

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.2616/Mum/2023
(Assessment Year: 2001-02)

Colorplus Realty Limited Solitaire New Glass Building, Pokharan Road No. 1, Jekegram, Thane – 400 606	Vs.	Dy. CIT, Central Circle-8(1) 6 th Floor, Aaykar Bhavan, Mumbai – 400 020
PAN/GIR No. AABCC 3401 B		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Madhur Agrawal
Respondent by	:	Shri H. M. Bhatt
Date of Hearing	:	20.12.2023
Date of Pronouncement	:	22.12.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-50, Mumbai ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2001-02.

2. The solitary issue raised by the assessee in this appeal is the denial of deduction u/s. 80IB of the Act amounting to Rs.4,88,493/- being the compensation received by the assessee from the insurance company.

3. The brief facts are that the assessee company engaged in the manufacturing of garments which are sold through franchisees in various locations all over India. The assessee had filed its return of income dated 30.10.2001, declaring total income at

Rs.3,2560,300/- and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny and the assessment order u/s. 143(3) of the Act was passed by the Id. Assessing Officer ('A.O.' for short) dated 27.02.2004, determining the total income at Rs.3,77,10,303/- after making a disallowance u/s. 80IB of the Act amounting to Rs.6,56,151/- being the insurance claim and compensation received by the assessee along with the other disallowances.

4. The assessee was in appeal before the Id. CIT(A), challenging the order of the Id. A.O.

5. The Id. CIT(A) deleted the impugned addition/disallowance on this ground.

6. The Revenue was in appeal before the Tribunal, challenging the order of the Id. CIT(A) and the Tribunal had remanded this issue back to the file of the Id. A.O. for deciding the same afresh.

7. The Id. A.O. in the second round of proceeding had disallowed the claim of the assessee made u/s. 80IB of the Act vide order dated 19.12.2008 passed u/s. 143(3) r.w.s.254 of the Act towards the insurance claim and compensation of Rs.16,28,311/- and added 30% of the same amounting to Rs.4,88,493/- to the total income of the assessee.

8. Aggrieved, the assessee was in appeal before the first appellate authority, challenging the impugned addition made by the Id. A.O.

9. The Id. CIT(A) upheld the addition made by the Id. A.O. on the ground that the insurance/compensation claimed cannot be considered for computing the eligible profit and gains derived from the industrial undertaking of the assessee.

10. The assessee is in appeal before us challenging the order of the Id. CIT(A).

11. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that some of the assessee's stocks were destroyed and the assessee was compensated by Oriental Insurance Company of Rs.7,51,494/-. Further to this, the Id. AR submitted that the assessee manufactures garments which are sold by its franchisees where the unsold garments lying with the franchisees remains with that of the assessee and when shortage of stocks were discovered, the same are debited to the franchisees account to the extent of the cost of the goods where the claims and compensation are credited in the assessee's account during the year under consideration amounting to Rs.8,76,817/-. The Id. AR contended that these are compensation for lost goods which have to be credited to the material consumed by the assessee rather than crediting the same in the P & L account. The Id. AR placed reliance on the decision of the Hon'ble Gujarat High Court in the case of *CIT(4) vs. Shree Rama Multi Tech Ltd.* [2013] 33 taxmann.com 194 (Guj) holding that compensation received by industrial undertaking from insurance company due to loss suffered by it as business income is eligible for deduction.

12. The learned Departmental Representative ('Id.DR' for short) on the other hand, controverted the said fact and stated that the compensation received by the assessee from the insurance company does not pertain to the profits and gains of the business of the assessee and relied on the decision of the Hon'ble Apex Court in the case of *Cambay Electric Supply* [1978] 113 ITR 84 (SC), where it has been held that such receipts are not

derived from industrial undertaking as per provision of section 80IB of the Act. The Id. DR relied on the order of the lower authorities.

13. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has received compensation from the insurance company and the franchisee for stocks destroyed and lost aggregating to Rs.16,28,311/- for which the assessee had claimed deduction u/s. 80IB of the Act. The lower authorities have rejected the assessee's claim amounting to Rs.4,88,493/- being 30% on the aggregate compensation received from the insurance company on the ground that the same is not attributable to the industrial undertaking of the assessee for claiming deduction u/s. 80IB of the Act. The Revenue's reliance in the case of *Liberty India Vs. CIT*. [2009] 317 ITR 218 (SC) and *M/s. Srinivasa Cystine Ltd.* (in ITA No. ITA No.800/Hyd/2011 vide order dated 28.06.2012) cannot be considered as the facts of the present case are distinguishable from these.

14. Per contra, the Id. AR has placed reliance on the decision of Hon'ble Gujarat High Court in the case of *Shree Rama Multi Tech Ltd.* (supra), wherein it has been held that the compensation received by the industrial undertaking from insurance company on account of loss of raw material and finished goods would be eligible for deduction u/s. 80IA of the Act. The relevant extract of the said decision is cited hereunder for ease of reference:

6. Section 80-IA of the Act, as is well known, provides for deduction in respect of profit and gains from industrial undertakings or enterprise engaged in the infrastructure development. The fact that the assessee's profits are eligible for such deduction is not in dispute. Short question is, can the insurance claim in the circumstances under which the same was received, be stated to be derived from industrial undertaking. This very issue came up for consideration before Division Bench of Delhi High Court in case of Sportking India Ltd. (supra) the High Court held and observed as under:

"5. At the outset while determining the meaning to be attributed to this expression, one must keep in mind that section 80-A is a part of fasciculus of provisions whereby benefits are granted to certain industrial undertakings, businesses etc. including those which are located in certain special locations/ areas. The object is generation of new investment and employment with respect to particular industries in certain areas and in certain locations besides generation of revenue for the Government and industries from whom plant etc. will be purchased by the new industrial undertaking. The object of the provision is further made clear from sub section (2) of section 80-IA whereby such businesses are not considered for tang advantage of the deduction under section 80-IA if either it is formed from spting up of an existing business or by use of machinery or plant previously used and so on. The object is clearly to give fillip to the economy and to investment. This object will have to be kept in view while interpreting the provisions of section 80-IA.

6. We find that for a similar provision of section 80-IB, two decisions have been rendered by two Division Benches of this court in the judgments reported as *CIT v. Eliek SGS (P) Lid.* [2008] 300 ITR 6 (Delhi), and *CIT v. Dharam Pal Prem Chand Lid.* [2009] 317 ITR 353 (Delhi): (2009] 221 CTR (Del) 133. In the *Eltek SGS (P) Lid.* case [2008] 300 ITR 6 (Delhi) duty drawback was held to be profits/gains derived from an industrial undertaking and hence eligible for deductions under section 80-IB. In the case of *CIT v. Dharam Pal Prem Chand Ltd.* [2009] 317 ITR 353 (Delhi) refund of excise duty was held to be profits and gains derived from an industrial undertaking within the meaning of an expression under section 80-IB."

7. We have no reason to take a different view. If the assessee had either consumed the raw material in its industrial activity or sold the finished good but for the unfortunate fire, surely the assessee would have earned income. Such income would have been eligible for deduction under section 80-IA of the Act. If this much is undisputed, merely because of the fire and destruction of such goods before sale would hardly make any significant difference insofar as deduction under section 80-IA of the Act is concerned. Looking from the other angle, what the assessee achieved through passing of the insurance claim was reduction of the loss arising out of the industrial undertaking. Such recouping or reduction of the loss cannot be kept out of consideration while computing the assessee's income eligible for reduction under section 80-IA of the Act.

15. Though the above cited decision was on deduction pertaining to section 80IA, the proposition laid down by the Hon'ble High Court has to be considered for deciding the issue in hand. The assessee in the present case has received compensation for destroyed and lost goods from the insurance company and from the franchisees which the Revenue claims to be not from the industrial undertaking and shall not be the profits and gains of the business of the assessee. The Hon'ble Gujarat High Court after duly considering the decision of the Division Bench of Hon'ble Delhi High Court in the case of *CIT vs. Sportking India Ltd.* [2010] 324 ITR 283 has held that such compensation received from

insurance company for the damage incurred by the assessee would be the profit/loss from such industrial undertaking, for the reason that if not for such loss, the assessee would have earned income which is otherwise eligible for deduction u/. 80IB of the Act.

16. From the above observation, it is evident that on identical facts, the Hon'ble High Court has held that the assessee is eligible for deduction u/s. 80IA/80IB of the Act on compensation received due to destruction of goods before sale had taken place. We find that on destruction of raw materials, the assessee was paid insurance claim, the cost of raw material is already considered as 'cost' while working out the profit of eligible undertaking and the claim tantamount to sale of raw materials. As regards to loss of goods at franchisee and the amount paid by such franchisee would also be sale of goods. Thus, both the above sums are profits derived from industrial undertaking business eligible for deduction. Hence, we direct the Id. A.O. to allow deduction u/s. 80IB on both the amounts. We, therefore, allow the appeal filed by the assessee.

17. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22.12.2023

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 22.12.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai