

Relief once granted u/s 80-IB couldn't be rejected in subsequent yrs without withdrawing relief granted in earlier yr

Summary – The High Court of Bombay in a recent case of Simple Food Products (P.) Ltd., (the Assessee) held that where deduction under section 80-IB was granted for an initial assessment year, same could not be rejected for subsequent assessment years unless relief for initial year was withdrawn.

Facts

- In the previous year relevant to assessment year 1996-97, the assessee commenced production of milk as small scale industry. The assessee in the first year claimed the benefit of deduction under section 80-IA as the assessee derived profit and gains from an industrial undertakings producing milk. Admittedly, milk was not a produce/good specified in Eleventh schedule. The Assessing Officer allowed the claim of deduction under section 80-IA.
- For the assessment years 1997-98 and 1998-99, the deduction under section 80-IA was available. However, no occasion to claim deduction under section 80-IA arose in view of the loss suffered in both the assessment years. Nevertheless, it was included in computing the period of 10 years for which the deduction under section 80-IA would be available.
- For the assessment years 1999-2000 to 2001-02, the assessee continued to claim the benefit of deduction under section 80-IA/80-IB. With effect from 1-4-2000, the benefit under section 80-IA was bifurcated into deduction in respect of profit and gains from industrial undertaking/enterprise in the infrastructure development, *i.e.*, section 80-IA, while deduction in respect of profit and gains of industrial undertaking other than undertaking engaged in infrastructure development *i.e.* section 80-IB. It was undisputed position that the benefit of deduction available under section 80-IA for the period of 10 years continued to be available under section 80-IB.
- Thereafter, notices were issued to assessee to reopen the assessment for the assessment years 1999-2000 to 2001-02. It was an undisputed position that infact, no notice was issued even though at that time the Assessing Officer had jurisdiction to issue a notice for reopening the assessment for assessment year 1996-97. Further, notice was issued under section 153A with regard to assessment years in question.
- The Assessing Officer disallowed the assessee's claim for deduction under section 80-IB for the assessment year in question.
- The Commissioner (Appeals) dismissed assessee's appeal on the ground that assessee did not carry out any processing/manufacturing activity to qualify for relief under section 80-IA/80-IB. However, assessee contended that claim for deduction under section 80-IB in respect of subject assessment years could not be rejected as the deduction granted in the first year had not yet been withdrawn.
- However, Tribunal, by impugned order ignored its decision on the ground that same was rendered in context of the fact that in the initial year, the claim for deduction under section 80-IA/80-IB was

allowed under section 143(3), unlike in instant case, where the claim under section 80-IA/80-IB was allowed in the initial year under section 143(1).

- On appeal to the High Court:

Held

- On perusal of the decision in *CIT v. Dinshaw Frozen Food Ltd.* [IT Appeal No. 32 of 2003, dated 29-9-2007], which in turn has followed the decision in *CIT v. Paul Brothers* [\[1995\] 26 ITR 548/79 Taxman 378 \(Bom.\)](#). There is no finding in the two orders to the effect that the in the initial year the claim under section 80-IA/80-IB was granted by virtue of an order passed under section 143(3). Nothing has been brought on record to indicate that there has been some change in manufacturing process from that existing when the claim was allowed in the initial year *i.e.* Assessment Year 1996-1997 and subject Assessments. The intent/object of the deduction under section 80-IA/80-IB is to encourage setting up of industries to manufacture goods which are not specified in the Eleventh Schedule.
- In absence of the revenue being able to establish that for the subject Assessment Years, the facts with regard to the performance were different from facts with regard to the performance in which the claim for deduction in initial year was allowed, the grant of deduction in the subsequent subject Assessment Year cannot be withheld. The other issue raised revenue that merely because a claim was allowed in an earlier year would not prohibit it from disallowing the claim in subsequent assessment years is no longer *res integra* as in *Paul Brothers (supra)* as it is categorically held that in absence of deduction granted in the initial Assessment Years being withdrawn, the relief for subsequent Assessment Years could not be withheld. The basis for the same is found in sub-clause (3) under section 80-IA/80-IB which gives deduction for 10 consecutive years to the profit and gains of an Industrial undertaking from initial year of assessment when the deduction was allowed, subject to the condition laid down therein. It is not the revenue's contention that the condition in clause (3) of section 80-IB has not been fulfilled. Therefore, once deduction is granted in the initial Assessment Year, the same would continue for the period of 10 consecutive year unless the relief for initial year is also withdrawn at the time of withholding the relief under section 80-IA/80-IB.
- The High Court in *Paul Brothers (supra)* and *Dinshaw Frozen Food Ltd. Nagpur (supra)* were while dealing with deduction under section 80-IA/80-IB had categorically held that in absence of relief/deduction for the initial year being withdrawn, the relief under (section 80-IA/80-IB cannot be withheld for the subsequent years. The manner in which the relief has been granted in the initial Assessment Year is not determinative for withholding the relief in the subsequent Assessment Years.
- The decision in *Paul Brothers (supra)* and the *Dinshaw Frozen Food Ltd. Nagpur (supra)*, conclude the issue in favour of the assessee and against the Revenue.
- Thus, the substantial questions is answered in the affirmative, *i.e.*, in favour of the Assessee and against the revenue.