

Unit created due to expansion constitutes a new business; tax holiday period begins from initial AY of that unit

Summary – The Amritsar ITAT in a recent case of Aggarwal & Co. (Engg. & Erectors), (the Assessee) held that It is 'undertaking or enterprise' rather than assessee, which is to be subjected to deduction under section 80-IC; a unit arising due to substantial expansion would constitute new business and period of 10 years' tax holiday would commence from initial assessment of that unit

Facts

- The assessee was engaged in the business of civil construction and engineering works. It claimed to have two units, namely, unit I and unit II in Himachal Pradesh. The assessee claimed deduction under section 80-IC in respect of income of unit II, whereas no deduction in respect of the income of unit I was claimed.
- Considering the fact that unit-I & unit-II had common premise, common invoice book, common stock register, common excise registration number & sales tax number, common employees and common inventory of plant & machinery, the Assessing Officer held that this was a case of splitting up of business, because of which, deduction under section 80-IC could not be allowed to the assessee.
- On appeal, the Commissioner (Appeals) held that there was no splitting up of the business. However, he held that in view of section 80-IC(6), the period of deduction was 10 years from the initial assessment year and since it was from the assessment year 1997-98, that the deduction was claimed for the first time, such deduction would be available to the assessee up to the assessment year 2006-07 only.
- On second appeal:

Held

- Section 80-IC(6) evidently, talks of an 'undertaking' or enterprise'. Section 80-IC(8)(v) states that 'initial assessment year' means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion.
- Section 80-IC(8)(v), therefore, makes it further clear that the substantial expansion being considered as that of the undertaking or enterprises.
- Thus, the assessee is correct in contending that whereas the relevant provisions of the Act are clear with regard to the entitlement therein being that of the 'undertaking or enterprise' and not of the assessee. Obviously, therefore, the restriction of the period of deduction pertains to an undertaking

or enterprise belonging to an assessee and not to the assessee, as has erroneously been done by the Commissioner (Appeals).

- In the instant case, the issue of the new unit, *i.e.*, Unit -II having come into existence by virtue of the substantial expansion carried out, is not at all in dispute. It has been held by the Madras High Court in *CIT v. Premier Cotton Mills Ltd.* [[1999](#)] 240 ITR 434/[[2000](#)] 108 Taxman 218, that the assessee 'undertaking' is not to be equated with the legal entity which may own the undertaking and that a single legal entity may own and operate more than one industrial undertaking.
- It is clear from sub sections of section 80-IC that it is the 'undertaking or enterprise', rather than the 'assessee', or the profits and gains, which is to be subjected to deduction therein and that 'undertaking' and 'enterprise' are the terms which are not mutually inter-changeable with the term 'assessee'. In the present case, the substantial expansion carried out by the assessee resulted in a new unit, *i.e.* Unit II, which is the 'undertaking' or 'enterprise' that is to be subjected to the deduction, and not the assessee itself. As such, the provisions of section 80-IC(b) is to be construed *vis-à-vis* Unit-II.
- It remains unchallenged on record that Unit-II of the assessee is an entirely independent unit from the erstwhile unit. It was set up by installing new machinery worth Rs. 71 lacs. Obviously, it has a separate electricity connection. It is being worked by separate employees. The purchases to and sales from Unit-II are separate, as borne out from the separate stock register maintained. All this has duly been taken into consideration by the Tribunal in its order for the assessment year 2006-07. Physically also, though located in the same complex, Unit-I & Unit-II are housed separately. Thus, for all intents and purposes, the two units are mutually distinct and separate entities, Unit-II having come into being only as a result of the substantial expansion carried out by the assessee. It is in this light, that the applicability of the provisions of section 80-IC(6) have to be construed. The Commissioner (Appeals) has erred in not doing so.
- *Joonktolle Tea & Industries Ltd. v. Dy. CIT* [[2010](#)] 8 taxman.com 4 (Kol.), which holds that the unit arising due to the substantial expansion would constitute a new business or enterprise and, accordingly, would be eligible for deduction under section 80-IC for a period of ten years from the initial assessment of that unit, is directly on the issue, in favour of the assessee.
- Section 80-IC(8)(v) states that 'initial assessment year' means the assessment year relevant to the previous year in which the *undertaking or enterprise, inter-alia*, begins manufacture, or completes substantial expansion. In the present case, substantial expansion was brought about in the assessment year 2004-05 and that being so, the period of 10 years' tax holiday is to commence with reference to this assessment year, *i.e.*, assessment year 2004-05.