under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Briefly stated the facts are these : The assessee filed its income tax return for assessment year 2001-02 declaring total income of Rs. 39,120 after claiming deduction of Rs. 2,73,754 under Section 80-IB of the Act. The case of the assessee was selected for limited scrutiny under Section 143(2)(ii) of the Act and finally the assessment was completed on 16-12-2002 by determining the total income at Rs. 64,220 after allowing deduction of Rs. 2,48,652 under Section 80-IB. The assessment record was examined by the learned CIT who, after examining the record, was of the view that the assessing officer failed to make proper enquiries in respect of the claim of the assessee under Section 80-IB. Accordingly, he assumed jurisdiction under Section 263 by issuing show-cause notice dated 2-5-2003. After considering the reply of the assessee, the learned CIT posed two questions - (i) whether, "the assessee carried on the manufacturing process with the aid of power or without the aid of power and (ii) whether, the

assessee employed prescribed number of workers in the manufacturing process. With reference to the first question, he found that the expenditure on power was only Rs. 5,424 and, therefore, it could not be said that the manufacturing process was carried on with the aid of power. Regarding the second question, it was found by him that the assessee had debited Rs. 6,56,060 as labour charges and Rs. 3,01,323 as salaries and bonus to employees. The details of labour charges revealed that the concerned labours were not permanent employees and no PF/ESIC was deducted from their dues. Thus, in view of the judgment of the Hon'ble Bombay High Court in the case of CIT v. Sayer's Asia Ltd , he was also of the view that casual or irregular workers could not be considered in determining the number of workers employed in the manufacturing process for the purpose of Section 80-IB(2)(iv) of the Act. It was also observed by him that the Director to whom the remuneration was paid could not be considered as worker for that purpose. It was also noticed by him from the details furnished that the designation of the workers was not given and, therefore, it could not be ascertained whether they were employed in the manufacturing process or not. It was also seen by him that the regular workers were only 11.

Finally, it was observed by him that the whole thing requires thorough examination to determine the number of workers employed in the manufacturing process. Accordingly, the order of the assessing officer was partially set aside and the matter was restored to his file for fresh adjudication of the matter under Section 80-IB. Aggrieved by the same, the assessee is in appeal before the Tribunal.

3. The learned Counsel for the assessee Mr. Jain, has not challenged the assumption of jurisdiction by the learned CIT under Section 263.

Thus, ground No. I raised by the assessee is dismissed as "not pressed".

4. On merit, he tried to argue that manufacturing process was carried on by the assessee with the aid of power by submitting that some of the processes involved consumption of electricity. When the Bench asked to provide the details of consumption of electricity, the learned Counsel for the assessee gave up this plea and restricted his arguments to the second question regarding number of workers employed by the assessee.

5. It was contended by him that the learned CIT was not justified in observing that only permanent workers could be considered for the purposes of claiming deduction under Section 80-IB and not the casual or irregular workers. According to him, the word "workers" employed by the legislature in Sub-section (2)(iv) of Section 80-IB would include all type of works without any qualifications who are employed in the manufacturing process. It was submitted by him that the judgment of the Hon'ble Bombay High Court has not been properly appreciated by the learned CIT inasmuch as the question posed before the court was entirely different. On the contrary, he drew our attention to page 271 of the report to point out that the judgment of the Hon'ble Bombay High Court rather helps the assessee inasmuch as the Hon'ble Bombay High Court indirectly held that casual workers could be taken into consideration. He also relied on the decision of the Hon'ble Karnataka High Court in the case of CIT v. K.G. Yediyurappa & Co.

, wherein it has been held that the word "worker" would include casual, permanent and temporary workers. Further, reliance was placed on the decision of the Tribunal in the case of Indian Resins & Polymers v. Income Tax Officer (1989) 31 ITI) 75 (Coch.). Thus, it was contended that if the casual workers are taken into consideration, then the condition prescribed under Section 80-IB would stand satisfied. On the other hand, the learned Departmental Representative has relied on the order of the learned Commissioner. In addition, it was further submitted by him that even assuming that casual workers are to be taken into consideration, then the matter should still go to the assessing officer for necessary verification.

6. Rival submissions of the parties have been considered carefully. We have gone through the relevant provisions of Section 80-IB. Certain conditions are provided in Sub-section (2) which must be fulfilled before claiming the deduction. One of the conditions provided in Clause 4 is that, where the industrial undertaking manufactures or produces article or things, the undertaking employs 10 or more workers in a manufacturing process carried on with the aid of power or employs 20 or more workers in a manufacturing process carried on without the aid of power. In the present case, we are required to see whether assessee employed 20 workers in the manufacturing process carried on by him without the aid of power. The Legislature has used the word "worker" which is not qualified by any other word.

The Hon'ble Karnataka High Court had to interpret the word "worker" as found in Section 80HH(2)(iv) which is analogous to Section 80-IB(2)(iv). Their Lordships observed as under: To understand the above provisions, no canon of construction is called for. The wordings are unambiguous. It provides that "if the assessee employs ten or more workers In the absence of any definition of the word "worker", the court has to take its ordinary meaning which may mean casual, permanent or temporary. There is, therefore, no reason why the word "worker" shall not include all these three categories.

The above observations clearly show that the casual or temporary workers can be considered if they are employed in manufacturing process. Similar view has been taken by the Tribunal, Cochin Bench, in the case of Indian Resins & Polymers (supra). As far as the judgment of the Hon'ble Bombay High Court is concerned, we are of the view that the learned CIT had not properly appreciated the ratio laid down by that judgment. In that case, the Income Tax Officer found that the assessee employed only 7 workers in its manufacturing process. In addition, there was a labour supervisor, who, according to Income Tax Officer, could not be considered to be employed in the manufacturing process.

Thus, the claim of the assessee was disallowed and the order of the assessing officer was upheld by the First Appellate Authority. On further appeal, it was contended on behalf of the assessee before the Tribunal that it was sufficient if 10 or more workers had been employed by the new undertaking at same point of time in the course of the year.

Since on some days in the assessment year 10 workers were employed, it was held by the Tribunal that the requirement of Section 84(2)(iv) was complied with and, therefore, the assessee was entitled for deduction.

This contention was not found favourable with the Hon'ble High Court.

The Hon'ble High Court at page 269 of the report observed "it appears to us that the view taken by the Tribunal that it is sufficient that assessee employs such number of persons for some days in the assessment year under consideration is too facile a view and one which cannot be easily accepted". However, it was

further held that in the absence of the words "throughout the year", the assessee must be deemed to have substantially complied with the requirement of Section 84(2)(iv) and cannot be denied relief merely because on a few occasions in the relevant period being considered the quota of workers employed in the manufacturing process falls below 10. Thus, this judgment is an authority for the proposition that the claim of the assessee cannot be allowed where number of workers employed are 10 or more on few days only but, on the other hand, the claim of the assessee would be allowed where such requirement is substantially complied with. It is pertinent to note that the entire legal position has been summed up by the court at page 271 and the proposition No. 5 which is worth noting is quoted below: (5) The undertaking is not required to have ten or more regular workers and it may be said to have satisfied that requirement if the aggregate actual number of workers engaged in the manufacturing process, both regular and normal, is ten in number. However, where the undertaking employs less than ten regular workers, it cannot be held to say that on any particular day it wanted to employ additional casual workers to enhance the figure to ten or more, but that it could not do so by reason of non-availability of casual labourers. If it chooses to have less than ten regular workers on its muster roll, it runs the risk of not satisfying the requirement on such days on which the necessary number of casual workers is not available.

The above observations of the Hon'ble Bombay High Court clearly show that casual workers can be taken into consideration for the purpose of ascertaining the number of workers employed in the manufacturing process. Thus, this judgment rather helps the assessee. In view of the above discussion, we hold that the learned CIT was not justified in holding that casual workers could not be taken into consideration for allowing the relief under Section 80-IB.7. Despite the above legal finding, we are of the view that factual details require examination inasmuch as the nature of duties of the workers employed by the assessee is not before us. It is only those workers who were employed in the manufacturing process are to be taken into consideration. The Hon'ble Bombay High Court at page 270 has clearly observed that a worker, who is not employed in the manufacturing process, has to be ignored. In view of the same, we partially uphold the order of the learned CIT. The directions of the learned CIT to the assessing officer are modified to the effect

that the assessing officer shall examine the nature of the dues of the workers employed by the assessee and then ascertain the number of workers employed in the manufacturing process. The casual workers would also to be taken into consideration for the purpose of sub-section 2(iv) of Section 80-IB.

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