

(2013) 05 CAL CK 0004

Calcutta High Court

Case No: G.A. No. 670 of 2013 & ITAT No. 58 of 2013

CIT

APPELLANT

Vs

Kanoria Chemicals and
Industries Ltd.RESPONDENT

Date of Decision: May 8, 2013**Hon'ble Judges:** Tarun Kumar Das, J; Girish Chandra Gupta, J**Bench:** Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. The assessing officer reduced the profits shown by the assessee at a sum of Rs. 36,95,49,232 to a sum of Rs. 6,82,21,261 for the purpose of computing the deduction allowable u/s 80IA of the Income Tax Act on the basis of the following reasoning:

The market value means the price that such goods or services would ordinarily fetch in the open market. The assessee company itself has shown the sale to UPPCL and that is to be considered as market rate for the sale of power as it cannot be sold to any other person except the UPPCL. In the circumstances, it is considered that the rate per unit sale of inter unit transfer of power is to be restricted to the rate at which it is being transferred/sold to UPPCL. In this way, @ Rs. 24,43,159 the sale value of 162.089 unit will come to Rs. 39,60,09,288. The assessee has shown sale value of 162.089 unit on account of unit transfer (captive use) for Rs. 69,73,37,259. It means there is reduction of Rs. 30,13,27,971 in the sale value by restricting the sale rate of 162.089 unit @ Rs. 24,43,159. This reduction in sale value will reduce the profit by similar amount.

2. The assessing officer evidently ignored the explanation offered by the assessee which he has recorded in the assessment order which reads inter alia as follows:

As your honour asked why the sale price should not be restricted to the rate at which sold to UPPCL, in this connection we again draw your kind attention that

PGC-I was set up only for the generation and distribution of power to Renukoot Chemical Works Division and has charged the rate at which Renukoot Chemical Works Division would have purchased from SEB/UPPCL. It cannot be charged at the rate on which is sold to UPPCL because it was surplus power which had to be transfer because electricity cannot be stored. In this way co. has been able to get some gain.

In the year under consideration Power Generation Division-I transferred only 0.89 MU to UPPCL amounting to mere Rs. 21,74,412 that is 0.31% (negligible) of total sales of Rs. 69,95,11,671.

3. The Commissioner (Appeal) did not interfere in an appeal preferred by the assessee. The assessee approached the Tribunal. The Tribunal reversed the finding of the Assessing Officer for the following amongst other reasons:

We find that the price at which State Electricity Boards sells electricity to industrial consumers is representative of the price that electricity would ordinarily fetch in the open market and i.e. the price which has been adopted by the assessee for the electricity generated by the eligible business transferred to its other business for the purpose of computation of profits and gains of the eligible business in terms of section 80IA(8) of the Act. We find that the AO has taken figures from units of powers sold to UPPCL at 0.89 units @ Rs. 24,43,159 as against the price of assessee i.e. inter-unit transfer @ Rs. 43,02,187 per unit. We are of the view that the figures picked up by the AO from the orders of UPPCL does not represent the open market value of electricity.

4. The learned Tribunal also allowed the claim for deduction u/s 80IA following the judgment of this Court in the case of CIT v. Graphite India Limited. From the aforesaid brief narration, it would appear that the views adopted by the learned Tribunal, prima facie, are correct. We have enquired of Mr. Dudheria, learned Advocate appearing for the Revenue, as to on what basis does he dispute the correctness of the order passed by the learned Tribunal.

5. Mr. Dudheria submitted that he has placed all the facts and circumstances of the case. He has nothing more to do.

6. We have considered his submission and also considered the submissions advanced by learned Senior Advocate appearing for the Assessee and we are of the opinion that this appeal does not involve any substantial question of law and is, therefore, not admitted and thus rejected.