

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.844 OF 2002

Win Laboratories Ltd.

...Appellant

vs.

The Assistant Commissioner of Income-Tax

...Respondent

Mr. Atul K. Jasani a/w. Mr. P. C. Tripathi for Appellant.

Mr. Arvind Pinto for Respondent.

CORAM : K. R. SHRIRAM AND
AMIT B. BORKAR, JJ.

DATE : 18 NOVEMBER 2021

P. C. :

On 15/9/2004 the following substantial question of law was framed:

"Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that in view of the provisions of Section 80AB of the Income Tax Act, 1961, the loss of Rs.3,24,080/- sustained by the Generic Division was to be deducted from the profits of Bulk Drugs Division for the purposes of computing deduction under Section 80HH and 80I of the Income Tax Act, 1961 ?"

2. Mr. Jasani at the outset submitted that this question is squarely covered by the judgment of the Apex Court in the ***Commissioner of Income Tax-I vs. Reliance Energy Ltd.***¹ Mr. Jasani submitted that though in *Reliance Energy (supra)* Section 80-IA of the Income Tax Act, 1961 (the Act) was

¹ (2021) 127 taxmann.com 69 (SC)

discussed, it would still squarely apply to the case at hand to Sections under consideration, i.e., 80I and 80HH of the Act.

3. Mr. Pinto per contra, strongly opposed the appeal and submitted that the ITAT had correctly concluded that the losses should be set-off against the profits of industrial undertaking before granting deduction under Section 80 HH of the Act in view of the specific provision found in Section 80AB of the Act. Mr. Pinto submitted that to an extent Section 80AB of the Act restricts the deduction granted under Section 80HH and 80I of the Act. Mr. Pinto relies on the judgment of *Commissioner of Income-Tax vs. Sundaravel Match Industries (P) Ltd.*²

4. If one considers Section 80I of the Act it provides for deduction in respect of profits and gains from Industrial undertaking after a certain date etc. It applies to industrial undertaking or a ship or the business of a hotel or business of repairs to ocean going vessels or other powered craft. Section 80IA of the Act provides for deductions in respect of profits and gains from industrial undertaking or enterprises engaged in infrastructure development etc. Section 80HH of the Act provides for deduction in respect of profits and gains from a newly established industrial undertaking or a hotel business in backward area. If we consider the language applied in

2 245 (ITR) 605

these three sections, they are identical except that the industry to which it becomes applicable differs. Therefore, even if the judgment of the Apex Court in *Reliance Energy Limited (supra)* was in regard to Section 80-IA of the Act, in our view it covers even Sections 80I and 80HH of the Act.

5. In *Reliance Energy (supra)* the Apex Court had categorically stated that Section 80AB of the Act cannot be read to be curtailing the width of Section 80-IA of the Act. Mr. Pinto submitted that this observation of the Apex Court was in the nature of obiter. It is settled law that even if the observation of the Apex Court is in the nature of obiter, the same will be binding on the High Courts.

6. In the circumstances, in view of what is said in *Reliance Energy Limited (supra)* by the Apex Court we will have to answer the question noted above in negative.

7. Appeal disposed with no order as to costs.

(AMIT B. BORKAR, J)

(K. R. SHRIRAM, J.)