SUPREME COURT OF INDIA

Swaraj Engines Ltd.

Vs.

Asst.Commnr.,Income Tax, Chandigarh

C.A.No.8756 of 2003

(S.H.Kapadia and Swatanter Kumar JJ.)

06.04.2010

ORDER

1. The appellant-assessee was formed as a joint venture between Kirloskar Group and the Government of the State of Punjab. It claimed deduction under Section 80-I of the Income Tax Act, 1961 for the Assessment Year 1990-91, which, according to the assessee, is the initial assessment year. The deduction was initially allowed by successive Assessing Officers for the initial Assessment Year 1990-91 and for six successive Assessment Years 1991-92 to 1996-97.

2. For the Assessment Year 1997-98, the Assessing Officer allowed the deduction under Section 80-I in the assessment framed under Section 143(1)(a) of the 1961 Act. This deduction under Section 80-I was confirmed in the assessment made under Section 143(3) of the Income Tax Act, 1961 for the Assessment Year 1997-98 in which deduction under Section 80-I was taken into account by the Assessing Officer. However, a notice under Section 154 was issued by the Department purporting to withdraw Section 80-I deduction in 1 respect of the Assessment Year 1997-98. This order under Section 154 was challenged in Appeal by the assessee. The said Appeal was allowed in favour of the assessee by CIT(A) vide order dated 18th January, 2002.

3. Soon thereafter, on 20th March, 2002, the Department issued notice under Section 148 for the Assessment Year 1997-98 for the reason that in the Annual Report of the assessee for Financial year 1988-89, relevant to the Assessment Year 1989-90, assessee had indicated sales of 346 engines manufactured before 31st March, 1989.

4. Taking into account the said particulars of sales, the notice stated that the manufacturing/production of engines had allegedly started in the period, relevant to the Assessment Year 1989-90, and, consequently, assessee was not entitled to the benefit under section 80-I during the Assessment Year 1997-98 (with which we are concerned). Needless to state that 80-I deduction is for a period of eight years, which, according to the Department, ended during the period, relevant to the Assessment Year 1996-97.

5. This initiation of the re-assessment proceedings was challenged by way of a Writ Petition before the Punjab and Haryana High Court, which stood dismissed giving liberty to the assessee herein to raise all objections, including the one relating to jurisdiction of the Assessing Officer to issue notice, before the proper forum. The impugned judgment has been challenged in this Civil Appeal, which now has come for hearing before this Court.

6. During the pendency of this Civil Appeal, we are informed that against the order of the Assessing Officer reopening the assessment, the assessee herein had preferred an Appeal to CIT(A). By his order dated 8th January, 2007 in Appeal No.65/P/03-04, the CIT(A) allowed deduction under Section 80-I for the Assessment Year 1997-98 on the ground that assembling of engine did not amount to manufacture for the purposes of claiming deduction under Section 80-I of the Income Tax Act, 1961. Against this decision of CIT(A), we are informed that the Department has preferred Income Tax Appeal No.304/CHD/2007 before the Income Tax Appellate Tribunal, Chandigarh. That Appeal is pending as of date. We are informed that arguments stand concluded.

7. However, it appears that the CIT(A) did not give the finding on the validity of the reopening of the assessment.

8. In the above circumstances, we are of the view that ends of justice would be sub-served if we direct the Income Tax Appellate Tribunal, Chandigarh, to also examine this narrow issue regarding the validity of the notice dated 20th March, 2002 in the pending Appeal, bearing No.ITA 304/CHD/2007. [emphasis supplied] The interim orders passed by this Court during the pendency of this Civil Appeal will continue till the disposal of the pending Appeal by the Tribunal.

9. Civil Appeal stands disposed of accordingly. No order as to costs.