

## **No sec. 80-IB relief on income from DEPB**

**Summary – The High Court of Gujarat in a recent case of Banpal Oil Chem (P.) Ltd., (the Assessee) held that Assessee having eligible industry and availing deduction under section 80-IB, will not be entitled for same in respect of income from DEPB and DEPB Premium**

### **Facts**

- The assessee-company engaged in processing and exporting Castor oil. It was also engaged in export. The assessee filed return of income, claiming deduction under section 80-IB. In computing deduction, he included income from Duty Entitlement Pass Book [DEPB] also.
- The Assessing Officer disallowed the deduction holding that the income from DEPB could not be stated to be derived from eligible business so engaged in by the assessee-company; DEPB income was related to export.
- On appeal, the Commissioner (Appeals) reversed the order of the Assessing Officer and directed him to allow deduction under section 80-IB on the DEPB and DEPB premium income on the ground that same was part of the business profits of the assessee.
- On further appeal, the Tribunal reversed the decision of Commissioner (Appeals) holding that the assessee was not entitled to deduction under section 80-IB in respect of DEPB and DEPB premium.
- On appeal to the High Court:

### **Held**

- Section 80-IB provides deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. The industrial undertaking eligible for such deductions have been specified in sub-section (3) to sub-section (11C) of the said sub-section and provides incentives for variety of industries. For example, under sub-section (4) of section 80-IB in case of an industrial undertaking in an industrially backward State specified in the Eight Schedule, deduction of 100 per cent of the profits and gains derived from such industrial undertaking is provided for five assessment years beginning with the initial assessment year and thereafter, at the rate of 25 per cent upto a maximum of 10 consecutive assessment years. Like wise, under sub-section (10) of section 80-IB, deduction is provided in case of an undertaking developing and building housing projects. These deductions thus relate either to the nature of industry or its location in a specified area or a backward area. Essentially, these deductions are granted not on account of the exports made by the industry of its goods so manufactured by an industry covered under any of the sub-sections of section 80-IB. It can be seen that a manufacturer of goods who sales his product in India would receive no benefit of DEPB while another manufacturer of the same product and exports such product, would receive export incentive in the nature of DEPB scrips at a specified percentage of the FOB value of the export. This value of DEPB with premium if so sold at a premium, would go on to enhance the profit of the assessee. It was therefore, that the Supreme

Court in case of *Liberty India v. CIT* [2009] 317 ITR 218/183 Taxman 349 dissociated the DEPB benefit received by an undertaking which was otherwise eligible to deduction under section 80-IB since the deduction was for the industry, covered under any of the sub-sections of section 80-IB and not for exports. DEPB was seen as an export incentive and the profit derived on account of such export incentive made available by the Government of India was considered as not having been derived from the activity carried on by the eligible industry.

- Section 80HHC on the other hand pertains to deduction in respect of profits retained for export business. Under sub-section (1) of section 80HHC where an assessee, being an Indian company or a person resident in India is engaged in the business of export out of India of any of the goods or merchandise to which the section applies. There would be in computing of the total income of the assessee a deduction to the extent of profits referred to in sub-section (1B), derived by the assessee from the export of such goods or merchandise. Sub-section (1B) of section 80HHC specifies the extent of deduction on the profit as provided in sub-section (1). Sub-section (3) of section 80HHC provides a formula to ascertain an assessee's profit relatable to its export business. For example, under clause (a) of sub-section (1) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profit of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee. This provision in mathematical terms is expressed as under:

$$\text{Profits derived from exports} = \frac{\text{Profits of the business} \times \text{export turnover}}{\text{Total Turn over}}$$

- Section 80HHC contains an explanation clause defining various terms such as export turnover in clause (b) of the explanation, total turnover in clause (ba) and profits of the business in clause (baa).
- It is as per this definition of profits of the business that the question of eliminating 90 per cent of the DEPB or duty draw back from the numerator of the said formula arises.
- In essence, this formula enables us to ascertain the assessee's profit relatable to its export business by ascertaining its proportion to the profits of the business.
- Section 80-IB grants deductions to eligible industries and has nothing to do with the export of a product. If therefore, an industry eligible for deduction under section 80-IB also exports the product, the DEPB benefits are seen in addition to and not as having been derived by the industry out of its eligible business. On the other hand, section 80HHC has direct co-relation to the export business of an assessee and essentially aims to grant deduction at specified percentage on the assessee's export

profit to be ascertained through a complex formula provided in sub-section (3) of the section by further applying the definition of term 'profits of the business' contained in clause (baa) of the Explanation.

- Principle of netting while excluding certain sum from the claim of assessee for deduction under section 80-IB is neither new nor unfamiliar. Such principle however cannot be applied in the present case since this very issue of exclusion of the entire amount of DEPB from the profit eligible for deduction under section 80-IB is well entrenched.
- In the result, Tribunal was justified in holding that the assessee was not entitled to deduction under section 80-IB in respect of DEPB and DEPB premium.