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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 44/2020

THE PR. COMMISSIONER OF INCOME TAX -6

.....Appellant

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary & Ms. Nivedita, Advs

versus

MAHLE FILTERS SYSTEMS (INDIA) LTD

.....Respondent

Through: Mr. Neeraj Jain, Mr. Aniket D. Agrawal, Mr. Saksham Singhal & Mr. Abhishek Singhvi, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 11.09.2024

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ["**Tribunal**"] dated 04 July 2019 and posits the following questions of law for our consideration:-

> "2.1 Whether on the facts and in the circumstances of the case, ld. ITAT has erred in upholding the decision of the ld. CIT(A) in deleting the disallowance of Rs.2,96,26,413/- under section 80IC ignoring the fact that transaction was sham and purpose of following the circuitous route of first merging M/s Mahle Filter System (India) Ltd. with M/s Purolator India Ltd. and then changing the name of the company to M/s Mahle Filters Systems (India) Ltd. was to get the benefit of deduction under section 80IC?
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> 2.2 Whether the ld. ITAT erred in upholding the decision of ld. CIT(A) in deleting the disallowance of Rs.64,23,771/- for the purpose of calculating deduction under section 80IC, ignoring the fact that income disallowed by the Assessing officer for the purpose of calculating deduction under section 80IC include interest on loan to employees, foreign exchange gain, tooling income and sale of scrap and these income don't have direct nexus to the export business?

2.3 Whether on the facts and in the circumstances of the case, ld. ITAT has erred in upholding the decision of ld. CIT(A) in deleting the disallowance of Rs.1,25,45,326/- under section 35, 35AC and 35DDA ignoring the fact that expenses had been incurred by the amalgamating company and not by the Assessee?

2.4 Whether on the facts and in the circumstances of the case. ld. ITAT has erred in further restricting disallowance restricted by ld. CIT(A) under section 14A read with Rule 8D to Rs.20,995/- as against Rs.88,577/- restricted by ld. CIT(A) ignoring the fact that even if no exempted income is earned in the particular year, the expenses incurred towards the investment is proportionally disallowable?

2.5 Whether on the facts and in the circumstances of the case. ld. ITAT has erred in upholding the decision of ld. CIT(A) in deleting the disallowance of Rs.32,34,071/- on account of royalty payments ignoring the fact that expenses incurred by the Assessee are for enduring benefit and are thus capital in nature?

2.6 Whether on the facts and in the circumstances of the case, ld. ITAT has erred in deleting the additions upheld by the ld. CIT(A) made by the Assessing officer on the basis of treating 'income from house property' declared by the Assessee to 'income from other sources' owing to the fact that the Assessee has entered into 'lease and License agreement' not 'lease rental agreement'?

2.7 Whether on the facts and in the circumstances of the case, ld ITAT has erred upholding the decision of ld. CIT(A) in enhancing the deduction under section 80IC as computed by the ld. Assessing officer from Rs.2,64,42,825/- to Rs.2,96,26,413/- ignoring the fact that Assessee has not transferred the expenditure incurred on sale of these stocks to Parwanoo Unit?"

2. We note that by our order dated 26 September 2023 we had closed proposed question 2.4 as it was conceded before us that the same is covered against the Revenue by the judgment rendered in **Principal Commissioner of Income Tax vs. Caraf Builders and Constructions Pvt. Ltd**. [2018 SCC OnLine Del 12876]. That leaves us to consider the rest of the proposed questions.

3. In so far as proposed questions 2.1 and 2.7 and relating to deduction under Section 80IC of the Income Tax Act, 1961 ["**Act**"] are concerned, we observe that the Tribunal has held as follows:-

"23. We are of the considered opinion that the Assessing Officer has not appreciated the underlying facts in issue in true perspective. Correct facts are that the manufacturing unit at Parwanoo, Himachal Pradesh was eligible for deduction u/s 80IC of the Act. The said undertaking belongs to M/s Purolotor India Ltd. The Assessing Officer proceeded by wrong assumption of facts that M/s Purolator India Ltd got amalgamated with M/s Mahle Filter Systems [India] Ltd whereas the fact of the matter is that Mahle Filter systems [India] Ltd was the transferor company and amalgamated with M/s Purolator India Ltd which was the transferee company by order of the Hon'ble High Court of Delhi in the matter of Scheme of Amalgamation of Company Petition No. 53/2008 connected with Company Application No. 172/2007. Subsequently, the name of M/s Purolator India Ltd was changed to M/s Mahle Filter Systems [India] Ltd.

24. According to the Id. DR, this is nothing but a sham transaction to take the benefit of section 80IC of the Act. We do not find any force in this contention of the ld. DR. The Scheme of Amalgamation has been approved by the Hon'ble High Court of Delhi and, therefore, by no stretch of imagination, the transaction of amalgamation can be can be considered as a colourable device or a sham transaction. There is no dispute that the manufacturing unit at Parwanoo was eligible for deduction u/s 80IC of the Act the same always belonged to the assessee, previously known as M/s Purolator India Ltd.

25. Provisions of section 80IA(12) of the Act have been wrongly applied by the Assessing Officer because the said provision is applicable where any undertaking which is entitled to the deduction u/s 80IA is transferred before expiry of the period specified therein to another India company in a scheme of amalgamation or demerger, whereas the facts of the case in hand show that the manufacturing unit at Parwanoo, HP continued to belong to the assessee and it is only M/s Mahle Filter systems [India] Ltd which amalgamated with the assessee M/s Purolator India Ltd and only the name has been changed to M/s Mahle Filter systems [India] Ltd. Accordingly, even consequent to the amalgamation, the unit at Parwanoo was still owned and managed by the assessee in the same manner as it was managed prior to amalgamation. Considering the correct facts in true perspective, we do not find any error or infirmity in the findings of the CIT(A). Ground Nos.1 and 4 raised by the revenue stand dismissed."

In view of the aforesaid findings of facts, we find that the view ultimately taken by the ITAT does not give rise to any substantial question of law. We also take note of our judgment rendered in the

context of a Scheme duly approved by a High Court and the lack of authority inhering in the Assessing Officer [‘**AO**’] to doubt its validity or question its provisions in **Pr. Commissioner of Income Tax-Central-1 vs. Aamby Valley Ltd**. [ITA 849/2019 decided on 19 July 2024].

4. Question 2.2 relates to the deletion of disallowance of INR 64,23,771/- for the purpose of calculating deduction under Section 80IC. While upholding the deletion made by the Commissioner of Income Tax (Appeals) [“**CIT(A)**”], the Tribunal held as follows:-

> “26. Ground No. 2 relates to the deletion of disallowance of Rs. 64,23,771/- for the purpose of calculating deduction u/s 80IC of the Act.
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> 27. During the course of scrutiny assessment proceedings, on perusal of the profit and loss account of the Purwanoo Unit, the Assessing Officer observed that the assessee has disclosed 'Other Income' of Rs. 64,23,771/- which consisted of rent receipts, interest receipts, scraps as well as discount received and foreign exchange gain. The Assessing Officer was of the firm belief that the expression 'derived from' in the language of section 80IC of the Act shows that the income must directly result from the eligible business and hence it should have a direct nexus with the eligible business. The Assessing Officer, accordingly, disallowed the claim of deduction u/s 80IC of the Act.
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> 28. The assessee carried the matter before the CIT(A) and furnished the details of 'Other income' which read as under:

Interest on loans given to employees	Rs. 1,78,000
Foreign exchange gain	Rs. 19,94,070
Cash discount given to buyers	Rs. 21,09,398
Tooling income	Rs. 7,30,233
Sale of scrap	Rs. 7,56,631
Rental income	Rs. 6,10,800
Rent recovery from employees against rent expenses	Rs. 2,97,447
Other Income – Common Income Allocation	(Rs. 2,50,689)
Interest received on fixed deposits- Common Income Allocation (netted off in Interest expenses)	(Rs. 2,119)

Total Rs. 64,23,771

29. Out of the above, rental income and income on fixed deposits was offered to tax under the head 'Income from other sources'. Other items of income are inevitably linked and have direct nexus to the industrial undertaking. Therefore, these incomes are eligible for benefit of deduction u/s 80IC of the Act. We, therefore, do not find any reason to interfere with the findings of the CIT(A). Ground No.2 is dismissed."

We do not find any infirmity in the findings of the Tribunal. In view of the aforesaid, question 2.2 fails to give rise to any substantial issue.

5. In so far as Question 2.3 is concerned, we find that the Tribunal has upheld the findings of the CIT(A). The CIT(A) in its order had observed as follows:-

"5.3 I have considered facts of the case, the findings of AO and detailed contentions as well as case laws relied upon by the appellant in the instant case, consequent to the merger of the appellant with erstwhile Mahle, the appellant filed an application with the Directorate of Industries intimating it about the merger and change of name of the appellant from Purolator India Limited to Mahle Filter Systems (India) Ltd. Accordingly, the Directorate of Industries acknowledged the change of name of the appellant from Purolator India Limited to Mahle Filter Systems (India) Ltd for all purposes. Further, the amalgamation of Erstwhile Mahle into the appellant was approved by the Delhi High Court on 27 May 2008 which was operative from 1 April 2007. After the amalgamation, the appellant, in accordance with the terms of the amalgamation agreement, filed an application before the ROC requesting it to change appellant's name from Purolator India Limited to Mahle Filter Systems (India) Limited (by which it is presently known). Pursuant to the aforesaid application, ROC, issued a certificate dated 4 September 2008, approving the change of name of the appellant. The details of the amalgamation had been clearly disclosed at clause no. 4 to Schedule 18 — Notes to accounts of the audited financial statements of the appellant for assessment year 2009-10.

The appellant had established the manufacturing unit at Parwanoo prior to the amalgamation with erstwhile Mahle. Accordingly, even consequent to the amalgamation, the unit at Parwanoo was still owned and managed by the appellant in the same manner as it was

managed by it prior to the amalgamation. Since the appellant's former name was 'Purolator', the question of transfer of the manufacturing unit at Parwanoo from Purolator to appellant does not arise.

Section 80IC(7) of the Act provides that the provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section. Section 80IA(12) of the Act provides that where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the specified period, to another Indian company in a scheme of amalgamation or demerger, then, no deduction shall be allowed to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place, restrictions of sub-section (12A) have only been introduced in respect of section 80IA of the Act and not in other incentive sections like S. 80IB, S.80IC, While the provisions of Section 80IC(7) requires application of Section 80IA(7) to Section 80IA(12) in the context of units availing benefit under Section 80IC, it does not cover the application of S.80IA(12A). Hence, going by recognized tax principle that restrictive provisions are to be strictly construed, it is lucid that the provisions of section 80IA (12A) have to be applied only with respect to units/businesses availing incentives under Section 80IA. This is also supported by the wordings contained in the CBDT Circular no. 3 of 2008 dated 12 March 2008.

The Hon'ble High Court in the case of Mega Packages (supra) held that section 80IC of the Act bestows the deduction under the Act upon the undertaking and not the owner. Once the same is to be allowed to undertaking, the change in ownership of the undertaking would not disentitle the benefits of deduction for unexpired period to the successor. Therefore, provisions of section 80IC(4) shall not apply in such as case.

In view of the above, there is no ambiguity as to the amalgamation/ merger undertaken by the appellant and its legal and economic effect. While doing so the appellant followed the prescribed procedure. Everything that the appellant did was permitted by law and was perfectly legal in the eyes of law. The legal effect of each of the aforesaid transactions undertaken by the appellant was achieved. It could not, therefore, be said that the appellant had employed any colorable device.

It is clear that the appellant is eligible for the deduction under section 80IC of the Act as appellant had established the manufacturing unit at Parwanoo prior to the amalgamation with erstwhile Mahle. Therefore, provisions of section 80IC(4) of the Act are not applicable in the case of the appellant. After considering all the facts and circumstances of the case, I am of the

> view that there is no proper justification for the addition made by the AO and accordingly the same is deleted."

Before us the Revenue could not controvert the findings of the CIT(A) and which has been upheld by the Tribunal. We thus find no justification to entertain the appeal on question 2.3.

6. In so far as question 2.5 is concerned and which relates to disallowance of royalty payments, we note that the Tribunal has relied upon the decision of this Court in **Commissioner of Income Tax vs, Hero Honda Motors Ltd**. [2015 SCC OnLine Del 7039]. We thus find no justification to interfere with the view taken by the Tribunal.

7. Lastly, with respect to question 2.6 we take note of the following categorical findings of fact of the Tribunal:-

> "16. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the factory building owned by the assessee was let out to M/s Anand Engines Component Ltd., for which the assessee earned rental income of Rs. 47.26 lakhs. Whether there existed 'leave and licence' agreement and not 'rental agreement' would not change the colour of receipts in the hands of the assessee. The undeniable fact is that the assessee has earned rental income from letting out its property and the same has to be taxed under the head 'income from house property' eligible for deduction as per the provisions of section 24 of the Act. We, accordingly, direct the Assessing Officer to tax rental income under the head 'income from house property' as per provisions of law. Ground No. 3 is, accordingly, allowed."

8. In view of the aforesaid, we are of the considered opinion that no substantial question of law arises. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 11, 2024