
Tax holiday for small scale industrial undertakings not available if conditions not met for the entire period

December 8, 2017

In brief

In a recent decision¹, the Supreme Court (SC) has held that a taxpayer would not be eligible to avail the tax holiday under section 80IB of the Income-tax Act, 1961 (Act) meant for small scale industrial undertaking (SSIU), once the taxpayer ceases to retain the character of a SSIU during the entire period.

In detail

Background

- The taxpayer was engaged in manufacturing and sale of components.
- The taxpayer qualified as a SSIU in its initial years. Accordingly, it claimed tax holiday under section 80IB of the Act meant for SSIUs for eight consecutive years.
- During the year under consideration the taxpayer ceased to be a SSIU.
- During the assessment proceedings, the tax officer (TO) accepted the claim of the taxpayer. Subsequently an order by the Commissioner under section 263 of the Act, denied the claim of deduction as the taxpayer ceased to be a SSIU.
- During the course of appeals, the taxpayer contended that once the conditions stipulated under section 80IB of the Act are satisfied in the initial year, the taxpayer was eligible to the claim of deduction for 10 consecutive years. Furthermore, the taxpayer contended that the provisions relating to incentive were to be construed liberally to advance the objective of the provision.
- The Commissioner (Appeals) and the Income-tax Appellate Tribunal upheld the order of the TO.
- The High Court (HC) reversed the said orders and allowed the claim. The HC observed that merely because a small-scale unit stabilises early and makes further investments in its

business, the benefit under section 80IB could not be denied to such unit.

- Aggrieved, the Revenue preferred an appeal before the SC.

Issue before the SC

Once the conditions stipulated under section 80IB of the Act are fulfilled in the initial year, whether the benefit of deduction could be denied in the subsequent years, if the taxpayer ceases to be a SSIU (being one of the conditions).

SC ruling

- The statute does not indicate that the incentive provided has to continue for 10 consecutive years, irrespective of continuation of eligibility conditions. Applicability of incentive was directly related to eligibility.

¹ Civil Appeal No. 20854 OF 2017

- Each assessment year is separate, and thus, the incentive available for SSIU could not be availed by an undertaking that does not continue as a SSIU during the relevant period.
- Construing an incentive provision liberally does not mean ignoring conditions for exemption.
- In the present case, the scheme of the statute is clear that the incentive is applicable to a SSUI.
- The intention of legislature is not defeated by not allowing the incentive to a taxpayer that ceases to be a SSUI, even if it was eligible in the initial year.
- As the taxpayer did not retain the character of SSUI, it was not eligible for claiming the incentive meant for that category. Permitting incentive in such a case will be against the object of law.

The takeaways

While the decision has reaffirmed the position that formation

conditions are to be satisfied in the initial year only it has also held that a liberal reading of incentive provisions would not mean that stipulated conditions are to be ignored.

This will adversely affect a number of SSIU's whose claims are yet to be decided by the Courts.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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