(1984) 01 BOM CK 0011

In the Bombay High Court

Case No : Income Tax A. No. 77 of 1982

Commissioner of Income Tax APPELLANT

Vs

Devidayal Rolling Refineries Pvt. Ltd. RESPONDENT

Date of Decision : 24-01-1984

Acts Referred:
Income Tax Act, 1961 — Section 80, 80E

Citation : (1984) 01 BOM CK 0011

Hon'ble Judges : Sujata V. Manohar, J;Kania, J

Bench : Division Bench

Judgement

Smt. Sujata Manohar, J.—The petitioner had filed a reference application with the ITAT u/s. 256(1) of the IT Act, 1961, stating therein that the following questions of law arose out of the order of the Tribunal in the present case :

1."Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in interpreting the Supreme Court decision in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, to mean the loss incurred in non-priority industry could not be set off against the profits and gains of a priority industry run by the same assessee even according to the steps set out for such working at Para 91 of the report ?"

2."Whether, on the facts and in the circumstances of the case, the Tribunal was right in confirming the orders of the CIT (Appeals) directing that the deduction at 8% should be allowed on the profits of the priority industry even through for the years under consideration the gross total income as computed u/s. 80-B(5) is nil or negative ?"

The Tribunal by its order dt. 29-12-1981 rejected the reference application and declined to refer the questions sought for.

2. The present application is in respect of getting these two questions referred by the Tribunal to the High Court under the provisions of s. 256(2) of the IT Act,

1961. In the present case the assessee had claimed relief u/s. 80-I as well as u/s. 80J of the IT Act in respect of the units run by it. Out of the three units, unit Nos. 1 and 3 were admittedly new industrial undertaking within the meaning of s. 80J and therefore, entitled to relief under the said section. Unit No. 2 was a priority industry as provided u/s. 80I of the IT Act as then in force. The ITO took the view that the assessee was entitled to relief under the said two sections on the basis of the net profit of the three units combined together. It was the contention of the assessee that the deductions which they are entitled to under the provisions of ss. 80I and 80-J in respect of the said units have to be calculated separately on each of the relevant units. Under s. 80I of the IT Act as it then stood, it was provided as follows :

"80-I. Deduction in respect of profits and gains from priority industry in the case of certain companies. - (1) In the case of a company to which this section applies, when the gross total income includes any profits and gains attributable to any priority industry; there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent thereof, in computing the total income of the company.

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Sec. 80-J is also similarly worded. The first part of these two sections refers to the gross total income and it sets out that when the gross total income of the company includes any profits and gains attributable to any priority industry, the deductions in accordance with that action is required to be given from such profits and gains while computing the total income of the company. There is a similar provision u/s. 80-J. The words "such profits and gains" clearly refer to the profits and gains attributable to the priority industry in question. This section cannot be interpreted to treat the profits and losses of different units as adjusted against each other.

3. Sec. 80M of the said Act which is similarly worded has been considered by the Supreme Court in the case of Cloth Traders (P) Ltd. Vs. Additional Commissioner of Income Tax , Gujarat-I, . In that case in construing the language of s. 80M the Supreme Court has held that the opening words "where the gross total income of an assessee ... includes any income by way of dividends from a domestic company merely prescribed a consolation for the applicability of the section, namely, that the gross total income must include the category of income described by the words "income by way of dividends from a domestic company". If the gross total income includes this category of income, the assessee would be eligible for deduction in respect of "such income", i.e. such category of income, whatever be the quantum. The words "such income" cannot have any reference to the quantum of such income. The deduction permissible has to be calculated with reference to the full amount of such income and not such income as computed under the Act after making deductions provided under the Act. The Supreme Court has thus construed the sake legislative formula in s. 80M which is

used in ss. 80-I and 80-J also. In case the ratio of the Supreme Court Judgment applies to the present case. Thus the deduction admissible is to be calculated in respect of the whole of the income received by the assessee from the priority or new undertaking as the case may be, and not in respect of the income computed after making the deductions provided under the Act and after adjusting the profits of losses of different units against one another.

4. Our attention was drawn to a decision of the Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad, which deals with the provisions of s. 80E of the IT Act. Sec. 80E is worded differently from ss. 80I, 80-J and 80M. Opening words of this section are "which the total income (as computed in accordance with the other provisions of this Act) includes any profits and gains attributable the business". Those words are very different from the opening words of ss. 80M, 80J and 80I. The ratio of that decision cannot apply in the present case.

5. In the circumstances the rule is discharged. The petitioner will pay to the respondents cost of the application.

