

***THE HON'BLE SRI JUSTICE DILIP B.BHOSALE**
AND
***THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**
+ ITTA Nos.50, 51, 52 and 71 of 2005

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%Dated 21-01-2015

Deccan Industrial Products

... Appellant

VERSUS

\$ Asst. Commissioner of Income-Tax

... Respondent

! Counsel for Appellant : Y.Rathnakar

^Counsel for Respondent : J.V.Prasad, S.C. for Income-Tax

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<GIST: 1) [(1999) 237 ITR 579 (SC)]
 2) [(2009) 317 ITR 218 (SC)]

>HEAD NOTE:

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ITTA Nos.50, 51, 52 and 71 of 2005

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ORAL JUDGMENT : (per Hon'ble Sri Justice Dilip B.Bhosale)

These income tax appeals under Section 260A of the Income Act, 1961 (for short 'the Act') are directed against the common order passed by the Income Tax Appellate Tribunal, Hyderabad Bench, in

ITA Nos.21 to 24/Hyd/2003 for the assessment years 1993-94, 1994-95, 1995-96 and 1996-97.

2. This Court, though admitted the appeals on three substantial questions of law, learned counsel for the appellants addressed only the first. He did not address the remaining two questions in view of the fact that Writ Petition No.21797 of 2009 filed by the appellant is pending in this Court for disposal. In the Writ Petition, challenge is to the order declining waiver of interest. The question that falls for our consideration is as follows:

"Whether on the facts and in the circumstances of the case, the sale proceeds of Rs.27,98,289 obtained on the sale of advance licenses issued under Chapter-VII of the Import Export Policy for asst. year 1993-94, constituted income derived from industrial undertaking for calculating allowance u/s.80IA of the I.T. Act."

3. The above substantial question of law is common in all appeals except the amount of sale proceeds. The amounts of sale proceeds in the remaining three appeals are Rs.33,91,871/-, Rs.35,70,645/-; and Rs.3,42,468/- respectively.

4. Appellant-assessee is a Company registered under the Companies Act, 1956. It is engaged in the business of manufacturing rubber moulded goods, such as rubber rings, and its sale. They filed Return of income for the assessment year 1993-94 declaring 'nil' income after adjustment of deductions under Section 80HHC and 80-IA of the Act. Subsequently, it was noticed that while computing the total income, other income derived from sale of import (advance) license (for short 'the license'), export incentives and interests was not deducted from the profits of the assessee-Company. In view thereof, it was noticed that the income chargeable to tax had escaped assessment for the assessment year 1994-95 within the meaning of Section 147 of the Act. Hence, a notice under Section 148 of the Act was issued on 13.02.2001 to the assessee-Company. In response thereto, the assessee-Company

filed a revised Return of income showing the same income as disclosed in the original Return.

5. The Assessing Officer as well as the CIT (A) and the Tribunal rejected the claim of assessee-Company holding that for the purpose of calculation of deduction under Section 80-IA and for the purpose of calculating relief under Section 80HHC; a) premium on sale of advance licences; b) export incentive; and c) interest income, cannot be treated as income derived from their business. In the present appeals we are concerned only with 'the premium on sale of the licenses'. In short, all the three authorities viz., Assessing Officer, CIT (A) and the Income-Tax Appellate Tribunal answered the question, as formulated in these appeals, against the assessee-Company holding that the income earned by them from the sale of the license cannot be considered as income derived from business of their industrial undertaking. From perusal of the order of the Tribunal it is clear that the Tribunal based on the judgment of the Supreme Court in ***Commissioner of Income Tax v. Sterling Foods***^[1] rejected the claim of the appellants and held that the receipts from sale of license cannot be included in the income of the assessee for the purpose of relief under Section 80-IA of the Act.

6. We have heard learned counsel for the parties and with their assistance gone through the order of Tribunal as well as the orders passed by the authorities below and the judgment of the Supreme Court in ***Sterling Foods (supra)***. We have also perused the other materials placed before us including the provisions contained in Sections 80-IA and 80HH of the Act prevailing in 1994-95.

7. Learned counsel for the appellants after inviting our attention to the provisions contained in Sections 80-IA and 80 HH of the Act endeavoured to show the difference between these provisions to demonstrate that the judgment of the Supreme Court in ***Sterling Foods (supra)*** based on the provisions of Section 80HH of the Act is not applicable to the facts of the present case. He submitted

that Section 80-IA was different from Section 80 HH, in the sense that under Section 80-IA income derived from the “business” of an undertaking was admissible for deduction whereas under Section 80 HH deduction was allowable to income derived from ‘an industrial undertaking’ and not the ‘business’ of the industrial undertaking. Hence, he submitted, the provisions of Section 80-IA were much wider in scope than Section 80 HH. According to learned counsel for the appellants, Section 80-IA was wider than Section 80 HH as the Legislature intended to give the benefit of deduction not only to the profits derived from the undertaking but also to give the benefit of deduction in respect of incomes having direct nexus with the profits of the undertaking. Hence, he submitted all incomes that arose during the course of running the business would be eligible for deduction under Section 80-IA, which, in the present case would include income arising from the sale of license. He, therefore, submitted that the law laid down by the Supreme Court in ***Sterling Foods (supra)*** would not apply to the facts of the present case. He submitted, in view of the delay in issuing the license, assessee-Company had to procure raw material from open market which included the duty paid thereon, and to recover the same the assessee-Company had no option but to sell the license in open market. He submitted that sale of license has direct nexus/connection with the business of the assessee-Company, and therefore, they are entitled for deduction under Section 80-IA of the Act. He further submitted that the purchase of raw materials is a part of the business of undertaking and so also the sale of license, and therefore, it would fall within the first degree of proximity.

8. On the other hand, learned counsel for the Revenue in support of the judgment of the Tribunal, in addition to ***Sterling Foods (supra)***, placed reliance upon the judgment of the Supreme Court in ***Liberty India v. Commissioner of Income-Tax***^[2] to contend that the sale of license has absolutely no connection with the business of the assessee-Company. He submitted that for application of the words

“derived from” there must be a direct nexus between the profit and the business of undertaking. He submitted merely because under the scheme to encourage export, the income derived from sale of license cannot be regarded as profit derived from the business of undertaking. In other words, he submitted that sale of the license by the assessee-Company did not have either direct or indirect connection with their business, and therefore, the authorities below have rightly rejected their claim.

9. In ***Sterling Foods (supra)*** assessee was engaged in processing prawns and other sea food, which it exported. It also earned some import entitlements granted by the Central Government under an Export Promotion Scheme. The assessee was entitled to use the import entitlements itself or sell the same to others. It sold the import entitlements that it had earned to others. Its total income for the assessment year 1979-80 included the sale proceeds for such import entitlements and it claimed relief under Section 80HH of the Act in respect of the sale proceeds of the import entitlements. The Tribunal held that the relief could not be granted. The High Court, in that case, held that the income which the assessee made by selling the import entitlements was not a profit or gain which it had derived from its industrial undertaking, on a reference for the relevant assessment year in favour of the assessee. The question that was framed by the Supreme Court in ***Sterling Foods (supra)*** was “whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the receipt from the sale of import entitlements could not be included in the income of the assessee for the purpose of computing the relief under Section 80HH of the Income-Tax Act, 1961?”. After noticing the provisions contained in Section 80HH of the Act and while dealing with the submission of learned counsel for the assessee that the profits and gains were derived from the assessee’s industrial undertakings, and therefore they were entitled to deduction prescribed under the said provision, the Supreme Court in paragraph

twelve observed thus:

“..... We do not think that the source of the import entitlements can be said to be the industrial undertaking of the assessee. The source of the import entitlements can, in the circumstances, only be said to be the Export Promotion Scheme of the Central Government whereunder the export entitlements become available. **There must be, for the application of the words “derived from”, a direct nexus between the profits and gains and the industrial undertaking.** In the instant case, the nexus is not direct but only incidental. The industrial undertaking exports processed sea food. By reason of such export, the Export Promotion Scheme applies. Thereunder, the assessee is entitled to import entitlements, which it can sell. The sale consideration therefrom cannot, in our view, be held to constitute a profit and gain derived from the assessee’s industrial undertaking.”

(emphasis supplied)

10. In ***Liberty India (supra)*** the Supreme Court while dealing with similar submissions, as urged in the instant case, based on the provisions contained in Sections 80-IB and 80-IA held thus:

“13. Before analysing section 80-IB, as a prefatory note, it needs to be mentioned that the 1961 Act broadly provides for two types of tax incentives, namely, investment-linked incentives and profit-linked incentives. Chapter VI-A which provides for incentives in the form of tax deductions essentially belong to the category of “profit linked incentives”. **Therefore, when section 80-IA/80-IB refers to profits derived from eligible business, it is not the ownership of that business which attracts the incentives. What attracts the incentives under section 80-IA/80-IB is the generation of profits (operational profits).**

14. Analysing Chapter VI-A, we find that section 80-IB/80-IA are a code by themselves as they contain both substantive as well as procedural provisions. Therefore, we need to examine what these provisions prescribe for “computation of profits of the eligible business”. It is evident that section 80-IB provides for allowing of deduction in respect of profits and gains derived from the eligible business. The words “derived from” are narrower in connotation as compared to the words “attributable to”. In other words, by using the expression “derived from”, Parliament intended to cover sources not beyond the first degree.....”

(emphasis supplied)

11. Sections 80-IA and 80-IB, as they stand today, were substituted

for Section 80-IA by the Finance Act, 1999

w.e.f 1-4-2000. Prior to its substitution, Section 80-IA was amended almost every year. In the present case, we are concerned with the assessment years 1993-1994 to 1996-1997. Though there were amendments by the Finance Act, 1992 w.e.f.1-4-1993, Finance Act, 1993 w.e.f.1-4-1994, Finance Act, 1994

w.e.f.1-4-1995, Finance Act, 1995 w.e.f.1-4-1996, for addressing the substantial question of law involved, the provisions contained in Section 80-IA, as it stood in 1993-94 are relevant for our purpose. In other words, the amendments in 1993, 1994, 1995, 1996 insofar as sub-section (1) of Section 80-IA is concerned, would not have any effect on consideration of the question raised in these appeals. The relevant sub-section (1) of Section 80-IA was inserted by the Finance (No.2) Act, 1991. Similarly, it would be relevant to reproduce the provision of Section 80-HH, as it stood in 1993-94, though we are not directly concerned with, to understand the judgment of the Supreme Court in **Sterling Foods (supra)**, which was strongly relied upon by the Tribunal for answering the question in favour of the Revenue and against the Assessee. Sections 80-IA and 80-HH, so far as they are relevant, read at the relevant times thus:-

80-IA. (1) *Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking or a hotel or operation of a ship (such business being hereinafter referred to as the eligible business), to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to the percentage specified in sub-section (5) and for such number of assessment years as is specified in sub-section (6).*

80HH. (1) *Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent*

thereof.

12. Analyzing Chapter VI-A of the Act, we find that

Section 80-IA is a Code by itself as it contained both substantive as well as procedural provisions. To analyze the provision of Section 80-IA, so far as it is relevant here, if the gross total income of an assessee includes any profits and gains derived from “any business of an industrial undertaking”, the assessee is entitled to be allowed, in the computation of his total income, a deduction from the profits and gains derived from “any business of an industrial undertaking” of an amount equal to 25% thereof. Insofar as Section 80-HH, as it is relevant here, is concerned, if the gross total income of an assessee includes any profits and gains derived from an “industrial undertaking”, the assessee is entitled to be allowed, in the computation of his total income, a deduction from the profits and gains derived from the industrial undertaking of an amount equal to 20% thereof.

13. Thus, from perusal of these provisions, distinction is clear so far as it is relevant here. Section 80-IA provides that the gross total income of an assessee would include any profits and gains derived from “any business of an industrial undertaking” and not from “industrial undertaking” as provided for in Section 80HH. In our opinion, the gross total income of an assessee, so far as Section 80-IA is concerned, means any profits and gains derived from “any business” of an industrial undertaking. By making the slight change in the language, the Legislature, as a matter of fact, has widened the scope of Section 80-IA than Section 80 HH, but while reading the expression “the gross income derived from any business”, in our opinion, cannot be read to mean and include “the income” having no nexus with the business of an undertaking or the income that cannot be “attributable to” the business of an undertaking. There must be, for the application of the words “derived from”, direct nexus between the profits and gains

and the business of an industrial undertaking. In the instant case, the profit derived from sale of the license could be, at the most treated as incidental and not direct.

14. Section 80-IA refers to the profits and gains derived from “any business” of an industrial undertaking. The words ‘derived from’ are narrower in connotation as compared to the words “attributable to”. In other words, by using the expression “derived from”, the Legislature intended to cover sources not beyond the first degree. The Legislature has not used the expression “attributable to” in Section 80-IA. The expression “attributable to” is of wider import and the Legislature use such expression when it intended to cover receipts from sources other than actual conduct of the business. Therefore, in our opinion, the expression “derived from any business of an industrial undertaking” will have to be read to mean the gross total income of an assessee derived from the business of an industrial undertaking. In the present case, it is not the case of the assessee that sale of the license is their business. If the assessee has derived any profits/gains from the sale of license, it at the most could be treated as income from sources other than the actual conduct of the business and the same, in any case, cannot be treated as a part of gross total income from their business of manufacturing rubber moulded goods such as rubber rings and sale of the same. The submission that the sale of license has direct nexus/connection with the business of the undertaking must be rejected. Merely because the license was obtained for procuring the raw material for manufacturing finished products for its exports, does not mean that the sale of advance license has nexus with the business of manufacturing and sale of finished product.

15. In the result, we find no merit in the appeals. Appeals are accordingly dismissed. The substantial question of law is accordingly answered in favour of the Revenue and against the assessee-Company. No order as to costs.

Miscellaneous petitions pending in the appeals, if any, also stand disposed of.

Dilip B.Bhosale, J

A.Ramalingeswara Rao, J

21st January, 2015.

Note : L.R. copy to be marked : Yes

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[\[1\]](#) ([1999] 237 ITR 579 (sc)

[\[2\]](#) [2009] 317 ITR 218 (SC)