

# Update



## Leased Assets qualify for Industrial Undertaking purposes holds Bombay High Court

**Aditya Shah**

[trainee@vinodkothari.com](mailto:trainee@vinodkothari.com)

1<sup>st</sup> September, 2014

Check at:

<http://india-financing.com/staff-publications.html>  
for more write ups.

**Copyright:**

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

**Disclaimer:**

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.



## Article

### Preamble

Section 80 IB of the Income tax provides for flat deduction in percentage terms in respect of profit or loss by certain industrial undertaking, subject to pre-conditions and eligibility of the assessee for deduction under that section. It has been a matter of contention for some time that whether a film production companies are allowed for deduction as postulated under Section 80IB of the Income Tax Act, 1961. Now comes into picture an appeal from revenue– **CIT vs Jyoti Prakash Dutta**<sup>1</sup> the Bombay High Court where in it is upheld that a film production companies, which works on hired plant and machinery are industrial undertaking in order to claim deduction as envisaged under Section 80IB of the Income Tax Act, 1961. The similar questions were earlier also raised by the revenue department before the Income Tax Tribunal in which the tribunal has upheld the claim of the assessee for deduction in previous assessment years. In this instant case the revenue department has again sought appeal from the order of Tribunal before the Bombay High Court.

### Core Issues Involved in the Case

- Whether the film production companies are “Industrial Undertaking” for the purpose of Section 80IB of the Income Tax Act, 1961?
- Whether a film production company can be considered as “Industrial Undertaking” under the provision of Section 80 IB of the Income tax Act, when the plant or machinery of such company is not owned by the assessee and are hired by the assessee?

### Facts and Circumstance of the Case

The case relates to *Commissioner of Income tax, Mumbai vs Mr. Jyoti Prakash Dutta* (herein after referred as ‘Assessee’). The assessee is a film production company which claimed deduction under Section 80IB of the Income tax Act, 1961 in respect of one of its film called “Border”. The contention of the revenue department was that since the company is a film producing company it is not an industrial undertaking within the purview of the Income Tax Act, 1961. Further the company doesn’t itself own any plant and machinery, and the business affairs are carried out through hired equipments and machinery, in such case the assessee shall be disentitled from claiming deduction under Section 80IB of the Income Tax Act, 1961.

---

<sup>1</sup>In order to view the judgement [Click here](#)

## Article

The Assessing authority supported its contention on the ground that, the assessee did not fulfilled the condition as postulated under Section 80IB (2)(ii) of the Income Tax Act, 1961 which is a condition precedent for claiming deduction under Section 80IB of the Income Tax Act, where by the assessee claiming deduction under the Section 80IB *shall not be formed by transfer to a new business of machinery or plant previously used for any purpose*. The Assessee did not own any plant or equipment, and such assets were hired by the assessee which amounted to transfer and thus were disentitled from the deduction under Section 80IB of the Income Tax Act, 1961. The authority relied on the judgment of Supreme Court in *Textile Machinery Corp 107 ITR 195*<sup>2</sup> whereby it was held that the industrial unit must set up new plant and machinery for the purpose of industrial unit activity in order to avail benefit arising from Section 15C (2) (i) of Indian Income Tax Act 1922 which is identical to Section 80-IB (1) Income Tax Act, 1961.

The assessing authority however accepted the legal position of the film production company as an Industrial Undertaking in light of the decision by the Bombay High Court in case of *Commissioner of Income-Tax vs D.K. Kondke*<sup>3</sup>.

The *assessee* pointed out that the word in the section 80IB (2) (ii) is ‘*transfer*’ and not ‘*hire*’ and hence acquisition by transfer would only disentitle the assessee from the benefit of deduction under Section 80IB of the Income Tax Act, 1961. Since the equipment used in the processing of the film would not be transferred to the assessee, and thus the argument of disqualification for deduction by the assessee under Section 80IB should not be accepted.

### Decision by the Court

The Court referred to the Tribunal order passed in AY 1998-99 wherein same argument was canvassed. The Court also mentioned about the judgement passed in case of D.K.Kondke (supra). Thereafter the Court accepted the contention of the Assessee on the premise of an earlier order of the Income Tax Tribunal with similar facts of the case which was decided earlier, and thus upheld the order of Tribunal. The court pointed out that the question that arises in the matter of *Textile Machinery Corporation Limited* (supra) cannot be said to be applicable to the facts before us, since condition differs in both the cases. Hence the appeal was dismissed by the Court.

### Conclusion

The Court by deciding in favor of the case has reiterated the fact that in order to constitute an Industrial Undertaking in terms of Section 80IB of the Income Tax Act, 1961 an industrial unit need not necessarily own its plant and machinery, and that hiring of plant and

<sup>2</sup> <http://judis.nic.in/supremecourt/imgst.aspx?filename=5385>

<sup>3</sup> CIT v/s D.K. Kondke, (1991) 192 ITR 128:- <http://indiankanoon.org/doc/1500008/>



## *Article*

machinery would not inhibit the ability of industrial unit or a company in order to claim benefit under the said section. For the deduction to be claimed under sub-section (3) the only precondition is fulfilling the conditions specified and set out in sub-section (2) of Section 80-IB. This order has once again clarified the position of law and explained in detail that hiring of plant and machinery can never be a reason for disentitling the claim for deduction under Section 80-IB

**Also see our other related write-ups:**

- To view our other articles on leasing [click here](#)