
Pr. Commissioner Of Income Vs Sandvik Asia Pvt. Ltd

Income Tax Appeal No. 679 Of 2018

Court: Bombay High Court

Date of Decision: Sept. 8, 2022

Acts Referred:

Income Tax Act, 1961 " Section 10A, 10B, 10B(7), 70, 80IA, 80IA(5), 80IA(8), 80IA(10), 80IB(6), 80IB(8), 80I(6), 92CA, 260A#Finance Act Of 2000 " Section 10B

Hon'ble Judges: Dhiraj Singh Thakur, J; Abhay Ahuja, J

Bench: Division Bench

Advocate: Suresh Kumar, J. D. Mistri, Atul K. Jasani

Final Decision: Dismissed

Judgement

Dhiraj Singh Thakur, J

1. This is an appeal under Section 260 A of the Income Tax Act, 1961 (The Act) against the order dated 14th June, 2017 passed by the Income Tax

Appellate Tribunal (ITAT), Pune. The subject matter of the appeal pertains to the assessment year 2005-06.

2. The following questions of law have been proposed for our consideration:

“(a) Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal (ITAT) was justified in holding

that no adjustment was merited in the hands of the assessee on account of payment of Management Fees to Associated Enterprise (AE) without

appreciating the fact that the assessee had failed to establish rendering of actual services commensurate with the payment made and also tangible

benefit derived by the assessee from receipt of such services?

(b) Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that services were rendered by the AE and were

also benefiting the assessee ignoring that in the para 20 of the remand report submitted by the TPO which was attached as per page 613 of the paper

book submitted by the assessee before the Tribunal, the TPO has demonstrated that the profitability of the assessee has been coming down and

quantum of management fees has been going up year after year clearly showing that management fees were not benefiting the assessee but hurting

the profitability of the assessee?

(c) Whether on the facts and circumstances of the case and in law, the ITAT was justified in deleting the addition of Rs.19,52,000/- to closing stock

being provision for obsolete inventory when the provision has been made on the basis of internal guidelines and not as per provisions of Income Tax

Act, 1961 which provides for valuation of closing stock either at cost or at market price?

(d) Whether on the facts and circumstances of the case and in law, the ITAT was justified in deleting the addition of Rs.19,52,000/- to closing stock

being provision for obsolete inventory by holding that the decision of the Hon'ble Supreme Court in the case of Rotork Controls Ltd. (314 ITR 62)

is applicable here, when the same relates to provision for warranty and hence misplaced?

(e) Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that the decision of the Hon'ble Supreme

Court in the case of Rotork Controls Ltd. (314 ITR 62) is applicable in this case when scientific basis of the valuation cost of inventory is not

conclusively established?

(f) Whether on the facts and circumstances of the case and in law, the ITAT was justified in allowing the losses suffered by newly set up EOU

against its other business income?

3. Briefly stated the material facts are as under:

The assessee company is a part of the Sandvik Group being a subsidiary of Sandvik AB Sweden. The company Sandvik AB Sweden is stated to be a

holding company of the assessee, besides a few others. The assessee company is engaged in the business of manufacturing of hard material

specialized tools which are used in drilling besides tubes, pipes and wires. Return of income was filed by the assessee for the assessment year 2005-

06. During the relevant assessment year, the assessee had made a provision for Finished Goods obsolescence for an amount of Rs. 19,52,000/-.

However, this amount was disallowed and added back to the total income of the assessee by the Assessing Officer (A.O.), who held that the closing

inventory had to be valued either at cost price or at market price.

In its return of income, the assessee adjusted the loss of its newly set up Export Oriented Unit (EOU) against the profits earned by its Non-EOU.

However the A.O. held that the set-off was impermissible on the ground that the income of an EOU was exempt under Section 10A / 10B and since

an exempt income could never be a part of the gross total income, the same, therefore, had to be excluded. Reference was also made to the

provisions of Sub-sections 6 and 8 of Section 80B to hold that an assessee could be allowed to carry forward and set off losses after the completion

of the ten years period.

4. In the return of income the assessee claimed that it had made a payment of Rs. 4,41,44,973/- on account of management services to Sandvik AB

Sweden. Following the mandate of Section 92CA, which empowers the A.O. to refer the matter to Transfer Pricing Officer (TPO) to determine the

arm's length price of the international transactions, the A.O., referred the matter to the TPO. The TPO, however, was of the view that there was

no evidence with regard to the receipt of services by the assessee and, therefore, made an adjustment of Rs. 4.41 crores.

The assessee in its appeal filed before the CIT(A), however, furnished additional evidence to prove that it had actually received management services

from Sandvik AB Sweden. The CIT(A) referred the additional evidence to the A.O., who in turn, referred the same to the TPO., who submitted a

remand report dated 01st April, 2013 on the additional evidence so referred, held that the evidence produced by the assessee did not show that any

service was received from Sandvik AB Sweden with whom the assessee had executed the agreement for providing management services.

5. The CIT(A) upon consideration of the remand report as also the terms and conditions of the agreement came to a conclusion that the view

expressed by the TPO was unsustainable, inasmuch as Sandvik AB Sweden was the "providing party" and it was the group companies, which

would actually provide management services through Sandvik AB Sweden. The CIT(A) also held, based upon the additional evidence that the

management services were rendered to the assessee. It was held that if the management services were indeed rendered to the assessee, then the

arm's length price of such payment could not have been Nil, as had been held by the TPO and that the TPO ought to have carried out an

exercise to determine the arm's length price of the payment on account of management services & accordingly proceeded to delete the addition

of Rs.4,41,44,973 based on the transfer pricing adjustment made by T.P.O.

6. The Tribunal in the appeal filed by the Revenue, upheld the Order of the CIT(A). It was held that the TPO in its remand report had not doubted that

the management services had not been rendered at all but had proceeded on the premises that the same were rendered by group entities of Sandvik

AB & not by Sandvik AB itself & further that the services rendered by the Sandvik group entities were in accordance with the agreement.

7. Since reference has been made to the Management Service agreement entered between Sandvik AB & the Respondent. We deem it appropriate

to refer to some of the clauses relied upon by the Tribunal.

(i) "Providing parties" (in the definition section) means "all or some of the Sandvik Companies, which provide management services".

(ii) Sandvik AB represents all the legal units working as "Commissionaires" as per the Swedish Legislation, meaning that the operations are

conducted on behalf of Sandvik AB & any profits or losses are included in the accounts of Sandvik & other legal units providing management services.

(iii) (Footnote 1) "Such Companies working as Commissionaires for Sandvik AB which are also providing services in accordance with this service

agreement & which therefore constitutes parts of the providing party in the context of this service agreement, are primarily AB Sandvik Coromant,

AB Sandvik Hard Materials, AB Sandvik Process Systems, AB Sandvik Steel & AB Sandvik Tamrock Tools. Also other units working as

commissionaires can constitute parts of the providing party.

A reading of the aforementioned clauses of the agreement make it quite clear that the management services could be rendered by all or any of the

Sandvik Companies & such operations would be on behalf of Sandvik AB.

8. In our opinion the Tribunal committed no error in deciding the issue in favour of the Respondent more so when the management service fees

received by Sandvik AB had been taxed by the A.O. in charge of assessment of Sandvik AB Sweden, as provider of such services.

9. On the issue of the addition of Rs.19,52,000 made by the A.O. on account of closing stock of obsolete inventory, the CIT(A) deleted the addition,

which was upheld by the Tribunal by following its Order passed in the case of the Respondent, in the Revenue Appeal for the Assessment Year 2004-

05. What was held by the Tribunal in the Order for the above said assessment year is as under:-

"43. We have heard the rival contentions and perused the record. The assessee was consistently following the method of accounting of its obsolete

inventory which has been consistently followed from year to year. Where there is recognition of the value of obsolete stock on a scientific basis, then

provision made on that basis cannot be objected to by the Assessing Officer as the Department has been accepting the consistent method followed by

the assessee both in the earlier and subsequent years. In view of the principle of consistency and in the absence of any evidence brought on record to

disbelieve the method followed by the assessee, we find no merit in the order of Assessing Officer in this regard. Further, even the Hon'ble

Supreme Court in Retort Controls India (P) Ltd Vs. CIT reported in 314 ITR 62(SC) had upheld the provision for warranty made by the said

assessee in its books of account and its admissibility being on scientific basis. Following the same similitude of reasoning, we uphold the order of CIT(A) in

this regard and dismiss the grounds of appeal No.2 and 4 raised by the Revenue.

10. We have noticed that an appeal preferred by the Revenue, being ITA No.50/2017, against the Order of the Tribunal for the assessment year

2004-05 was dismissed on the ground that the assessee had been consistently following the method of evaluating the stock which had been accepted

by the Revenue.

11. We cannot persuade ourselves to take a different view on an issue arising between the same parties, which has already been raised and rejected

by this Court, although for a different assessment year, more so when there is no change in the factual or legal matrix of the case.

12. The other issue arises for consideration is whether the losses sustained by hundred per cent EOU could be set off against the other business

income of the assessee. This issue, however, is no longer res integra. In Hindustan Lever Ltd. V/s. Dy. CIT {(2010) 325 ITR 102 (Bom.)}.

This Court observed thus:

“Plainly, Section 10B as it stands is not a provision in the nature of an exemption but provides for a deduction.

Section 10B was substituted by the Finance Act of 2000 with effect from April 1, 2001. Prior to the substitution of the provision, the earlier provision

stipulated that any profits and gains derived by an assessee from a 100 per cent export oriented undertaking, to which the section applies “shall not

be included in the total income of the assessee”. The provision, therefore, as it earlier stood was in the nature of an exemption. After the substitution

of Section 10B by the Finance Act of 2000, the provision as it now stands provides for a deduction of such profits and gains as are derived by a 100

per cent export oriented undertaking from the export of articles or things or computer software for ten consecutive assessment years beginning with

the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce. Consequently, it is evident that the basis

on which the assessment has sought to be reopened is belied by a plain reading of the provision. The Assessing Officer was plainly in error in

proceeding on the basis that because the income is exempted, the loss was not allowable. All the four units of the assessee were eligible under Section

10B. Three units had returned a profit during the course of the assessment year, while the Crab Stick unit had returned a loss. The assessee was

entitled to a deduction in respect of the profits of the three eligible units while the loss sustained by the fourth unit could be set off against the normal

business income. In these circumstances, the basis on which the assessment is sought to be reopened is contrary to the plain language of Section

10B.

This decision was also followed in Commissioner of Income- tax-10, Mumbai V/s. Galaxy Surfactants Ltd. [2012] 19 Taxmann.com 141 (Bom.)

Additionally what was observed in paragraph No. 6, read as under:

“...There is no provision in Section 10B by which a prohibition has been introduced by the Legislature in setting off of a loss which is

sustained from one source falling under the head of profits and gains of business against income from any other source under the same head. On the

other hand, there is intrinsic material in Section 10B to indicate that such a prohibition was not within the contemplation of the Legislature. Sub-section

(7) of Section 10B provides that the provisions of sub-section (8) and sub-section (10) of Section 80-IA shall, so far as may be, apply in relation to the

undertaking referred to in the Section as they apply for the purposes of an undertaking referred to in Section 80-IA.

A provision akin to sub-section (5) of Section 80-IA or for that matter akin to sub-section (6) of Section 80-I has not been introduced by the

Legislature when it enacted Section 10B. The fact that unabsorbed depreciation can be carried forward to a subsequent year does not militate against

the entitlement of the assessee to set off a loss which is sustained by an eligible unit against the income arising from other units under the same head

of profits and gains of business or profession. The Legislature not having introduced a statutory prohibition, there is no reason to deprive the assessee

of the normal entitlement which would flow out of the provisions of Section 70.Ã¢â‚¬â€œ

13. In view of the reasons indicated above, in our opinion no substantial questions of law arise in the present appeal, which is, accordingly, dismissed.