M/S POLYFLEX (INDIA) PVT. LTD. A

v.

THE COMMISSIONER OF INCOME TAX & ANOTHER

(Civil Appeal No. 8260 of 2022)

NOVEMBER 17, 2022 B

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Income Tax Act – s.80-IB – Deduction under – Appellant-assessee manufactured 'polyurethane foam,' which is used as automobile seat – The assessee filed its return of income for the assessment year 2003-04 and claimed deduction u/s. 80-IB – Assessing officer disallowed the deduction u/s. 80-IB of the Act – CIT(A) upheld the order of the assessing officer – However, ITAT set aside the assessment order as well as the order passed by the CIT(A) – High Court set aside the order passed by the ITAT and restored the order passed by the assessing officer denying the deduction/benefit claimed u/s.80-IB of the Act – On appeal, held: The assessee shall not be eligible for the benefit u/s. 80- IB of the IT Act if it is found that the articles and/or goods manufactured by the assessee do not fall and/or classifiable under Eleventh Schedule of the Act – The assessee is manufacturing polyurethane foam and supplying the same in different sizes/designs to the assembly operator, which ultimately is being used for car seats – Merely because the assessee is using the chemicals and ultimately what is manufactured is polyurethane foam and the same is used by assembly operators after the process of moulding as car seats, it cannot be said that the end product manufactured by the assessee is car seats/automobile seats – Polyurethane foam is an article classifiable in the Eleventh Schedule (entry 25), considering s. 80- IB(2)(iii), the assessee shall not be entitled to the benefit u/s. 80-IB – The High Court has rightly held so and has rightly set aside the order passed by the ITAT. C D E F

Dismissing the appeal, the Court G

HELD: 1. The assessee shall not be eligible for the benefit under Section 80- IB of the IT Act if it is found that the articles and/or goods manufactured by the assessee do not fall and/or classifiable under Eleventh Schedule. According to the revenue, H

the assessee is manufacturing polyurethane foam which falls under the Eleventh Schedule. However, it is the case on behalf of the assessee that the final product manufactured and sold by the assessee is automobile seats/car seats which is other than the manufacture of polyurethane foam. By the impugned judgment and order, the High Court has specifically observed and held that what is manufactured and sold by the assessee is polyurethane foam which is manufactured by injecting two chemicals, namely, Polyol and Isocyanate and the polyurethane foam which is manufactured by the assessee is used as ingredient for manufacture of automobile seats. The assessee is manufacturing polyurethane foam and supplying the same in different sizes/ designs to the assembly operator, which ultimately is being used for car seats. The assessee is not undertaking any further process for end product, namely, car seats. The polyurethane foam which is supplied in different designs/sizes is being used as ingredient by others, namely, assembly operators for the car seats. Merely because the assessee is using the chemicals and ultimately what is manufactured is polyurethane foam and the same is used by assembly operators after the process of moulding as car seats, it cannot be said that the end product manufactured by the assessee is car seats/automobile seats. There must be a further process to be undertaken by the very assessee in manufacturing of the car seats. No further process seems to have been undertaken by the assessee except supplying/selling the polyurethane foam in different sizes/designs/shapes which may be ultimately used for end product by others as car seats/automobile seats. In view of the above, when the articles/goods which are manufactured by the assessee, namely, polyurethane foam is an article classifiable in the Eleventh Schedule (entry 25), considering Section 80-IB(2)(iii), the assessee shall not be entitled to the benefit under Section 80-IB of the IT Act. [Paras 7, 8 & 10][133-F-H; 134-A-E, F-G]

Commissioner of Income Tax, Madras v. Vinbros and Company, **(2015) 14 SCC 483;** *Commissioner of Income Tax-I, Mumbai v. Hindustan Petroleum Corporation Limited*, **(2017) 15 SCC 254 : [2017] 7 SCR 631 – referred to.**

Case Law Reference

[2017] 7 SCR 631	**referred to**	**Para 3.8**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8260 of 2022.

From the Judgment and Order dated 25.02.2014 of the High Court of Karnataka at Bangalore in ITA No. 623 of 2007.

Preetesh Kapur, Sr. Adv., Ms. Sheena Taqui, Ms. Radhika Gupta, Dhvanit Chopra, Ms. Akansha Saini, Shiv Vinayak Gupta, Mrs. Bina Gupta, Advs. for the Appellant.

Balbir Singh, ASG, Arijit Prasad, Ashok Kumar Panda, Sr. Advs., Rupesh Kumar, Ms. Monica Benjamin, Prahlad Singh, Devashish Bharukha, Raj Bahadur Yadav, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.02.2014 passed by the High Court of Karnataka at Bengaluru in Income Tax Appeal No. 623/2007, by which the High Court has allowed the said appeal preferred by the Revenue, the assessee has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That the appellant – assessee is having a manufacturing unit at Pune in which the appellant – assessee is manufacturing 'polyurethane foam,' which is ultimately used as automobile seat. The assessee filed its return of income for the assessment year 2003-04 and claimed deduction under Section 80-IB of the Income Tax Act (for short, 'IT Act'). The assessing officer disallowed the deduction under Section 80-IB of the IT Act by observing that the nature of the business of the assessee is "manufacturer of polyurethane foam seats" which falls under entry 25 to the Eleventh Schedule of the IT Act and therefore the assessee shall not be entitled to deduction under Section 80-IB. However, it was the case on behalf of the assessee that different sizes of polyurethane foam are used as automobile seats and therefore the end product can be said to be the automobile seat which is different than the polyurethane foam and therefore the same does not fall under entry 25 to the Eleventh Schedule of the IT Act. However, the assessing officer did not accept

A the same by observing that as 'polyurethane foam' is made of Polyol and Isocyanate and other components, the deduction under Section 80-IB of the IT Act cannot be given to the assessee-company as Section 80-IB(2)(iii) states that the benefit of deduction under the said section cannot be given if the assessee manufactures or produces any article or thing specified in the list in the Eleventh Schedule of the IT Act.

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2.1 The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) (for short, 'CIT(A)) against the assessment order. The CIT(A) upheld the order of the assessing officer. The CIT(A) observed that the two chemicals, namely, Polyol and Isocyanate used in the manufacture of polyurethane foam seats assemblies were the basic ingredients of polyurethane foam and therefore the case would squarely fall in what is specified in the Eleventh Schedule.

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2.2 Against the order of the CIT(A), the Assessee filed an appeal before the Income Tax Appellate Tribunal (for short, 'ITAT'). The ITAT set aside the assessment order as well as the order passed by the CIT(A) and allowed the appeal filed by the assessee by observing that polyurethane foam was neither produced as a final product nor is an intermediate product nor is a by-product by the assessee and the same was used as automobile seat and therefore does not fall within entry 25 to Eleventh Schedule of the IT Act and therefore the assessee shall be entitled to claim deduction under Section 80-IB of the IT Act. The order passed by the ITAT has been set aside by the High Court, by the impugned judgment and order specifically observing that what is manufactured by the assessee is polyurethane foam in different sizes/designs and there is no further process undertaken by the assessee to convert it into automobile seats and therefore what is manufactured by the assessee is polyurethane foam falling in entry 25 to Eleventh Schedule and therefore the assessee shall not be entitled to deduction claimed under Section 80-IB of the IT Act. Consequently, the High Court has allowed the appeal preferred by the revenue and has quashed and set aside the order passed by the ITAT and has restored the assessment order denying the deduction claimed under Section 80-IB of the IT Act. The impugned judgment and order passed by the High Court is the subject matter of present appeal.

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3. Shri Preetesh Kapur, learned Senior Advocate has appeared on behalf of the assessee and Shri Balbir Singh, learned Additional Solicitor General of India has appeared on behalf of the revenue.

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3.1 Shri Preetesh Kapur, learned counsel appearing on behalf of the assessee has vehemently submitted that when on appreciation of the entire evidence on record and after considering the process undertaken by the assessee and after considering the fact that the end product was automobile seat, the ITAT allowed the appeal and held that the assessee is entitled to claim deduction under Section 80-IB of the IT Act, the same was not required to be interfered with by the High Court.

3.2 It is submitted that the relevant pre-condition for the assessee to be eligible for the benefit under Section 80-IB of the IT Act in the present case is that the final product manufactured and sold by the assessee ought not to have an article classifiable in the Eleventh Schedule. It is submitted that the final product manufactured by the assessee is not polyurethane foam, but automobile seat in which polyurethane foam is used. It is submitted that the learned ITAT returned a categorical finding of fact that the final product manufactured by the assessee is automobile seat in which polyurethane foam is used. It is submitted that if that be so, the manufactured item shall not come within any of the entry of Eleventh Schedule and therefore the assessee shall be entitled to deduction under Section 80-IB of the IT Act.

3.3 It is submitted that in fact the assessee received orders for supply of automobile seats and even paid the sales tax as automobile seats. It is submitted that the final product is commercially distinct from polyurethane foam.

3.4 It is submitted that the High Court ought to have appreciated that in fact in assessee's own case in respect of the very same product, in relation to classification for the purposes of payment of excise duty, the CEGAT has observed that the product manufactured by the assessee can never be said to be known in trade parlance as articles of polyurethane foam and hence cannot be classified as polyurethane foam. It is submitted that the order passed by the CEGAT had attained finality. It is submitted that therefore once the articles/goods manufactured cannot be classified as polyurethane foam under the Excise Act, the same cannot be treated and/or considered as polyurethane foam under the IT Act.

3.5 It is submitted that in the present case the Tribunal noted in detail the elaborate manufacturing process undertaken by the assessee whereby the final product, namely, car seats are manufactured. It is submitted that after elaborating the process, the Tribunal has returned a

finding of fact that the said process clearly results in the emergence of a final product which is commercially distinct and different from polyurethane foam and is known in the market as car seats and not as polyurethane foam.

3.6 It is submitted that the High Court has reversed the decision of the ITAT without even noticing the above process or the CEGAT's order and also without giving any reason as to how the above finding of fact was perverse. It is submitted that at no stage the department has denied that the final product sold by the assessee is the car seat.

It is further submitted that it is a settled position of law that the moment a commercially distinct commodity, known in trade parlance by a different name and having a different use, comes into being, it ceases to be classifiable as the raw material/ingredient from which it is made.

3.7 It is further submitted by Shri Preetesh Kapur, learned counsel appearing on behalf of the assessee that entry 25 of Eleventh Schedule specifically talks about "latex foam sponge and polyurethane foam" and it does not talk about the "latex foam sponge and polyurethane foam preparations" and/or items and/or articles made from the aforesaid foam. It is submitted that whenever the legislature wanted, there is a specific entry like entry 2 and 3 in which it is specifically mentioned "tobacco and tobacco preparations and cosmetics and toilet preparations". It is submitted therefore that when the final product is automobile seat and the polyurethane foam loses its characteristics which is used as ingredient, the assessee shall be entitled to deduction under Section 80-IB of the IT Act.

3.8 Making the above submissions and relying upon the decisions of this Court in the cases of ***Commissioner of Income Tax, Madras v. Vinbros and Company, (2015) 14 SCC 483*** and ***Commissioner of Income Tax-I, Mumbai v. Hindustan Petroleum Corporation Limited, (2017) 15 SCC 254***, it is prayed to allow the present appeal.

4. Shri Balbir Singh, learned ASG appearing on behalf of the revenue has vehemently submitted that what is manufactured by the assessee is polyurethane foam in different shapes/designs and what is sold is different sizes/designs of polyurethane foam which ultimately is being used by the assembly operator for manufacturing of car seats/ automobile seats and the same is used as ingredient and after the process of moulding etc., the seats are manufactured. It is submitted that

therefore, by no stretch of imagination, it can be said that the assessee is manufacturing and selling automobile seats. It is submitted that what is manufactured and sold is the polyurethane foam which is manufactured by using two chemicals Polyol and Isocyanate.

4.1 It is submitted that the High Court has specifically observed and held that except manufacture of polyurethane foam which is manufactured by injecting two chemicals, there is no further process undertaken by the assessee. It is submitted that as rightly observed by the High Court the assessee produces the polyurethane foam seats which are used for making end product to be fixed in different vehicles. It is submitted that the assessee as such is not manufacturing the end product, namely, automobile seats to be fixed in the vehicles. For the aforesaid, Shri Balbir Singh, learned ASG has taken us to the findings recorded by the CIT(A) and has submitted that after considering the detailed process undertaken by the assessee, the CIT(A) opined that the assessee is not the manufacturer of the car seats and what is manufactured is the polyurethane foam which is being sold in different designs/shapes/sizes.

4.2 It is submitted that therefore as the assessee is manufacturing polyurethane foam which falls under entry 25 of the Eleventh Schedule and therefore considering Section 80-IB(2)(iii), the assessee shall not be entitled to deduction under Section 80-IB of the IT Act. It is submitted that therefore the impugned judgment and order passed by the High Court is not required to be interfered with.

5. We have heard learned counsel for the respective parties at length.

6. The short question which is posed for the consideration of this Court is, "whether the assessee is eligible for the benefit under Section 80-IB of the IT Act?"

7. The assessee shall not be eligible for the benefit under Section 80-IB of the IT Act if it is found that the articles and/or goods manufactured by the assessee do not fall and/or classifiable under Eleventh Schedule. According to the revenue, the assessee is manufacturing polyurethane foam which falls under the Eleventh Schedule. However, it is the case on behalf of the assessee that the final product manufactured and sold by the assessee is automobile seats/car seats which is other than the manufacture of polyurethane foam.

A 8. By the impugned judgment and order, the High Court has specifically observed and held that what is manufactured and sold by the assessee is polyurethane foam which is manufactured by injecting two chemicals, namely, Polyol and Isocyanate and the polyurethane foam which is manufactured by the assessee is used as ingredient for manufacture of automobile seats. The assessee is manufacturing B polyurethane foam and supplying the same in different sizes/designs to the assembly operator, which ultimately is being used for car seats. The assessee is not undertaking any further process for end product, namely, car seats. The polyurethane foam which is supplied in different designs/ sizes is being used as ingredient by others, namely, assembly operators C for the car seats. Merely because the assessee is using the chemicals and ultimately what is manufactured is polyurethane foam and the same is used by assembly operators after the process of moulding as car seats, it cannot be said that the end product manufactured by the assessee is car seats/automobile seats. There must be a further process to be undertaken by the very assessee in manufacturing of the car seats. No D further process seems to have been undertaken by the assessee except supplying/selling the polyurethane foam in different sizes/designs/shapes which may be ultimately used for end product by others as car seats/ automobile seats.

E 9. So far as the reliance placed upon the decisions of this Court in the cases of ***Vinbros and Company (supra)*** and ***Hindustan Petroleum Corporation Limited (supra)***, relied upon by the learned counsel appearing on behalf of the assessee is concerned, the same shall not be applicable to the facts of the case on hand and/or the same shall not be of any assistance to the assessee in view of the findings recorded F hereinabove.

10. In view of the above when the articles/goods which are manufactured by the assessee, namely, polyurethane foam is an article classifiable in the Eleventh Schedule (entry 25), considering Section 80-IB(2)(iii), the assessee shall not be entitled to the benefit under Section G 80-IB of the IT Act. The High Court has rightly held so and has rightly set aside the order passed by the ITAT and has rightly restored the order passed by the assessing officer denying the deduction/benefit claimed under Section 80-IB of the IT Act. We are in complete agreement with the view taken by the High Court and that of the assessing officer, confirmed by the CIT(Appeals).

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11. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs. A

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal dismissed.