Income Tax Appellate Tribunal - Pune
Deputy Commissioner Of Income Tax vs V.M. Jog Construction Ltd. on 8 September, 2003
Equivalent citations: (2003) 81 TTJ Pune 856
Bench: P Jagtap, N Vasudevan
ORDER P.M. Jagtap, A.M.

1. This appeal is preferred by the Revenue against the order of learned CIT(A)-I, Pune dt. 19th Dec., 1996 whereby he held that 70 per cent of the value of 'TIFR' contract executed by the assessee amounted to manufacturing for the purpose of deduction under Section 80-I.

2. The relevant facts of the case giving raise to this appeal are that the assessee-company was awarded a contract by the Tata Institute of Fundamental Research ("TIFR' in short) for supply, fabrication, erection and commissioning of 15 nos. of dish antennas having 45 mtrs. of diameter at it's site situated at Narayangaon, near Pune. In its return of income, the assessee-company declared a net profit of Rs. 28,63,192 earned from the execution of the said contract in the year under consideration and claimed a deduction of Rs. 7,15,798 being 25 per cent of the said profit under Section 80-I. During the course of assessment proceedings, it is explained on behalf of the assessee-company that erection and fabrication of dish antenas is an industrial activity and therefore profit earned from such activity is eligible for deduction under Section 80-I. The AO however was of the opinion that the execution of such contact cannot be construed as an industrial undertaking within the meaning of Section 80-HH(2) and erection or fabrication of dish antennas cannot be termed as manufacture of any article or thing. He therefore disallowed the claim of the assessee for deduction under Section 80-I relying on the decision of Hon'ble Supreme Court in the case of CIT v. N.C. Budharaja & Co. and Anr. (1993) 204 ITR 412 (SC). The matter was carried before the learned CIT(A) and during the course of appellate proceedings before him, it was submitted on behalf of the assessee-company that it had constructed a factory shed of about 2000 sq.ft. for executing the aforesaid contract of supply, fabrication, erection and commissioning of 15 Nos. of dish antennas of 45 mtrs. diameter. It was also submitted that various equipments such as cranes, vertical lathe machine, pipe cutting machine, etc. were engaged by the assessee-company in the said workshop and during the execution of contract, 250 KVA power was supplied by TIFR. A copy of relevant contract executed with TIFR was also filed by the assessee-company before the learned CIT(A) in order to point out the scope of the contract which included, inter alia, supply of Azimuth indoor assembly, Azimuth cable, elevation cable wrap, feed cable wrap and number of other items. It was contended on behalf of the assessee-company that all these items were manufactured in the workshop set up at Narayangaon site since it was found convenient to set up such workshop at the site rather than manufacturing them with the existing facilities and transport them for further erection at the site. It was also submitted that the scope of the said contract required manufacturing process of very high precision involving quality machining of heavy items. The contention of the assessee-company before the learned CIT(A) therefore was that the contract obtained by it from TIFR was an engineering contract which included manufacturing as one of the main activities. In support of its case, the assessee-company also filed a copy of notification issued by the Central Board of Excise and Customs exempting all excisable goods manufactured at site falling under the head of Central Excise Tariff Act and it was submitted that in the absence of such exemption, the assessee-company would have been required to pay excise duty which is sufficient to

show that the activity carried on by the assessee-company for execution of TIFR contract was a manufacturing activity, After considering the submissions made on behalf of the assessee-company in the light of the material available on record, the learned CIT(A) held that the execution of TIFR contract by the assessee-company was mainly a manufacturing activity eligible for deduction under Section 80-I. However considering that the scope of the said contract was inclusive of erection and commissioning of dish antennas in addition to supply & fabrication of the same, he held that 70 per cent of the agreed contract value could be considered to be for manufacturing activities and accordingly directed the AO to allow deduction to the assessee-company under Section 80-I. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us.

3. The learned Departmental Representative submitted before us that the execution of TIPR contract by the assessee-company involved erection and fabrication of 15 Nos. of dish antennas and having regard to the scope of work of the said contract, the AO was right in treating the said activity to be not a manufacturing activity relying on the decision of the Hon'ble Supreme Court in the case of CIT v. N.C. Budhiraja & Co. (supra). He contended that such an activity involving erection and fabrication work cannot be considered as manufacturing or production of article for the purpose of allowing deduction under Section 80-I. He also contended that the words used in the relevant provisions of Section 80-I are specific and as held by the Hon'ble Supreme Court in the case of CIT v. N.C, Budhiraja & Co. (supra), the object of introduction of the said provisions in the statute has to be gathered from the reasonable interpretation of the plain language used by the legislature. He further contended that in order to be eligible for deduction under Section 80-I, the assessee must be engaged in the activity of manufacturing or producing an article or thing and any ancillary or incidental activities cannot be considered as manufacturing or production of article or thing so as to claim benefit of deduction under Section 80-I His contention was that the main activity of the assessee should be that of manufacture or production of an article or thing so as to be eligible for deduction under Section 80-I and the execution of TIFR contract by the assessee-company in the present case being not mainly of such nature, the learned CIT(A) was not justified in allowing the claim of the assessee-company for deduction under Section 80-I. In support of this contention, he relied on the decision of the Hon'ble Supreme Court in the case of Builders Association of India v. Union of India and Ors. (1994) 209 ITR 877 (SC) and that of Hon'ble Kerala High Court in the case of CIT v. Asian Techs Ltd.

4. The learned counsel for the assessee at the outset invited our attention to the relevant portion of written submission filed before the learned CIT(A) wherein the scope of TIFR contract and nature of work involved was explained by the assessee as under :

"The appellant-company was awarded a contract by Tata Institute of Fundamental Research (TIFR) for fabricating and erecting 15 nos. of dish antennas having 45 mtr. diameter (copy of the contract enclosed) TIFR is creating world's largest ever Radio Telescope near Narayangaon, Pune, which has an objective of astrophysical nature and could be used for various other purpose as the technology advances. This radio telescope consists of a cluster of 30 fully steerable parabolic dishes, each having a diameter of 45 mtrs. Of the 30 antennas, TIFR has awarded our company a job of supply, fabrication, erection and commissioning of 15 nos. of antennas. Each antenna is made up of various components and assemblies such as azimutth bearing bottom support ring, slewing bearing, yoke

assembly, cradle assembly, hub, parabolic radial frames, reems, quadripods, feed assembly, elevation bearing arrangements, azimuth bearing arrangements, elevation and azimuth lock assembly, bull-gear arrangement, cable wrap assembly etc. All these assemblies are fabricated/machined out of structural tubular steel, structural steel plates, other structural sections. Certain assemblies are required in large number per antenna, such as parabolic radio frames are 16 in numbers, rirn structures are 16 in numbers, quadripods are 4 in numbers etc. As these assemblies were to be fabricated, for totally 15 antennas for which the job was awarded to the company, there was requirement of production line system to be adopted for accurate and precision fabrication/assembly. The total weight of the dish antenna is approx. 82 tonnes excluding a counter-weight of 34 tonnes which is used for balancing the antenna during elevation moments. Entire dish antenna is mounted on a 12 mtr. high RCC tower approximately 5 mtr. is diameter at the top. Construction of these RCC towers was awarded by TIFR to another contractor and was not within the scope of the company. The entire system has a large quantum of electronic gadgetory for receiving the radio signals from outer space and conversion to light waves, transmission to control laboratory through optical fibre cables, reconversion to electro-magnetic waves and final recording and studies by use of advance models of computers.

From the above, it will be very clear that the contract is really a mechanical engineering contract involving fabrication, erection and commissioning and has no content of civil engineering work. As the 15 antennas are same type, the production work is also of repetitive nature where the same items are to be produced for 15 antennas and hence one can conclude that the activity of supply, fabrication, erection and commissioning of antennas for TIFR is mechanical engineering activity.

For better understanding it may be mentioned that the function of these antennas is something similar to the TV dish antennas which we see mushrooming all over except that these are very much larger in size and shape and having different functional role i.e., of radio astronomy. As the antennas has to receive radio waves from outer space, the designed parabolic shape of the antenna is of great importance and to achieve such shape, the manufacturing process are to be of very high precision and quality. Some of the components are measured in microns (1000th of a millimeter)."

5. The learned counsel for the assessee submitted that the scope of work involved in the execution of TIFR contract thus included supply, fabrication, erection and commissioning of 15 nos. of dish antennas. He submitted that each dish antenna was made up of various components and assemblies as explained before the learned CIT(A) and all these components were manufactured in workshop set up at Narayangaon site. According to him, the major work involved in the execution of TIFR contract was fabrication and supply of dish antennas and the AO was not right in rejecting the claim of the assessee for deduction under Section 80-I merely because work of erection and commissioning of the said dish antennas was also entrusted to the assessee-company. He contended that for claiming deduction under Section 80-I, the requirement is that an industrial undertaking must manufacture or produce articles or things and it is not necessary that such item should be an item saleable in the open market for claiming deduction under Section 80-I. In support of this contention, he relied on the decision of this Bench in the case of Dy. CIT v. Jain Irrigation System Ltd. rendered vide its order, dt. 31st Oct., 2000 in ITA No. 656/Pn/1992 wherein it was held that merely because an item is made according to the individual requirement of each customer, it cannot

be said that item emerged is not an article or thing. To be an article or thing, it must be a material object without life and inanimate object as defined in Webster Dictionary. He pointed out that the Tribunal in the said case ultimately held that an activity of designing, fabricating, assembling and installing of drip/sprinkle system of irrigation amounts to manufacture and consequently the assessee is entitled to deduction under Sections 80-HH and 80-I He also invited our attention to a copy of TIFR contract placed at page Nos. 28 to 52 of his paper book and explained the scope of work with reference to description given therein. He further invited our attention of order No. 10/90 issued by the Ministry of Finance, Govt. of India exempting the execution of project/contract executed by the assessee-company for TIFR from excise duty. His submission in this regard was that but for the exemption granted by the Govt. of India, the said activity of the assessee-company would have been liable to excise duty which again supports the assessee's claim that the same was a manufacturing activity. He contended that the execution of TIFR contract by the assessee-company thus mainly involved manufacturing activity and the learned CIT(A) was fully justified in directing the AO to allow deduction in respect of the same under Section 80-I. In support of this contention, he relied on the decision of the Hon'ble Bombay High Court in the case of CIT v. Tata Locomotive & Engineering Co. Ltd. (1968) 68 ITR 325 (Bom) as well as that of Madras Bench of Tribunal in the case of Shanthi Diamonds v. ITO (1990) 37 TTJ (Mad) 54 : (1990) 33 ITD 619 (Mad) and Pune Bench of Tribunal in the case of Indocan Engg. System (P) Ltd. v. Dy. CIT (1997) 60 ITD 649 (Pune).

6. In the rejoinder, the learned Departmental Representative submitted that the position on the issue under consideration has undergone sea-change with the decision of the Hon'ble Supreme Court in the case of CIT v. N.C. Budhiraja & Co. (supra) and as held by the Hon'ble Delhi High Court in the case of Bhagat Construction Co. (P) Ltd. v. CIT. The execution of works contract cannot be considered as manufacturing activity for the purpose of deduction under Section 80-I He contended that the contract awarded by the TIFR in the present case was purely works contract and not supply order and this being so, the learned CIT(A) was not correct directing the AO to allow deduction claimed by the assessee-company under Section 80-I.

7. We have considered the rival submissions and also perused the relevant material on record. We have also gone through the decisions relied upon by the learned representatives of both the sides in support of their stand. As regards the decisions cited by the learned Departmental Representative, it is observed from a careful perusal of the entire text of the said decisions that the same are distinguishable on facts and are of no help to the Revenue's case. In the case of CIT v. N.C. Budhiraja & Co. (supra) heavily relied upon by the Revenue, the assessee had constructed a dam and considering that the expressions 'manufacture' and 'production' are normally associated with movables-articles and goods, big and small-but they are never employed to denote construction activity of the nature involved in construction of a dam or a building, the Hon'ble Supreme Court held that the work undertaken by the assessee of construction of a dam could not be characterized as manufacture or production. The Hon'ble apex Court also observed that the word 'articles' used in Section 80HH(2)(i) cannot comprehend or take within its ambit a dam, a bridge, a building, a road, a canal and so on and accordingly disallowed the claim of the assessee in that case for deduction under Section 80HH on income earned from the activity of construction of a dam, In the present case, the assessee-company, however, had executed a contract involving supply, fabrication and erection of dish antennas and such 'dish antenna' being a movable item, constituted 'article' or

'thing' as explained by the Hon'ble Supreme Court in the case of CIT v. N.C. Budhtiaja & Co. (supra) for the purpose of Section 80-I. It is worthwhile to note here that the Hon'ble apex Court in the case of CIT v. N.C. Budhiraja & Co. (supra) did not express any opinion on the question of what would be the position if the assessee had claimed the benefit under Section 80HH on the value of the articles manufactured or produced which were used/consumed in the construction of the dam.

8. In this context, the learned Departmental Representative had relied on the decision of Hon'ble Delhi Court in the case of Bhagat Construction Co. (P) Ltd. v. CIT (supra) wherein it was observed by their lordships of Delhi High Court that an assessee may be engaged in the activity of building work as a contractor and in the process of completing that work some manufacturing may be done at interim stages, but the product of such manufacturing activity would not result in the production of goods since such products would be consumed by the assessee in its building work. The Hon'ble Delhi High Court therefore held that the assessee engaged in civil construction work was not an industrial undertaking as it had not manufactured and supplied any intermediary product and accordingly held the same to be not entitled for investment allowance. It is pertinent to note here that the said decision was rendered by the Hon'ble Delhi High Court in the context of deduction on account of investment allowance under Section 32A whereas the issue under consideration in the present appeal relates to deduction under Section 80-I, which by itself provides for deduction in respect of intermediary products manufactured by the assessee as per the specific provisions contained in Sub-section (8) of Section 80-I which are reproduced below :

"Section 80-I(8) : Where any goods held for the purposes of the business of the industrial undertaking or the hotel or the operation of the ship (or the business of repairs to ocean-going vessels or other powered craft) are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the business of the industrial undertaking or the hotel or the operation of the ship (or the business of repair to ocean-going vessels or other powered craft) and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the business of the industrial undertaking or the hotel or the operation of the ship (or the business of repairs to ocean-going vessels or other powered craft) does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship (or the business of repair to ocean-going vessels or other powered craft) shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date :

Provided that where, in the opinion of the (AO), the computation of the profits and gains of the industrial undertaking or the business of the hotel or the operation of the ship (or the business of repair to ocean-going vessels or other powered craft) in the manner hereinbefore specified presents exceptional difficulties, the AO may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation : In this sub-section, 'market value', in relation to any goods, means the price that such goods would ordinarily fetch on sale in the open market."

From a perusal of the aforesaid provisions, it is evident that if any goods manufactured by the assessee in his industrial undertaking are transferred to any other business carried on by the assessee, the profits & gains on such goods would be eligible for deduction under Section 80-I having regard to its market value. It is thus clear that the decision of Hon'ble Delhi High Court in the case of Bhagat Construction Co. (P) Ltd. v. CIT (supra) rendered in the context of deduction on account of investment allowance under Section 32A is not applicable to the present case involving the issue relating to deduction under Section 80-I.

9. In any case, the contract awarded by the TIFR to the assessee-company involved supply, fabrication, erection and commissioning of 15 nos. of dish antennas and having regard to the scope of work defined in the said contract, such dish antenna was not just an intermediary product but was a final product and manufacturing of such dish antennas comprising of various components as explained by the assessee in the written submission filed before the learned CIT(A) in a separate unit set up at the site, was a major activity involved in the execution of the said contract. It is worthwhile to note here that the construction of the RCC towers used for erection of the said dish antennas was awarded by the TIFR to another contractor and the work for erection and commissioning of the dish antennas alone was entrusted to the assessee-company which was incidental or ancillary to the main work of supply and fabrication of dish antennas. In the case of Dy. CIT v. Jain Irrigation System (supra), this Bench has held the activity of designing, fabricating, assembling and installing of drip/sprinkler system of irrigation to be manufacturing activity for the purpose of claiming deduction under Section 80HH and 80-I and having regard to the facts of the present case arising from the material available on record, we are of the opinion that the said decision of the Tribunal is squarely applicable to the present case. Even the decision of this Bench in the case of Indocan Engg. System (P) Ltd. v. Dy. CIT (supra) cited by the learned counsel for the assessee has a direct application to the facts of the present case since a similar issue relating to deduction under Section 80-I was involved in the said case and the assessment year under consideration was also 1990-91. In the said case, the assessee-company was carrying on the business of designing, manufacturing and fabricating water treatment plant and erecting the same at customer's site according to their specifications through subcontractor. For this purpose, various components were procured and fabrication was done under supervision of assessee's engineers and deduction claimed by the assessee under Section 80-I in respect of the said activity was held to be allowable by the Tribunal observing that the assessee's business was of manufacturing and fabricating of plant and such plant being an article or thing as mentioned in Section 80-I, the assessee-company was entitled for deduction under Section 80-I. In our opinion, the aforesaid two decisions of this Bench are directly applicable to the facts of the present case and respectfully following the same, we hold that the execution of TIFR contract in the present case mainly involved manufacture of dish antennas and the same being article or thing within the meaning of Section 80-I(2)(iii), the assessee was entitled for deduction under Section 80-I. The circular issued by the Government specifically granting exemption to the contract/project executed by the assessee for TIFR from excise duty further supports the assessee's case. We, therefore, find no infirmity in the impugned order of the learned CIT(A) directing the AO to allow such deduction and upholding the same, we dismiss this appeal filed by the Revenue.

10. In the result, the appeal of the Revenue is dismissed.