

Onus is on assessee to prove reasonable allocation of common expenditure to unit eligible for sec. 80-IB relief

Summary – The High Court of Madras in a recent case of Gimpex Ltd., (the Assessee) held that onus is on assessee to produce sufficient material on record to show that there is no disproportionate allocation of expenses to arrive at more profits for 'eligible units' in order to claim more relief under section 80-IB.

Facts

- The assessee was engaged in the business of processing and sale of Barytes minerals by establishing 12 units located at different places. Two of such units were located in area notified under section 80-IB(5) as industrially backward area Category 'B' *vide* Notification S.O. 440E dated 15-6-1999.
- The assessee filed the return of income claiming deduction under section 80-IB in respect of eligible units.
- The Assessing Officer opined that the assessee had allocated common expenses disproportionately to arrive at more profit for the two units, which are 'eligible units', with a view to claim more relief under section 80-IB.
- Thus, the Assessing Officer concluded that deduction was to be allowed only against such portion of the income, which formed part of the gross total income and if there were more than one "eligible unit", the balance income available was to be divided among the units proportionate to the sales in each unit.
- The First Appellate Authority set aside order of Assessing Officer holding that he had not referred to any particular item of expenditure, which was disproportionately allocated and no material or evidence was brought on record by the Assessing Officer to support his conclusion.
- The Tribunal confirmed the order of the first appellate authority.
- On revenue's appeal:

Held

- After perusing the facts placed before the Assessing Authority, First Appellate Authority as well as the Tribunal, it is to be pointed out that the question of eligibility of the assessee for deduction under sub-section (13) to section 80-IB read with sub-section (5) of section 80-IB is not in dispute. The only question would be whether the assessee has disproportionately allocated the common expenses to arrive at more profits for the "eligible units" in order to claim more relief under section 80-IB.
- This being a factual issue the assessee was bound to place before the Assessing Officer necessary documents to establish that the common expenses had not been disproportionately allocated so as to claim more relief under section 80-IB. Admittedly, no other record was produced by the assessee before the Assessing Officer.

- When the matter was considered by the First Appellate Authority, the First Appellate Authority had erroneously shifted the burden on the Assessing Officer stating that the Assessing Officer did not bring on record any material or evidence to support its conclusion that the expenditure was disproportionately allocated.
- It is to be noted that the onus is on the assessee to produce sufficient records to show that there was no disproportionate allocations and they were under an obligation to show as to how the profits were arrived at in respect of 12 units and particularly in respect of eligible units for the purpose of claiming deduction under section 80-IB.
- The assessment order also does not state as to whether the common expenses were with reference to the 12 units or with reference to the two units alone, which was disproportionately distributed.
- Thus, as regards the grant of relief under section 80-IB in respect of the "eligible units" with reference to the income and in order to arrive at the appropriate relief to the assessee, there is no hesitation in setting aside the order of the Tribunal and remit the matter back to the Assessing Officer so as to work out the relief properly, particularly with reference to the expenses allocable to eligible units.
- In the circumstances, the assessee is directed to produce necessary materials before the Assessing Officer to substantiate their claim as regards the deduction under section 80-IB.
- With the above direction, this appeal is disposed of.