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News Alert
20 September, 2012



Maintenance of separate books of accounts for tax holiday unit not a pre-requisite to avail deduction under section 80HH/80I of the Act

In brief

- The assessee, Bongaigaon Refinery and Petrochemical Ltd¹ is a public sector utility (PSU) engaged in refinery, petrochemical and polyester staple fibre business.
- During the year under consideration i.e. assessment year (AY) 1992-93, the assessee had two separate units claiming tax holiday as under:
 - Petrochemical unit
 - Polyester staple fibre unit

A third, refinery unit could not claim any deduction as the period for which such relief could be claimed had expired. Each of the above units, being separate undertakings were engaged in the production of separate and distinct types of products.

- The assessee had prepared consolidated financials for all the three undertakings and after working out the unit-wise net profits, claimed deduction under section 80HH and 80I of the Income-tax Act, 1961 (the Act) in respect of the profits of the petrochemical unit. The assessing officer (AO) while framing the assessment under section 143(3) of the Act allowed the claim on being satisfied with the unit-wise profit and loss account filed by the assessee during the course of assessment.

¹ CIT v. Bongaigaon Refinery and Petrochemical Ltd. [TS-695-SC-2012]

- However, subsequently, the Commissioner of Income-tax (the CIT) initiated re-assessment proceedings under section 263 of the Act on the grounds that the AO had allowed excess deduction under section 80HH and 80I of the Act based on the following grounds:
 - The net profit revealed in the audited profit and loss account for the AY 1992-93 was not supported by bifurcation of the profits amongst the said three units.
 - The basis of allocation of profits amongst the three units by the assessee, as shown in the computation of income, was not explained.
 - When separate accounts for each of the three units are not prepared, the only method which the assessee could have adopted to work out their net profits (unit-wise) had to be on the basis of proportion of turnover of the each of the three units.
- In response, the assessee argued that bifurcation of net profits (unit-wise) was placed before the AO. The AO had examined the material placed before him and after detailed investigation passed the order of assessment and, therefore, show-cause notice under section 263 of the Act was not maintainable. These arguments of the assessee were rejected by the CIT.
- On an appeal by the assessee, the Income-tax Appellate Tribunal (the Tribunal) concluded that there was no statutory requirement under section 80HH(5)/80I(7) of the Act to maintain unit-wise accounts. However, the Tribunal observed that *“considering the totality of facts and circumstances of the case, and to put an end to litigation, the assessee should submit unit-wise audited accounts and claim deductions under sections 80HH and 80I of the Act”*.
- The assessee appealed to the Gauhati High Court (HC). The HC, relying on its decision in the case of Technotive Eastern Pvt. Ltd², set aside the order of the Tribunal.

- Aggrieved by the order of the HC, the revenue filed an appeal with the Supreme Court (SC).

After noting the above facts, the SC held that in the absence of a statutory requirement to maintain separate books of accounts under the relevant provision of the Act, it was open to the assessee to maintain its accounts in a consolidated form as long as unit-wise profitability is ascertainable. Further, the SC remitted the matter to the AO to ascertain whether the assessee had correctly calculated its net profits for AY 1992-93 in respect of its petrochemical unit for the purposes of claiming deductions under section 80HH and 80I of the Act.

Conclusion

One of the important aspects highlighted by the SC is that so long as the assessee has requisite mechanism in place to determine unit-wise profits from the consolidated financial statements, the assessee would be eligible to claim tax holiday in relation to such profits even in the absence of separate books of accounts. The SC has, however, emphasised the requirement of an audited certificate to arrive at the unit-wise profits. This decision is a welcome decision for the assesses with multiple units currently under litigation regarding claim of deduction in absence of separate books of accounts.

² CIT v. Technotive Eastern Pvt. Ltd. [2002] 255 ITR 253 (Gauhati)

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