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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN  
AND  
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A. No. 373 of 2010

The Commissioner of Income - tax-I,  
Coimbatore.

.. Appellant/Respondent

Versus

M/s. Bannari Amman Sugars Limited,  
1212, Trichy Road, Coimbatore - 641 018.  
PAN-AAACB8933G

.. Respondent/ Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 06.11.2009 passed by the Income Tax Appellate Tribunal, Chennai "C" Bench, in I.T.A.No. 423/Mds/2009. For the assessment year 2005-06.

Preferred against the order of The Commissioner of Income - tax (Appeals) -I, Coimbatore. In ITA No. 280/2007-08 dated 04/02/2009 filed against the Assessment order of The Assistant Commissioner of Income - tax, Company Circle -I(2), Coimbatore. Dated 29/12/2007 for the Assessment year 2005-06. in PAN NO AAACB8933G.

For Appellant : Mr.M.Swaminathan  
Senior Standing Counsel

For Respondent : Mr. Subbaraya Aiyar

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 06.11.2009 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No. 423/Mds/2009, relating to the assessment year 2005-06.

2. By order dated 20.04.2010, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

"1. Whether in the case where a company



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engaged apart from its regular business in the business of generation and distribution of power, owing more than one industrial undertaking, deduction under Section 80IA of the Act is to be allowed to single industrial unit or to all the units taken together? And

2. Whether the Tribunal was right in holding that for the purpose of computing deduction under Section 80IA, the assessee was entitled to exemption in respect of the unit situated in Karnataka for which claim was made even though only combined profit and loss account and balance sheet in respect of all business was maintained?"

3. When the matter was taken into consideration, the learned counsel for the appellant/Revenue fairly submitted that a Co-ordinate Bench of this court by judgment dated 28.01.2019 in T.C.A.No.1045 of 2009 in respect of the assessee's own case, decided the identical questions of law against the Revenue. The relevant passage of the said judgment can profitably be extracted below:

"11. The Tribunal has found as a fact that independent Power Purchase Agreements (PPA) in respect of each unit have been entered into by the assessee with the Karnataka Transmission Limited and Tamil Nadu Electricity Board respectively, being i) Power Purchase Agreement with Karnataka Power Transmission Corporation Ltd. dated 25.09.2000 for 16 MW Cogeneration Plant situated at Alaganchi, Mysore District, ii) Power Purchase Agreement with Tamil Nadu Electricity Board dated 24.04.2002 for 20 MW Co-generation Plant situated at Alathukombai, Erode District and iii) Power Purchase Agreement with Karnataka Power Transmission Corporation Ltd dated 11.03.2004 for 20 MW Co-generation Plant situated at Alaganchi, Mysore District.

12. The terms and conditions contained in each PPA are different and distinct from each other. Thus the mere fact that consolidated financials have been prepared for the entire business would not disentitle the assessee from claiming deduction under section 80IA in respect of the one undertaking of its choice. In fact, separate statements have been maintained by the assessee and filed before the Commissioner of Income Tax (Appeals) detailing separate project cost and source of finance in respect of each unit. The assessee has categorically



exercised its claim before the Assessing Officer for deduction under section 80IA in respect of only the 16 MW unit at Karnataka.

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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 (299 ITR 444). 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



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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



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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. Following the aforesaid decision, which squarely applies to the facts of the present case, the substantial questions of law are answered against the appellant/Revenue and in favour of the respondent / assessee. Accordingly, the tax case appeal is dismissed. No costs.

Sd/-  
Assistant Registrar(CS VI)

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Sub Assistant Registrar



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To

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

+1cc to Mr. Subbaraya Aiyar , Advocate, S.R.No.8223  
+1cc to Mr.M.Swaminathan , Advocate, S.R.No.7948

T.C.A. No. 373 of 2010

RSI (CO)  
CT 25/02/2021