

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.408 of 2009

M/s.Sundaram Fasteners Limited,
98A, 7th Floor, Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004. Appellant/Respondent

-vs-

The Commissioner of Income Tax,
Company Circle VI(4), Nungambakkam,
Chennai - 600 034.Respondent/Appellant

Tax Case Appeal under Section 260-A of the Income Tax Act, 1961, is directed against the order passed by the Income Tax Appellate Tribunal "C" Bench, Chennai in I.T.A No.205/Mds/2008 dated 17.12.2008 for the assessment year 2004-05 against the order passed by the Commissioner of Income Tax (Appeals)-V, Chennai 34, made in I.T.A.No.684/2006-07 dated 08.10.2007 and against the order of the Joint Commissioner, Income Tax Company Range-VI, Chennai made in PAN/GIR NO.AAACS8779D Dated 29.12.2006 for the Assessment Year 2004-05.

For appellant : Mr.P.J.Rishikesh

For Respondent : Mr.T.R.Senthil Kumar

JUDGEMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This Tax Case Appeal by the assessee filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) is directed against the order passed by the Income Tax Appellate Tribunal "C" Bench, Chennai in I.T.A.No.205/Mds/2008 dated 17.12.2008 for the assessment year 2004-05.

2.The above Tax Case Appeal has been admitted on the following substantial questions of law:-

"(i) Whether on the facts and circumstances of the case, the assessee is entitled to claim for deduction under Section 80IB of the Act when the profits are independently determinable for all the four units of the appellant and as a consequence relief should have been independently determined.

(ii) Whether on the facts and circumstances of the case, the Tribunal was justified in denying relief under Section 80IB of the Act, when the appellant has satisfied all the conditions mentioned therein?"

3.We have heard Mr.P.J.Rishikesh, learned counsel for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Mrs.K.G.Usha Rani for the respondent/Revenue.

4. The short issue which falls for consideration is whether the Tribunal was right in reversing the order passed by the Commissioner of Income Tax (Appeals) V, Chennai, dated 08.10.2007 in I.T.A.No.684/2006-07 in the matter of computing deduction under Section 80 IB of the Act. The Tribunal in its order referred to the decision of the Bombay High Court in decision of Synco Industries Ltd., Vs. Assessing Officer of Income Tax reported in 254 ITR 608. This matter was carried on appeal to the Hon'ble Supreme Court and in the decision reported in (2008) 4 SCC 22, dated 13.03.2008 the Hon'ble Supreme Court held as as follows:

"29. While computing the quantum of deduction under Section 80-I(6) the Assessing Officer, no doubt, has to treat the profits derived from an industrial undertaking as the only source of income in order to arrive at the deduction under Chapter VI-A. However, this Court finds that the non-obstante clause appearing in Section 80-I(6) of the Act, is applicable only to the quantum of deduction, whereas, the gross total income under Section 80B(5) which is also referred to in Section 80I(1) is required to be computed in the manner provided under the Act which presupposes that the gross total

income shall be arrived at after adjusting the losses of the other division against the profits derived from an industrial undertaking. If the interpretation as suggested by the appellant is accepted it would almost render the provisions of Section 80A(2) of the Act nugatory and therefore the interpretation canvassed on behalf of the appellant cannot be accepted.

30. It is true that under Section 80-I(6) for the purpose of calculating the deduction, the loss sustained in one of the units, cannot be taken into account because Sub-Section 6 contemplates that only the profits shall be taken into account as if it was the only source of income. However, Section 80A(2) and Section 80B (5) are declaratory in nature. They apply to all the Sections falling in Chapter VI-A. They impose a ceiling on the total amount of deduction and therefore the non-obstante clause in Section 80-I(6) cannot restrict the operation of Sections 80A(2) and 80B(5) which operate in different spheres.

31. As observed earlier Section 80-I(6) deals with actual computation of deduction whereas Section 80-I(1) deals with the treatment to be given to such deductions in order to arrive at the total income of the assessee and therefore while interpreting Section 80-I(1), which also refers to gross total income one has to read the expression 'gross total income' as defined in Section 80B(5). Therefore, this Court is of the opinion that the High Court was justified in holding that the loss from the oil division was required to be adjusted before determining the gross total income and as the gross total income was 'Nil' the assessee was not entitled to claim deduction under Chapter VI-A which includes Section 80-I also.

32. The proposition of law, emerging from the above discussion is that the gross total income of the assessee has first got to be determined after adjusting losses etc., and if the gross total income of the assessee is 'Nil' the assessee would not be entitled to deductions under Chapter VI-A of the Act."

5. Though the impugned order passed by the Tribunal was on 17.12.2008, the Tribunal failed to notice that the above decision was passed on 13.03.2008. This error is sufficient to set aside the order passed by the Tribunal. However, since appeal has been entertained on the above mentioned substantial questions of law, we proceed to examine as to whether the Tribunal was right in reversing the order passed by the Commissioner of Income Tax (Appeals) on the above issue. The CIT (A) took note of the decision in the case of Synco Industries (supra) and held that the methodology adopted by the Assessing Officer of aggregating the income of all the units before considering eligible deduction under Section 80 IB was not in order.

6. Identical issue came up for consideration before High Court of Delhi in the case of The Commissioner of Income Tax III Vs. Sona Koyo Steering Systems Limited in I.T.A.No.1279/2008 dated 10.02.2010, the Court after taking into consideration the decision in the case of Synco Industries Ltd., (Supra) and the decision in the case of Commissioner Income Tax Vs. Kotagiri Industrial Co-operative Tea Factory Ltd., reported in 224 ITR 605 held as follows:

"From the above extract, it is apparent that the Supreme Court did not at all hold that while computing the deduction under Section 80-I(6), the loss of one eligible industrial undertaking is to be set off against the profit of another eligible industrial undertaking. All that the Supreme Court said was that in computing the gross total income of the assessee, the same has to be determined after adjusting the losses and that, if the gross total income of the so determined turns out to be 'Nil', then the assessee would not be entitled to deduction under Chapter VI-A of the said Act."

7. The above referred decision is a clear answer to the case of the Revenue before us. To be noted that the Assessing Officer failed to consider that the gross total income of the assessee before deduction was Rs.78,90,64,628/-, whereas in the case of Synco Industries Ltd., (Supra) as noted by Hon'ble Supreme Court, the factual position was different. In the said case, the Assessing Officer, noticed that the gross total income of assessee therein before deductions under Section 80 IB is nil.

* 8. Therefore, in our considered view, the Tribunal erred in reversing the order passed by Commissioner of Income Tax (Appeals). Therefore, the appeal filed by the assessee is allowed and the order passed by the Tribunal dated 17.12.2008 is set aside and the order of Commissioner of Income Tax (Appeals) is restored and the substantial questions of law are answered in favour of the assessee.

Sd/-

Assistant Registrar(Insp.Cell)
29.07.2019

* Substituted as per the order
dated 31.07.2019 made in
TCA.No.408 of 2009

Sd/-

Assistant Registrar(CS-III)
09.09.2019

//True Copy//

Sub Assistant Registrar

mrm

To

1. The Income Tax Appellate
Tribunal "C" Bench, Chennai.

2. The Commissioner of Income Tax,
Company Circle VI(4),
Nungambakkam, Chennai 34.

3. The Commissioner of Income
Tax(Appeals)-V, Chennai 34.

4. The Joint Commissioner of Income Tax,
Company Range VI, Chennai.

**To be substituted for the
Order already despatched
on 30.07.2019**

+1 cc to Mr.T.R.Senthil Kumar, Advocate SR.No.50062

+1 cc to Mr.P.J.Rishikesh, Advocate SR.No.49635

Tax Case No.408 of 2009

CA(CO)
CSL/29.07.2019
CS/09.09.2019