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

+ **INCOME TAX APPEAL No. 57/2005**

Date of decision: 27<sup>th</sup> November, 2017

M/S R.R.B. CONSULTANTS AND ENGINEERS (P) LIMITED  
..... Appellant  
Through Mr. S. Krishnan, Advocate.

versus

DCIT ..... Respondent

Through Mr. Sanjay Kumar, Advocate & Mr.  
Rahul Chaudhary, Sr. Standing Counsel for the  
Revenue.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MS. JUSTICE PRATHIBA M. SINGH**

**SANJIV KHANNA, J. (ORAL):**

The present appeal by the assessee-M/s RRB Consultants and Engineers Private Limited relates to Assessment Year 1996-97 and arises from the order of the Income Tax Appellate Tribunal (Tribunal, for short) dated 6<sup>th</sup> August, 2004 in ITA No. 913/Del/2000. The present appeal was admitted for hearing vide order dated 23<sup>rd</sup> January, 2006 on the following substantial question of law:-

“Whether the ITAT was, in the facts and circumstances of the case, right in holding that the appellant was not

entitled to the deduction under Section 80-IA of the Income Tax Act, 1961?”

2. We would clarify that the core issue raised in the present appeal relates to computation of deduction under Section 80-IA of the Income Tax Act, 1961 (Act, for short).

3. The appellant, during the relevant assessment year, had primarily derived income from consultancy and professional services from sale and installation of wind electricity generators. For this purpose, the appellant had entered into an agreement with their principal company and manufacturer, namely, M/s Vestas Danish Wind Technology, A/s, Denmark. The appellant had also erected and commissioned wind mills statedly for demonstration and sale promotion purposes. The power generated from the said erected and commissioned wind generators was sold to Tamil Nadu State Electricity Board and the appellant had earned income of Rs.22,92,245/- from the said sale.

4. The appellant had invoked Section 80-IA of the Act in its return of income and had shown the entire receipt of Rs.22,92,245/- as income from generation of power as exempt under Section 80-IA of the Act.

5. The Income Tax Officer vide assessment order dated 15<sup>th</sup> February, 1999 noticed that the appellant had net profit from consultancy of over Rs.2.98 crores. Further, the assessee was entitled to depreciation of over Rs.3.24 crores on the wind mills erected and commissioned. Accordingly, this depreciation figure was reduced from income of Rs.22,92,245/- earned from generation of power and as the resultant figure was in negative, it was

held that the appellant was not entitled to any deduction under Section 80-IA. The said order records that unabsorbed depreciation over Rs.3.01 crores would be adjusted from other businesses. The said benefit was granted. Accordingly, the net taxable income was computed at Rs.19,64,824/-. The said figure was arrived at after the Assessing Officer had made certain other disallowances in the taxable income, as declared in the profit and loss account.

6. The appellant in the first appeal partly succeeded as the Commissioner of Income Tax (Appeals) held that the depreciation on wind mills was to be first allowed, i.e., reduced from the entire income of the assessee and the balance amount thereafter has to be deducted from the income earned by the assessee from sale of power, for computing benefit under Section 80-IA of the Act. He observed that depreciation was to be allowed under Section 32, which falls under Chapter IV of the Act relating to computation of business income. Further, depreciation was to be allowed against the composite business income, i.e., profits earned by the assessee by way of commission from consultation and sale of wind mills as well as sale of electricity. He held that the wind mills were being used for more than one activity and, therefore, it does not follow that depreciation would be allowed only against income of one activity and not other.

7. Aggrieved, the Revenue preferred an appeal before the tribunal, which as is apparent from the fact that the appellant-assessee has filed the present appeal, has accepted the contention of the Revenue. The Tribunal in the impugned order has held as under:-

“10. A perusal of Section 80-IA(1) makes it very clear that deduction is to be allowed on the profits and gains of the business of generation of power, viz, the eligible business. Provisions of Section 80-IA (5) which has a non obstante clause even overriding the effect of provisions of Section 80-AB mandates that the profit of the eligible business be computed as if it were the only source of income of the Assessee. In the present case, the Assessee maintains a single set of books of accounts. The order of the Assessing Officer is silent on the other common expenses. Perusal of the profit and loss account, a copy of which is placed at page-14 of the Assessee’s paper book would show that there are other common expenses also. To quote a few Audit Fee, for tax matters, rent, rates and taxes etc. The gross receipts from power generation is shown in the profit and loss account at Rs.22,92,245/-. We shall now confine ourselves to the depreciation expenses which was in controversy before the revenue authorities. It cannot be disputed that even going by the provisions of Section 80-IA(5), that the expenditure incurred in earning the income from the eligible business has to be deducted and only on the net income, deduction under Section 80-IA has to be allowed. The case of the Assessee that the Wind Turbines (wind mill) through which it generated and sold electricity was not primarily meant for such purpose and it was primarily meant only for the purpose of demonstrating to the prospective buyers of power turbines manufactured by the Danish Company for which it acted as consultants and for marketing and sales for their products, cannot be

accepted. If one were to act as a marketing and sales agent for manufacturer of a product it is only usual or normal to expect the principal to provide the necessary infrastructure to carry on the activities by an agent. There is no reference to any specific agreement between the principal and the assessee that the Assessee would install wind Turbines at their own cost to demonstrate to the prospective purchasers of the principal's product. It cannot be disputed that the wind turbines were used in the eligible business. There is no evidence on record to suggest that the wind turbines were used in the business of providing consultancy service or such use was necessary for the business of consultancy service. In any event, the use, if any, of these wind turbines in the other business of the Assessee, viz., consultancy, marketing and sale of wind turbines in our view was only incidental and the primary purpose was to generate power. Even going by the provisions of Section 80-IA(5), the entire depreciation on these machinery has to be deducted from the receipts generated from the business of generation of power.

11. If we were to accept the computation of income for the purpose of Section 80-IA as adopted by the assessee, then that would amount to allowing deduction on the income from the business of consultancy, marketing and sales carried on by the assessee also. That would be against the provisions of Section 80IA(1), which allows deduction only on the profits derived from the eligible business. This would be against the decision of the Honourable Supreme Court in the case of Pandian Chemicals

(supra). The decisions relied upon by the Id. Counsel for the assessee are on the point that while allowing deduction of expenses, the expenses can not be bifurcated as between the exempt income and chargeable income and deduction of expenditure attributable to chargeable income can not alone be allowed. These decisions are not applicable in the context of Section 80 IA of the Act especially in view of the specific provisions of Section 80 IA(5) of the Act. We also derive support for our conclusions from the decision in the case of Indian Rayan Corporation Ltd. Vs. CIT, 281 ITR 98 wherein the Hon'ble Bombay High Court has held that deduction under Chapter VI-A has to be allowed only on the gross total in crossed and therefore one can not exclude depreciation allowance while computing profits derived from newly established undertaking for computing deduction under Chapter VI-A.

12. For the reasons given above, we are of the view that the Assessing Officer was justified in treating depreciation on wind turbines as a deduction from the income of power generation and on that basis holding that there was no income from the eligible business on which deduction under Section 80-IA was to be allowed. The CIT(A) in our view erred in accepting the computation as adopted by the assessee which in our view is against the provisions of Sec. 80-IA and the law laid down by the Honourable Supreme Court in the case of Pandian Chemicals (supra). The appeal of the revenue is allowed and the order of the CIT(A) is reversed and that of the Assessing Officer restored.”

8. Learned counsel for the appellant-assessee has drawn our attention to sub-section (7) to Section 80-IA of the Act read with sub-section (5) thereof as applicable to the Assessment Year 1996-97. Counsel for the appellant had also referred to a table relying upon the decision of the Madras High Court in *Velayudhaswamy Spinning Mills Private Limited versus Assistant CIT*, 2012 (340) ITR 477 (Mad.).

9. We have considered the contention of the appellant-assessee, but in the facts of the present case, which are glaring, do not think we are required to make an in-depth study of and elucidate upon sub-section (7) to Section 80-IA of the Act. The appellant-assessee, as noticed above, had a small income of Rs.22,92,245/- from sale of electricity, which qualifies for deduction under Section 80-IA. However, deduction is not to be allowed on the gross receipts. Expenses incurred and depreciation has to be reduced from the gross receipt, to arrive at the figure on which deduction is to be allowed under Section 80 IA of the Act. Deduction was to be allowed only on the net profits of the said undertaking, which was eligible for deduction under Section 80-IA. It is an accepted and admitted position that the appellant-assessee was entitled to depreciation of over Rs.3.24 crores on the wind mills, which were installed and used for generating electricity and also commission income. Thus, the depreciation, which was to be allowed and given on the wind mills was almost fifteen times the income earned by the appellant-assessee from generation of electricity, which was eligible for deduction under Section 80-IA. This being the position, we do not think the appellant-assessee would be entitled to deduction on the gross receipt without reducing depreciation under Section 80-IA regardless

of whatever interpretation they want to place on the provisions of Section 80IA. The view we have taken is in consonance and in conformity with the view expressed by this Court in ITA 579/2007 ***Dabur India Ltd. versus Commissioner of Income Tax, Delhi*** that deduction under Section 80-IA is on the net amount earned by the eligible undertaking, i.e., after computing the income of the eligible undertaking in terms of Chapter IV of the Act, which includes Section 32 relating to depreciation. Recent decision of the Supreme Court dated 9<sup>th</sup> October, 2017 in Civil Appeal No. 238/2012, ***Plastiblends India Limited versus Additional Commissioner of Income Tax, Mumbai and Another***, also takes the same view. In ***Plastibends India Limited (supra)***, the Supreme Court observed and held:-

"20. After removing the applicability of *Mahendra Mills* [*CIT v. Mahendra Mills*, (2000) 3 SCC 615 : (2000) 243 ITR 56] on the aforesaid grounds, the High Court proceeded to consider as to whether it can be said that the quantum of deduction allowable under Section 80-IA depends upon the assessee claiming or not claiming current depreciation? The Full Bench went on to answer this question with the observations that it was no longer *res integra* as the Apex Court had reflected thereupon in *Liberty India* [*Liberty India v. CIT*, (2009) 9 SCC 328 : (2009) 317 ITR 218] and quoted the following passage from the said judgment in support of its aforesaid remarks:

"24. 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 Sections 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

Sections 80-IA/80-IB is the generation of profits (operational profits).

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27. *On analysing Chapter VI-A, we find that Sections 80-IB/80-IA are the 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.

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33. On perusal of sub-section (5) of Section 80-IA, it is noticed that it provides for the manner of computation of profits of an eligible business. Accordingly, such profits are to be computed as if such eligible business is the only source of income of the assessee. *Therefore, the devices adopted to reduce or inflate the profits of eligible business have got to be rejected in view of the overriding provisions of sub-section (5) of Section 80-IA*, which are also required to be read into Section 80-IB. We may reiterate that Sections 80-I, 80-IA and 80-IB have a common scheme and if so read it is clear that the said sections provide for incentives in the form of deduction(s) which are linked to profits and not to investment.

34. On an analysis of Sections 80-IA and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying sub-section (2), would be entitled to deduction under sub-section (1) only to the extent of profits derived from such industrial undertaking after specified date(s). Hence, apart from eligibility, sub-section (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the

importance of the words “derived from industrial undertaking” as against “profits attributable to industrial undertaking”.”

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**23.** The aforesaid conclusion of the Full Bench is based on the judgments of this Court and there is no reason to disagree with the same, on finding that the judgments of this Court are rightly analysed and ratio thereof is correctly understood and applied. We, thus, entirely agree with the Full Bench judgment of the Bombay High Court in *Plastiblends India Ltd. v. CIT* [*Plastiblends India Ltd. v. CIT*, (2009) 318 ITR 352] and the following manner in which the position has been summed up by the High Court:

“44. To summarise, firstly, the Apex Court decision in *Mahendra Mills* cannot be construed to mean that by disclaiming depreciation, the assessee can claim enhanced quantum of deduction under Section 80-IA. Secondly, the Apex Court in *Distributors (Baroda) (P) Ltd.* [*Distributors (Baroda) (P) Ltd. v. Union of India*, (1986) 1 SCC 43 : 1986 SCC (Tax) 159] and in *Liberty India* [*Liberty India v. CIT*, (2009) 9 SCC 328 : (2009) 317 ITR 218] has clearly held that the special deduction under Chapter VI-A has to be computed on the gross total income determined after deducting all deductions allowable under Sections 30 to 43-D of the Act and any device adopted to reduce or inflate the profits of eligible business has got to be rejected. Thirdly, this Court in *Albright Morarji and Pandit Ltd.* [*CIT v. Albright Morarji and Pandit Ltd.*, 1998 SCC OnLine Bom 612 : (1999) 236 ITR 914] , *Grasim Industries Ltd.* [*Grasim Industries Ltd. v. CIT*, 2000 SCC OnLine Bom 948 : (2000) 245 ITR 677] and *Asian Cable Corpn. Ltd.* [*CIT v. Asian Cable Corpn. Ltd. (No. 2)*, 2003 SCC OnLine Bom 1279 : (2003) 262 ITR 537] has only followed the decisions of the Apex Court in *Distributors Baroda* [*Distributors (Baroda) (P) Ltd. v. Union of India*, (1986) 1 SCC 43 : 1986 SCC (Tax) 159] . Thus, on analysis of all the decisions referred hereinabove, it is seen that the quantum of deduction allowable under Section 80-IA of the Act has to be determined by computing the gross total income from business, after taking into consideration all the deductions

allowable under Sections 30 to 43-D of the Act. Therefore, whether the assessee has claimed the deductions allowable under Sections 30 to 43-D of the Act or not, the quantum of deduction under Section 80-IA has to be determined on the total income computed after deducting all deductions allowable under Sections 30 to 43-D of the Act.”

10. In the facts of the present case, the question of bifurcation of depreciation in view of the two lines of business, etc. wanes, as the amount of depreciation, even on bifurcation, which would be reduced from the gross receipts of the undertaking eligible for deduction under section 80IA of the Act, would be significantly higher. We do not, therefore, in the facts of the present case, find any good ground or reason to interfere with the impugned order passed by the Tribunal. The question of law is accordingly, in the facts of the present case, answered against the appellant-assessee and in favour of the Revenue. We clarify that if in a future year the relevant provision requires interpretation, we would interpret the same.

The appeal is dismissed. No order as to costs.

**SANJIV KHANNA, J.**

**PRATHIBA M. SINGH, J.**

**NOVEMBER 27, 2017**  
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