

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.290 of 2004
Date of decision: 24.9.2015**

Commissioner of Income Tax, Hisar

.....Appellant

M/s Parkash Industries Limited, Hisar

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Tajender K.Joshi, Advocate for the appellant-revenue.

Mr. Anand Chhibbar, Sr. Advocate with Ms. Riya Bansal,
Advocate for the respondent-assessee.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 8.3.2002, Annexure AIII passed by the income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No.1933/Del./95 for the assessment year 1991-92. This appeal was admitted on 9.8.2007 to consider following substantial question of law:-

“Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the decision of CIT (A) directing the ITO to allow deductions under Section 80HH and 80I of the Income Tax Act, 1961 without adjusting the

losses of other loss making industrial undertakings of the same assessee with the profit of eligible profit making units?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee company claimed deduction under sections 80HH and 80I of the Act at ₹ 1,09,43,158/- and ₹ 1,36,78,948/- respectively. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee company had six industrial units and deduction under sections 80HH and 80I of the Act was claimed on the profits of eligible profit earning units without adjustment of the losses incurred in the other units. The Assessing Officer rejected the claim and allowed deduction after making adjustment of the losses incurred by the loss making units which were also industrial undertaking, vide order dated 16.3.1994, Annexure A.1. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 30.12.1994, Annexure A.II, the CIT(A) partly allowed the appeal. The revenue went in appeal before the Tribunal. Vide order dated 8.3.2002, Annexure A.III, the Tribunal dismissed the appeal. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. Learned counsel for the revenue relied upon judgment of this Court in ***Bajaj Motors P.Limited vs. Commissioner of Income Tax***, (2012) 347 ITR 472 to submit that the issue stands concluded in favour of the revenue and against the assessee. In ***Bajaj Motors P. Limited's*** case (supra), identical issue was considered by this Court. In the said case, the assessee manufactured automobile parts at Gurgaon. It was entitled to deduction under section 80I of the Act. The Assessing Officer took into account loss of

the assessee in another manufacturing unit. It was held that the benefit under section 80I of the Act was referable to total income which was required to be worked out after taking into account the loss, if any. This view was upheld by the CIT(A) as well as the Tribunal. This Court while dismissing the appeal of the assessee held that in computing the quantum of deduction under section 80I of the Act, out of the profits and gains of unit No.1, the loss incurred in another independent unit No.2 should be set off against the profits of unit No.1. It was recorded as under:-

“5. Learned counsel for the assessee submits that for computing the benefit admissible under Section 80-I, loss in another unit could not be taken into account. Reliance has been placed on judgment of Hon'ble Supreme Court in *CIT Vs. Canara Workshops Pvt. Ltd. (1986) 161 ITR 320 (SC)* which has been followed in *CIT Vs. Siddaganga Oil Extractions Pvt. Ltd. (1993) 201 ITR 968 (Karnataka)* and *CIT Vs. Visakha Industries Ltd. (2001) 251 ITR 471 (Andhra Pradesh)*. Learned counsel for the assessee also relies upon *CIT Vs. Devidayal Rolling Refineries Pvt. Ltd. (1984) 40 CTR 191 (Bombay)*.

6. Learned counsel for the revenue, however, submits that component of benefit under Section 80-I has to be worked out with reference to total income after excluding the loss therefrom as provided under Section 80AB read with Sections 80A(2) and 80B(5). Reliance has been placed upon the following judgments:-

(i) *Distributors (Baroda) P. Ltd. Vs. Union of India (1985) 155 ITR 120 (SC)*; (ii) *H.H. Sir Rama Varma Vs. Commission of Income-Tax (1994) 205 ITR 433 (SC)*; (iii) *Commissioner of Income-Tax Vs. Macmillan Co. of India Ltd. (2000) 243 ITR 403 (Madras)*; (iv) *Commissioner of Income-Tax Vs. Chemical and Metallurgical Design Co. Ltd. (2001) 247 ITR 749*

(Delhi);

(v) *Commissioner of Income -Tax Vs. Nima Specific Family Trust (2001) 248 ITR 29(Bombay)*; and (vi) *Synco Industries Ltd. Vs. Assessing Officer of Income-Tax and others (2002) 254 ITR 608 (Bombay)*.

7. In order to appreciate the controversy, it would be appropriate to refer to the following provisions:-

“80A(1) xx xx xx”

“80A(2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.”

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“80AB Where any deduction is required to be made or allowed under any section included in this Chapter under the heading “*C-Deductions in respect of certain incomes*” in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing

the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.”

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“80B(5) “gross total income” means the total income computed in accordance with the provisions of this Act, before making any deduction under this chapter.”

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“80-I (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered

craft 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:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words “twenty per cent”, the words “twenty five per cent” had been substituted.”

8. It is clear from the above provisions that component on which deduction is permissible under Section 80-I is gross total income which is defined in Section 80B(5) and is also referred to in Sections 80A(2) and 80AB. In *Distributors (Baroda)* the said provisions were so interpreted, which was also followed in *H.H.Sir Rama Varma*. Judgment in *Canara Workshops* does not refer to Section 80AB. As observed by Madras High Court in *Macmillan Co.of India Ltd.* if component of deduction under Section 80-I is to refer total income without excluding the loss therefrom, it will be against the statutory provisions. It will be appropriate to make a reference to the following observations in the said judgment:-

“Learned counsel for the assessee, however, contended that the law to be applied is that laid down in the case of *CIT V. Canara Workshops P. Ltd. (1986) 161 ITR 320 (SC)*. It was held in that case that for computing the profits for the purpose of deductions under section 80E of the Income-Tax Act, 1961, the loss incurred by the assessee in the manufacture of alloy Steels (a priority industry) could not be set off against the profits of the manufacture of another product. The assessment year considered in that case was the year 1966-67. The Court, in the course of its judgment did not refer to Section 80AB of the Act and did not consider the effect of that provision as to whether it was declaratory

or not, while the question was specifically considered by the Supreme Court in the case of *H.H.Sir Rama Varma V, CIT (1994) 205 ITR 433*. We are bound by the latter decision and the law declared therein is the law which we are required to apply for determining the extent to which deductions are to be permitted under several sections in Chapter VIA excluding section 80M. Learned counsel also referred to certain other decisions which it is unnecessary to refer to, having regard to the law laid down in the case of *H.H.Sir Rama Varma V CIT (1994) 205 ITR 433(SC)*. We may also notice here the judgment of the Constitution Bench of the Apex Court in the case of *Distributors (Baroda) P. Ltd. Vs. Union of India (1985) 155 ITR 120* in which the Court while upholding the constitutional validity of section 80AA also in Chapter VIA of the Income-tax Act, held that section 80AA is merely declaratory of the law as it always was since April 1, 1968. Section 80AB similarly must be held to be declaratory of the law as it always was since April 1, 1981. It has been so held by the Apex Court in the case of *H.H.Sir Rama Varma (1994) 205 ITR 433*. ”

9. We are, thus, in agreement with the view taken by Madras High Court in *Macmillan Co. of India Ltd.* and Bombay High Court in *Nima Specific Family Trust* and *Synco Industries Ltd.* The provisions of Section 80A(2), 80B(5) and 80AB of the Act were not considered before the Apex Court in *Canara Workshops'* case (supra). It may further be observed that the said judgment has been followed by Andhra Pradesh High Court in *Visakha Industries Ltd's* case (supra). We are unable to subscribe to the view taken by Andhra Pradesh High Court in the aforesaid decision. The provisions of Section 80AB having not been noticed in the judgments relied upon on behalf of the assessee except in *Distributors (Baroda) P.Ltd.*, the same are distinguishable. The question raised is decided against the assessee and in favour of the revenue.”

5. Learned counsel for the respondent assessee was unable to distinguish the above said judgment. Consequently, the substantial question of law is answered in favour of the revenue and against the assessee. The appeal stands allowed.

(Ajay Kumar Mittal)
Judge

September 24, 2015
'gs'

(Ramendra Jain)
Judge