* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA Nos.977/2005 & 186/2006

Judgment reserved on: 19th February, 2007

% Judgment delivered on: 27th February, 2007

Commissioner of Income Tax
Delhi-IV, New Delhi ..... Appellant
Through Ms.P.L.Bansal, Advocate
with Mr.Vishnu Sharma,Adv.

versus

M/s Dewan Kraft System Pvt.Ltd.
N-127, Greater Kailash-I,
New Delhi. ..... Respondent
Through Mr.Salil Aggarwal with
Mr.Prakash Kumar, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B. GUPTA, J.

By this common judgment two appeals being ITA Nos. 977/05 & 186/06 filed by the Revenue are being disposed of

since common question of law is involved.

2. Appeal No.977/05 arises out of the decision dated 20th January, 2005 passed by the Income Tax Appellate Tribunal for assessment year 1997-98, whereas appeal No.186/06 pertains to the order dated 29th March, 2005 for the assessment year 1998-99 passed by the Income Tax Appellate Tribunal.

3. The brief facts leading to the filing of these appeals are:-

ITA No.977/2005

4. The Assessee a Private Limited Company is engaged in business of fabrication and supply of equipments and technical items. This business is being carried out in units situated at Kalamb, Himachal Pradesh which is a notified backward area. Other business units of the Assessee are situated in Delhi and Noida. The profit derived from the Kalamb unit was eligible for deduction under Section 80-IA of the Income Tax Act, 1961 (for short the Act) in the year under consideration, whereas such benefit was not available to the other units of Assessee situated in Delhi and Noida. In the return of income for the year under

consideration, the Assessee declared a gross total income of Rs.21,91,102/- which comprised of profit from Kalamb Unit amounting to Rs.20,92,221/-, interest and other income amounting to Rs.10,10,149/- and loss from units in Delhi at Rs.9,11,270/-. From this gross total income, the Assessee claimed a deduction of Rs.20,92,221 under Section 80-IA of the Act being 100% profit derived from Kalamb unit and, accordingly, total income of Rs.98,880/- was shown in its return.

5. The Assessing Officer, however, adjusted the loss of Rs.9,11,270/- of Delhi unit against the profit of Rs.20,92,221/- of Kalamb unit and restricted the deduction under Section 80-IA of the Act at Rs.11,80,952/.

6. Being dissatisfied with the decision of the Assessing Officer, the Assessee filed an appeal and the Commissioner of Income Tax(Appeal) held that the deduction claimed by the assessee under Section 80-IA of the Act at Rs.20,92,221/- to be correct and allowed the same.

7. Aggrieved against the order of Commissioner of Income Tax (Appeal) the Revenue filed an appeal before the Income Tax Appellate Tribunal, which upheld the order of

Commissioner of Income Tax (A).

ITA No.186/2006

8. The issue in this case is whether Income Tax Appellate Tribunal is justified in allowing the deduction under Section 80-IA of the Act at Rs.18,03,143/- as against Rs.4,53,398/- allowed by the Assessing Officer for the assessment year 1998-99. The Income Tax Appellate Tribunal, following its order dated 20th January, 2005 in ITA No.758/Del/2001 for the assessment year 1997-98, dismissed the appeal of the Revenue.

9. It has been argued by the learned counsel for the Appellant that as per provision of Section 80-IA of the Act where gross total income of the Assessee includes any profits and gains derived from any eligible business of an industrial undertaking, the whole of the profit of such eligible business is to be allowed as deduction under Section 80-IA of the Act and the interest earned by the Assessee is not a business income but it is an income under the head "income from other sources" and it cannot be treated as business income.

10. Learned counsel for the Appellant in support of its

contention has cited decision of Apex court in **IPCA Laboratory Ltd. v. Deputy Commissioner of Income Tax** (2004) 266 ITR 521 and **Commissioner of Income Tax v.Kotagiri Industrial Co-operative Tea Factory Ltd.**, (1997) 224 ITR 604.

11. On the other hand, it has been argued by learned counsel for the Respondent that the Assessing Officer while computing the income, restricted the deduction at Rs.11,80,952/- being the amount allowable to the extent of business income against the business profit of Rs.20,92,221/- from Kalamb unit. In doing so, the Assessing Officer mixed the profits of Kalamb unit with profits of units at Delhi and Noida and, thus, erroneously restricted the deduction to the extent of business income. This has been done in the total disregard of provision of sub-section 7 of Section 80-IA of the Act. The learned counsel in support of his contention has cited a decision of Andhra Pradesh High Court in **C.I.T. v. Vishaka Industries Ltd.**, (2001) 251 ITR 471.

12. It is an admitted fact that Kalamb Unit is the only unit of the Assessee which is eligible for benefits available

under Section 80-IA of the Act during the years under consideration, whereas the other units situated at Delhi and Noida are not eligible for this benefit. It is also not in dispute that profits derived by the Assessee from Kalamb Unit amounted to Rs.20,92,221/- whereas the other units at Delhi and Noida resulted in the loss of Rs.9,11,270/-. Provision of sub-section 7 of Section 80-IA of the Act which is relevant in this case, is reproduced below:-

> " (7)Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purpose of determining the quantum of deduction under sub-section (5) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year upto and including the assessment year for which the determination is to be made."

13. Perusal of the above provision shows that it is a distinct and separate deeming provision which lays down the special method of computing the profits and gains entitled to deduction under Section 80-IA of the Act.

Moreover, this provision is of overriding nature providing specifically that during each of the assessment years in the tax holiday, period in which the Assessee is entitled to deduction under Section 80-IA of the Act, this provision will be applied as if the industrial unit is an independent unit and is the one and only source of income possessed by the Assessee.

14. It is clear that while computing deduction under Section 80-IA of the Income Tax Act, 1961, the profits and gains of Kalamb unit for the purpose of determining the quantum of deduction under Section 80-IA (5) of the Act is to be computed if such eligible business of the said unit is the only source of income of the assessee. The Assessing Officer mixed the profits of the Kalamb unit with the profits of units at Delhi and Noida and, thus, he erroneously restricted the deduction to the extent of business income and this was done by him in total disregard of the provisions of sub-section 7 of Section 80-IA of the Act as mentioned above.

15. Thus, the Kalamb unit being the only unit of the Assessee eligible for deduction under Section 80-IA of the

Act is to be treated as an independent unit and the same is to be treated as the only source of income for Assessee for the purpose of computing deduction under Section 80-IA of the Act. The deduction claimed by the Assessee under Section 80-IA of the Act, thus, is in accordance with the said provisions and as such we find that there is no infirmity in the impugned order passed by the Income Tax Appellate Tribunal.

16. The Judgments cited by learned counsel for Appellant are not applicable for the facts of the present case.

17. This being the position, we are of the opinion that there is no substantial question of law that arises for our consideration and we do not find any error in the view that has been taken by the Tribunal in this regard.

18. Consequently, both the appeals are dismissed.

V.B. GUPTA, J

FEBRUARY 27, 2007 MADAN B. LOKUR, J
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