

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.06.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY

AND

THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.No.868 of 2010

The Commissioner of Income Tax - I,
Coimbatore. Appellant

v.

M/s. Bannari Amman Sugars Ltd.,
1212, Trichy Road,
Coimbatore.
(PAN No.AAACB8933G) Respondent

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 05.03.2010 in I.T.A.No.1196/Mds/2009 for the Assessment Year 2006-2007 against the Commissioner of Income Tax (Appeals) I, Coimbatore and made in P.A.No.AAACB8933G, dated 25.05.2009 for the Assessment year 2006-2007 preferred against the Assistant Commissioner of Income Tax Circle-1(2), Coimbatore, and made in PAN No.AAACB8933G, dated 31.12.2008 for the Assessment year 2006-07.

For Appellant : Mr.T.R. Senthil Kumar
Senior Standing Counsel
Assisted by K.G. Usha Rani

For Respondent : Mr.R.Venkatnarayanan

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.1196/Mds/2009 in respect of the Assessment Year 2006-2007 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The above appeal was admitted on the following substantial question of law:

" Whether on the facts and In the circumstances of the case, the Income-Tax Appellate Tribunal was right in law in holding

that the assessee is entitled deduction under section 80IA of the Act, even though where a company apart from his regular business and in the business of generation and distribution of power, owning more than one Industrial Undertaking, deduction under Section 80IA of the Act is to be allowed to a single Industrial Unit not all the units taken together?"

3. When the appeal is taken up for hearing, T.R. Senthil Kumar, learned Senior Standing Counsel appearing for the appellant-revenue fairly submitted that the substantial question of law arise for consideration in this appeal is covered against the revenue by a Judgment of the Division Bench of this Court reported in [2019] 104 Taxmann.com 1 (Madras) [Commissioner of Income Tax, Coimbatore v. M/s.Bannari Amman Sugars Ltd.] wherein the Hon'ble Division Bench held as follows:-

" 13. We may, at this juncture, usefully refer to the provisions of section 80IB(5) of the Act which provides that in determining the quantum of deduction under section 80IA, the eligible business shall be treated as the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year upto and including the assessment year for which the determination is to be made. There is thus no doubt that each unit, including a CPP, has to be seen independently as separate and distinct from each other and as units for the purposes of grant of deduction under section 80IA of the Act.

14. Coming to the computation itself, reliance is placed by the Department on a judgment of the Supreme Court in the case of Synco Industries Ltd. v. Assessing Officer, Income-Tax, Mumbai [2008] 168 Taxman 224/299 ITR 444 (SC). The Supreme Court was considering the case of an assessee managing multiple units, some earning a profit and others, losses. The question before the Bench was whether the losses suffered by the eligible oil division ought to be adjusted against the profits of the chemical division in finalizing the grant of deduction under Section 80I of the Act. After considering the provisions of Section 80I, 80A, 80AB and 80B, the Bench holds as follows:

12. The contention that under Section 80-I (6) the profits derived from one industrial undertaking cannot be set off against loss suffered from another and the profit is required to be computed as if profit making industrial undertaking was the only source

of income, has no merits. Section 80-I (1) lays down that where the gross total income of the assessee includes any profits derived from the priority undertaking/unit/division, then in computing the total income of the assessee, a deduction from such profits of an amount equal to 20% has to be made. Section 80-I (1) lays down the broad parameters indicating circumstances under which an assessee would be entitled to claim deduction. On the other hand Section 80-I (6) deals with determination of the quantum of deduction. Section 80-I (6) lays down the manner in which the quantum of deduction has to be worked out. After such computation of the quantum of deduction, one has to go back to Section 80-I (1) which categorically states that where the gross total income includes any profits and gains derived from an industrial undertaking to which Section 80-I applies then there shall be a deduction from such profits and gains of an amount equal to 20%. The words "includes any profits" used by the legislature in Section 80-I(1) are very important which indicate that the gross total income of an assessee shall include profits from a priority undertaking. 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. 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. 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.

15. The conclusion was thus to the effect that where the assessee deserves profits from multiple units, all being eligible for deduction under Chapter VIA, the profits or losses arising from the respective units have to be considered in totality and only if the resultant figure were positive, would the assessee be entitled to its claim. Thus, the judgment considers the interplay between the income and losses arising from eligible units alone, all of which are eligible for deduction under Chapter VIA, and would not apply to the facts and circumstances of the present case whether the claim under Section 80I was restricted only to the 16 MW unit at Karnataka. Mr.Senthil Kumar, fairly, does not dispute this position.

16. In the light of the above discussion, the questions of law are answered in favour of the Assessee and against the Revenue and the Tax Case (Appeal) is dismissed. No costs."

4. Mr.R.Venkatnarayanan, learned counsel appearing for the respondent also submitted that in view of the Judgment of the Hon'ble Division Bench of this Court cited supra, the appeal is liable to be dismissed.

5. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down by the Hon'ble Division Bench of this Court in the Judgment reported in [2019] 104 Taxmann.com 1 (Madras) [cited supra], the question of law is decided against the Revenue and in favour of the assessee. The Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal,
Chennai, "C" Bench
2. The Commissioner of Income Tax-I,
Coimbatore
3. The Assistant Commissioner of Income Tax Circle-1(2),
Coimbatore

+1CC to Subbaraya Aiyar, Sr.No.28498

+1CC to Mr.T.R.Senthilkumar, Advocate, Sr.No.28497

सत्यमेव जयते

T.C.A.No.868 of 2010

LN (CO)

A.SK (12.07.2021)

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