

(2014) 03 GUJ CK 0027
In the Gujarat High Court
Case No : Tax Appeal No. 508 of 2007

Commissioner of Income Tax		APPELLANT
	Vs	
M/s. Atul Intermediates		RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Income Tax Act, 1961 — Section 28, 80A, 80AB, 80-AB, 80B

Citation : (2014) 269 CTR 49 : (2015) 373 ITR 638

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : M.R. Bhatt, Senior Advocate for Mrs. Mauna M. Bhatt, Advocate for Appellant(s) No. 1, Advocate for the Appellant; S.N. Soparkar for Mrs. Swati Soparkar, Advocate for Opponent(s) No. 1, Advocate for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal dated 18th August 2006. While admitting the appeal, following substantial question of law was framed:

Whether the Appellate Tribunal is right in law and on facts in holding that the assessee can claim deduction both u/s 80HHC as also u/s 80IA despite the provisions of section 80IA(9)?

2. The question involves the interpretation of sub-section (9) of section 80IA of the Income Tax Act, 1961(the Act" for short) in the context of assessee's claim of deduction u/s 80HHC of the Act. The controversy is whether the assessee can claim deduction u/s 80HHC of the Act, ignoring the deduction already claimed and allowed u/s 80IA of the Act, unless and until the combined effect of the deductions flowing from both the sections is to exceed the profit and gain of the eligible business of the undertaking or enterprise. The controversy arises in the following background.

3. Respondent-assessee is a company. For the assessment year 2001-02, the assessee filed its return of income on 29th October 2001. The assessee claimed

deduction of Rs. 16.54 lakhs (rounded of) u/s 80IA of the Act and of Rs. 52.75 lakhs (rounded of) u/s 80HHC, and declared total income of rupees nil. The return of the assessee was taken in scrutiny. The Assessing Officer questioned the assessee why in terms of sub-section (9) of section 80IA of the Act, the claim of deduction of the assessee u/s 80HHC for the profits from the sale of goods as a supporting manufacturer be not restricted to the extent of deduction already allowed u/s 80IA of the Act.

4. In response to such objection of the Assessing Officer, the assessee raised various contentions in written submissions dated 19th March 2004, and opposed the proposal of the Assessing Officer to restrict the assessee's claim of deduction u/s 80HHC of the Act.

5. The Assessing Officer, however, held that with the introduction of subsection (9) of section 80IA, statute had barred double deductions. The amount of deduction claimed and allowed u/s 80IA had to be reduced from the profit of industrial undertaking for the purpose of allowing any other deduction for which the assessee was entitled to; in the present case u/s 80HHC of the Act. He accordingly ordered re-computation of the deduction u/s 80HHC of the Act in his assessment. In principle, the Assessing Officer believed that by virtue of sub-section (9) of section 80IA of the Act if an assessee has already claimed a deduction u/s 80IA, which is also allowed, to such an extent, the deduction u/s 80HHC of the Act must be reduced.

6. The assessee carried the matter in appeal. Commissioner of Income Tax (Appeal) confirmed the order of the Assessing Officer in this respect. In his brief discussion, he held that sub-section (9) of section 80IA clearly lays down that no deduction under any other provision in Chapter VIA under the heading C. Deductions in respect of certain incomes" shall be allowed in respect of the profits and gains of the undertaking, which are deductible u/s 80IA of the Act. In view of this clear mandate, deduction u/s 80HHC of the Act, which comes under Chapter VI under the said heading, will not be admissible in respect of profits and gains of industrial undertaking in respect of which the deduction u/s 80IA has been allowed.

7. The assessee went further in appeal before the Income Tax Appellate Tribunal (the Tribunal" for short). The Tribunal relied on the decision in the case of (2006) 7 SOT 57 in which the Bangalore Bench of the Tribunal had ruled in favour of the assessee, placed reliance on various statutory provisions, and the circular of Central Board for Direct Taxes (`CBDT" for short) No. 772 of 23rd December 1998 explaining the scope of sub-section (9) of section 80IA of the Act.

8. The Revenue thereupon filed this appeal. Learned senior counsel Shri M.R. Bhatt for the Revenue drew our attention to the decisions of various High Courts of the country giving their interpretation of sub-section (9) of section 80IA of the Act, and raised the following contentions:

(1) Language of sub-section (9) of section 80IA is plain and unambiguous. It

aims at restricting double deductions. Once a deduction has been claimed, and allowed u/s 80IA, no deduction under Chapter VI under the heading "C. Deductions in respect of certain incomes" is to be allowed to that extent.

(2) Effect of sub-section (9) cannot be restricted to limiting the deduction to hundred per cent of the profit of the eligible business.

(3) Board's circular No. 772 dated 23rd December 1998 does not restrict the scope of sub-section (9) of section 80IA. In any case, Board's circular cannot limit the effect of a statutory provision flowing from the plain meaning assigned to it.

9. On the other hand, learned counsel Shri S.N. Soparkar for the assessee firstly placed heavy reliance on the Board's circular No. 772 dated 23rd December 1998 to contend that the sole intention of the Legislature in introducing subsection (9) of section 80IA was to restrict the benefit of deduction under Chapter VI under the heading "C. Deductions in respect of certain incomes" to a maximum of hundred per cent of the eligible business. No further meaning can be ascribed to the said provision. Secondly, sub-section (9) of section 80IA is not given overriding effect over the other provisions. The said provision, therefore, cannot be applied for computing the deduction u/s 80HHC of the Act by substituting the term "business profit" as explained in clause (baa) of explanation to section 80HHC. Counsel for the assessee drew our attention to section 80AB of the Act to contend that deduction u/s 80HHC of the Act is to be computed independently of any other claim of deduction of the assessee.

10. Having heard learned counsel for the parties, before attempting our interpretation of the statutory provisions, we may first refer to the relevant provisions as also various judicial pronouncements directly touching this aspect. Chapter VIA of the Act pertains to deductions to be made in computing total income, and has various parts. Part-A contains general provisions. Section 80A of the Act, contained in Part-A of Chapter VIA, pertains to deductions to be made in computing total income. Sub-section (1) of section 80A provides that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U. Sub-section (2) of section 80A provides that the aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.

11. Section 80AB of the Act pertains to deductions to be made with reference to the income included in gross total income and reads as under:

80AB. Where any deduction is required to be made or allowed under any section included in this Chapter under the heading "C--Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in

accordance with the provisions of this Act before making any deduction under this Chapter shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.

12. Apart from these general provisions of some relevance, Chapter VI contains various provisions granting deductions to the assessee in respect of a range of business activities. Section 80HHC of the Act, which is contained in Part-C relating to deductions pertaining to certain incomes, grants deductions at specified rates in respect of profits of export business. Sub-section (1) of section 80HHC provides for the basis of such deduction. Sub-section (1B) thereof provides for the extent of deduction made available from time to time. Subsection (3) provides for the formula for working out the profit eligible for such deduction. Different formulae are provided for manufacturing exporters, trader exporters and those who have both kinds of exports. In simple terms, for manufacturing exporter such eligible profit is to be worked out by applying a formula of

Clause (baa) to the explanation to section 80HHC provides that profits of business means the profits of business as computed under the head profits and gains of business or profession" as reduced by (1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits and (2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India.

13. Section 80IA of the Act pertains to deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development. Sub-section (1) of section 80IA provides that where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years. This rate of deduction changed from time to time. We are not concerned with the precise rate of deduction under this section. Sub-section (4) of section 80IA provides for the instances where the section would apply and includes any enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility. We are not concerned with the whole range of activities specified in sub-section (4) of said section, which qualify for deduction under sub-section (1) thereof. Our main interest is in sub-section (9A) with effect from 1st April 1999, which was later on renumbered as sub-section (9) and reads as under:-

(9) Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any

assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C -- Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.

14. Section 80IB of the Act pertains to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. Sub-section (13) of section 80IB provides that the provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80IA shall, so far as may be, apply to the eligible business under this section also.

15. The question of interpretation of sub-section (9) of section 80IA has occupied judicial minds on more occasions than one. As expected, various Benches of the Income Tax Appellate Tribunal were the first to express their opinions. The issue was considered by a Special Bench of the Tribunal in case of (2007) 108 ITD 49 . The Tribunal held that the restriction placed on claim of repetitive deduction contained in section 80IA(9) of the Act is to be made applicable in respect of all deductions under Chapter VIA. Full effect of such a provision is to be given, and wherever an assessee wants to claim deduction, restriction contained in section 80IA(9) is to be read in every provision providing for deduction under Part C of Chapter VIA. Despite this pronouncement by the Special Bench of the Tribunal, different Benches of the Tribunal adopted different interpretations. The question was, therefore, referred to a Larger Bench, which constituted of five members, and its decision was rendered in the case of Asst. C.I.T. v. Hind. Mint and Agro Products reported in (2009) 315 ITR 401 (Delhi) (SB). The Tribunal went deep into the issues, and traced the background for introduction of sub-section (9) of section 80IA. It was noticed that in case of J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, considered the question, whether deduction u/s 80I is to be allowed only on the balance of income after deducting the relief u/s 80HH from the gross total income, and not from gross total income as defined u/s 80B(5) of the Act. The question pertained to the assessment year 1984-85. It was held that the provision of law is clear. So far as the benefit of section 80I is concerned, it has to be granted on gross total income, and not on the income deducted u/s 80HH. It was further held that section 80HH and section 80I of the Act are independent, and therefore, deductions can be claimed by newly established industrial undertakings both u/s 80HH and 80I on the gross total income. The Revenue challenged the decision of the Madhya Pradesh High Court before the Supreme Court. The Supreme Court, however, noticed that such view is followed repeatedly by different High Courts in number of cases, against which no special leave petitions were filed, thus, the Department has accepted the view taken in these judgments. The Supreme Court, therefore, observed that the Department having accepted the view taken in these judgments cannot be permitted to take a contrary view in the present case involving the same point. SLP was thus dismissed in the case of Joint Commissioner of Income Tax Vs. Madideep Engg. and Pkg. India (P.) Ltd., . The Tribunal noted that sub-section (9)

of section 80IA seems to have been introduced taking note of the decision of Madhya Pradesh High Court in J.P. Tobacco Products Private Limited (supra) and other similar decisions of the High Courts. Therefore, amendment was made to remove the mischief. The Tribunal approved the decision in the case of Rogini Garments (supra) and observed as under:

66. After careful consideration of rival submissions, we find that above arguments were considered and rejected in Rogini Garments for good reasons. We are not persuaded to take a view different from the one taken by the Special Bench. On consideration of provisions of Section 80-IA(9), we find that there are two restrictions in the statutory provision under consideration. These are:-

a) where an assessee is allowed deduction under this section (80-IA or 80-IB), deduction to the extent of such profit and gain shall not be allowed under any other provision of this chapter (Heading "C -Deduction in respect of certain incomes"), AND

b) deduction shall in no case exceed the profit and gain of the undertaking or hotel as the case may be.

67. The contention on behalf of the assessee and intervener is that total deductions under various sections "should not exceed profits and gains of undertaking. We are unable to accept this contention. It is seen that CBDT Circular No. 772 clarified and only dealt with (b) above and did not deem it necessary to make reference to restriction (a). In order to accept the contention of the assessee, we would have to exclude portion of the provision covered by (a) and ignore the restriction placed therein. Why such course should be adopted when words used by the legislature, "claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions" are quite clear and unambiguous and are to be given effect to as rightly contended by the revenue. The profit or gains of industrial undertaking, which has already been allowed as a deduction u/s. 80IA, such profit (to the extent) cannot be taken into consideration for allowing deduction under any other provision of this Chapter "C". If profit which has already been allowed as a deduction is again taken into consideration for computing deduction under any other provision referred to above, then restriction (a) above is disregarded and ignored. It cannot be done without doing violence to the language of the provision. We see no justification for adopting a course prohibited by the legislature. It is not possible to ignore the restriction placed as (a) nor it is possible to accept that in Circular No. 772, there is a suggestion to ignore restriction (a) mentioned above. As per the settled law, courts and Tribunals must see the mandate of the legislature and give effect to it as rightly argued by the revenue. Therefore, restriction (a) above has to be respected and followed.

16. Before the Special Bench rendered its judgment in case of Hind. Mint and Agro Products (supra), the decision of the Tribunal in case of Rogini Garments

(supra) came for consideration before Madras High Court in case of General Optics (Asia) Ltd. Vs. Deputy Commissioner of Income Tax . It was held that the ratio laid down would apply only for assessment years 1999-2000 and onwards and not for the assessment year 1998-99.

17. This issue was considered by Delhi High Court in case of Great Eastern Exports Vs. The Commissioner of Income Tax, . The High Court approved the decision of the Special Bench of the Tribunal in case of Hind. Mint and Agro Products (supra). It was held and observed as under:

41. We have considered the aforesaid elaborate submissions made by counsel for various parties appearing in these matters. We have stated in detail the scheme of Chapter VI-A of the Act and case law up to the stage of amendment, explaining the said Scheme. No doubt, as the unamended provisions stood, the Courts had interpreted those provisions to mean that they are independent of each other. It was categorically laid down that a new industrial unit can claim deduction u/s 80HHC as well u/s 80-IA of the Act (or for that matter any other provision of this Chapter) on the gross total income independently and for granting deduction u/s 80-I of the Act, the said income was not to be reduced balance after taking into account the benefit u/s 80HH of the Act. The legal position was that the statute did not prescribe any order of priority in which the various deductions are to be allowed as each relief under each section of Chapter-VI A was separate one, the assessee could be entitled to more than one relief, and each relief was required to be independently determined. The question is as to whether insertion of sub Section (a) of Section 80IA and sub-Section (13) of Section 80-IB of the Act has made any difference to this position. Though we have already reproduced these provisions in the earlier part of this judgment, we are extracting these provisions again to maintain proper sequential continuity in our discussion:-

80 IA (9) Where any goods held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date.

Sub-Section (13) of Sec. 80IB. The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible business under this section

42. By sub Section (13) of Section 80IB of the Act provisions of sub-Section 9 to Section 80IA are made applicable to Section 80IB. There is no quarrel about this. Therefore, the interpretation which is to be given to sub Section (9) to Section

80IA will determine the fate of these cases.

49. With regard to the submission of the counsel of the assessee based on section 80AB of the Act which provides that deduction under each Section of VI-A is to be computed independently, the Tribunal answered by pointing out that not only the total scheme of the statute but Scheme of every Section is to be read and interpreted and every word given proper meaning. It noticed that:-

In several sections under Chapter VI-A, it is provided that if deduction is allowed under that section, then no deduction under any other section under Chapter VI-A would be allowed. Thus, where deduction under such specific section has been claimed and allowed, there is no need to compute deduction permissible under other sections of Chapter VI-A. It would be a futile and useless exercise. Therefore, no question of computing deduction in the above circumstances would arise and section 80-AB would have no application. The section provides no solution to the problem where deduction is to be computed under more than one section of Chapter VI-A. It cannot follow that other sections providing modification or change in the manner or mode of computation are to be ignored. There are several sections like section 80HHA, 80HHA(5), 80HHA(6) providing manner of deductions or preferential treatment to one deduction over another when the assessee is entitled to deduction under more than one section of Chapter VI-A. It is provided that effect shall first be given to a particular section. All the sections are to be read together harmoniously. The fact that section 80AB starts with a non-obstante clause does not make any difference as we see no conflict in various provisions. The restriction placed on double deduction of the same eligible profit cannot be read as absurdity or conflict. Having regard to the above provisions, putting ban on allowability of deduction under other sections, computation of deduction under those sections would serve no purpose. It cannot follow from the above that restriction of those sections are not to be given effect to as scheme in those sections is different from scheme of section 80AB which starts with non-obstante clause "Notwithstanding anything..." Arguments advanced on behalf of the assessee, if accepted, would lead to complications not envisaged by the Legislature. We find it difficult to accept them. Therefore, in a case where deduction u/s 80IA has been allowed, then in the light of the provisions of sub Section (9-A), such profits and gains (to the extent) shall not be allowed under any other provision of the relevant Chapter. For example, if total profit of undertaking is 100 and 20 per cent is allowed as a deduction u/s 80-IA or 80-IB, then for purposes of other provisions like section 80HHC, on such 20 per cent of profit, no deduction can be allowed. The deduction under other sections has to be computed after reducing such profit of 20 per cent. In other words, it will be computed with reference to 80 per cent of the profit. Such deduction cannot be governed by section 80AB alone as it is a case in which deductions under more than one section of Chapter VI-A is to be allowed. Adjustment of deductions under various sections is to be made. It is not a case where provision before making any deduction under Chapter VI-A is applicable. Therefore, provision of Section 80AB is of no assistance in resolving

the problem in hand.

18. Kerala High Court in case of Olam Exports (India) Ltd. Vs. Commissioner of Income Tax, also adopted the same view. It was observed as under:

1. In the appeal filed by the assessee, the questions raised pertain to computation of deduction for export profit u/s 80HHC of the IT. Act. The assessee having its industry in a backward area was entitled to deduction u/s 80IB of the IT. Act. However, by virtue of Section 80IB(13) read with Section 80IA(9) of the Act the assessee will not be entitled to claim deductions both u/s 80IB and u/s 80HHC of the Act. Tribunal following their full bench decision upheld the disallowance u/s 80IB(13) of the Act, but granted deduction u/s 80HHC of the Act. Even though senior counsel appearing for the assessee contended that deduction u/s 80HHC is a full code by itself and no exclusion would be made while computing eligible deduction, we notice that Section 80IB and u/s 80HHC come under Chapter VIA and by virtue of specific exclusion u/s 80IB(13) of the Act the assessee is not entitled to simultaneous deduction of both. In other words, while computing deduction u/s 80HHC deduction granted u/s 80IB cannot be reckoned or has to be excluded. We find the order of the Tribunal is consistent with the statutory provisions and therefore appeal on this issue is rejected.

19. The issue once again came up recently before the Punjab and Haryana High Court. The Court also took the same view in the decision in case of Broadway Overseas Ltd. Vs. Commissioner of Income Tax, . It was held as under:

22. Summing up the entire controversy, in conclusion, it is held that when provisions of Section 80IB(13) are read in conjunction with Section 80IA(9) of the Act, it becomes clear that deduction u/s 80HHC of the Act is to be computed on the eligible business profits only after reducing therefrom the portion of profit on which deduction has already been availed by the assessee under this Section i.e., 80IB. In other words, if an assessee has claimed deduction of profit or gains u/s 80IB, deduction to that extent is not to be allowed u/s 80HHC.

20. In the meantime, the issue came up for consideration before the Bombay High Court. In a detailed judgment in case of Associated Capsules Private Limited Vs. Dy. Commissioner of Income Tax and Commissioner of Income Tax, COMMISSIONER OF INCOME TAX (C), , the Court held that effect of sub-section (9) of section 80IA would be to restrict the deduction to a maximum of hundred per cent of the business profit. It was held that section 80IA(9) does not affect the computability of the deduction under various provisions under the heading C. Deductions in respect of certain incomes", but it effects the allowability of deductions computed under such provisions so that the aggregate deduction u/s 80IA and other provisions do not exceed hundred per cent of the profits of the business of the assessee. To come to such conclusions, the Court applied the following logic:

(1) The object of amending section 80IA emerging from the memorandum explaining the provisions of the Finance Bill of 1998 is that it was noticed that

certain assesseees were claiming more than hundred per cent deduction on the profits and gains of the same undertaking when they were entitled to deductions under more than one section under the heading C. Deductions in respect of certain incomes" of Chapter VI. With a view to prevent the tax payer taking undue advantage of the existing provisions, section 80IA was amended so that the deductions allowed u/s 80IA and various sections under the heading C. Deductions in respect of certain incomes" under Chapter VI are restricted to the profits of the business of the undertakings or enterprise.

(2) The language used in section 80IA(9) is `shall not be allowed" and not `shall not qualify". In the opinion of the Court it means the section seeks to restrict the allowance of deduction, and not the computation of deduction.

(3) Whenever the Legislature intended that deduction under one section should not affect the computation of deduction under other provisions of the Act, it has been so expressly stated.

(4) The CBDT in its circular No. 772 dated 23rd December 1998 also clarified that the provision is introduced with a view to prevent tax payers from claiming repeated deductions in respect of the same amount that too in excess of eligible profits.

21. The Court noticed the decision of the Special Bench of the Tribunal in case of Hind. Mint and Agro Products (supra), of Delhi High Court in case of Great Eastern Exports (supra) and Kerala High Court in case of Olam Exports (India) Ltd. (supra), but was unable to follow the same line. The Court held and observed as under:

39. Strong reliance was also placed by the Counsel for the Revenue on the Special Bench decisions of the Tribunal in the case of Rogini Garments (supra) and Hindustan Ming & Agro Products (P) Ltd. (supra), which are affirmed by the Delhi High Court in the case of Great Eastern Exports (supra). Reliance is also placed on decision of the Kerala High Court in the case of Olam Exports (India) Ltd. (supra) which supports the case of the Revenue.

22. This very issue was also considered by Karnataka High Court in case of 969855--> . The Court sided with the Bombay High Court's view. The decision of Delhi and Kerala High Courts were noticed, but not followed observing as under:-

23. Though the Delhi High Court as well as the Kerala High Court have taken a contrary view of which reliance is placed by the Revenue, in the light of the express provisions contained in sub-section (a) of section 80-IA, clause (baa) to the Explanation to section 80HHC and the explanation in the circular referred to supra and keeping in mind the object with which these provisions are introduced we are of the view that the contention of the Revenue is unsustainable and the Tribunal has committed no illegality, in respect of cases where it had allowed the appeal.

23. It can thus be seen that judicial opinion on the issue is split right down the

middle. Delhi, Kerala and Punjab and Haryana High Courts have permitted full operation of section 80IA(9), whereas Bombay and Karnataka High Courts have held that the implication of sub-section (9) of section 80IA on an assessee's claim of deduction u/s 80HHC would be limited to not permitting such deduction in excess of the business profit. Under the circumstances, it is our duty to examine the statutory provisions applicable, and give an interpretation, which, in our opinion, would best fit the language used by the Legislature and the scheme of the Act pertaining to granting deductions for various purposes under different provisions of Chapter VI.

24. We have noticed that Chapter VI of the Act pertains to deductions of certain incomes. Part-A thereof contains provisions of general applicability. Under sub-section (2) of section 80A, it is provided that the aggregate amount of deductions under Chapter VI shall not in any case exceed the gross total income of an assessee. However, the reference in this section is to the gross total income of an assessee, and not the business income. The situation, therefore, would arise as is apparent from the decision of Madhya Pradesh High Court in case of J.P. Tobacco Products Private Limited (*supra*) that an assessee may claim full deduction for the same gross profit under two different deduction provisions contained in Chapter VI of the Act, and such deduction would be allowed. In some cases, thus, such total deduction would exceed the income of the business of an assessee. In case of Mandideep Eng. And Pag. Ind. P. Ltd. (*supra*), the Supreme Court did not permit the Revenue to challenge the judgment of the Madhya Pradesh High Court in view of earlier decisions of different High Courts, which were not questioned. It was in this backdrop that sub-section (9) of section 80IA was introduced with effect from 1st April 1999. In this context, we may peruse more closely the language used in sub-section (9) of section 80IA. In plain terms it provides that where any amount of profits and gains of an undertaking or enterprise in case of an assessee is claimed and allowed u/s 80IA, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading C. Deductions in respect of certain incomes", and in no case exceed the profits of gains of such eligible business of the undertaking or enterprise. It can thus be seen that sub-section (9) is divided into two clear parts. First part pertains to non-allowability of deduction under any other provision contained in Part-C of Chapter VI to the extent of profits and gains of an enterprise or undertaking with respect to which deduction u/s 80IA is claimed and allowed. The second part provides that in any case, such deduction shall not exceed the profits and gains of eligible business of an undertaking or enterprise. If we accept the interpretation of the assessee that only effect of sub-section (9) of section 80IA would be to limit the maximum permissible deduction u/s 80HHC to the profits and gains of the eligible business, we would be completely ignoring the first part of the sub-section. In other words, the earlier part of sub-section would be rendered completely redundant, purposeless and otiose. It is well settled that the Legislature cannot be expected to have used words and expressions, which have no meaning or effect. Limiting

the scope of application of sub-section (9) of section 80IA only to restricting the claim of deduction u/s 80HHC or for that matter under the provisions of sub-chapter C to Chapter VI would amount to giving no effect to the earlier portion of the subsection, which specifically provides for making a disallowance of deduction claimed by the assessee under various provisions contained in sub-chapter C profit or gain of an undertaking or enterprise which has already been claimed and allowed u/s 80IA. In case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, the Supreme Court observed that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application. In case of *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, the Court observed that it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of statute devoid of any meaning or application. In our understanding, therefore, subsection (9) of section 80IA has two implications. First part would operate as to denying an assessee's claim of deduction under other provisions of sub-chapter C of Chapter VI when a certain profit or gain has already been granted deduction u/s 80IA. Under such situation, to the extent specified in first part of sub-section (9), the assessee's claim of deduction under other provisions, including section 80HHC, would be restricted. Second implication of subsection (9) of section 80IA is that under no circumstances, once deduction has been granted u/s 80IA, deduction under any other provision combined together would exceed the total amount of profits and gains of eligible business of an undertaking or enterprise. This much is plain, and requires neither any imagination nor any interpretative process. Any other view would amount to obliterating the first part of sub-section (9) of section 80IA, and would, thus, be wholly impermissible to do. We wonder, if the sole intention of the Legislature was to limit various deductions to the maximum limit of the profit of the eligible business, why was such long and somewhat complex expression was used in sub-section (9) of section 80IA? The same purpose could have been easily achieved by far briefer and more simple expression of providing maximum limit of deduction, for example, as was done in sub-section (2) of section 80A. We, therefore, refuse to accept the theory that the Legislature has in far more complex and detailed expression desired to bring about the same result, though in plain terms, when the sub-section read as a whole, conveys entirely different connotation.

24. Having said so, we are actually conscious of the fact that sub-section (9) of section 80IA does not contain a non-obstante clause. Two things thus emerge in our understanding of the said provision. First in plain terms when read as a whole sub-section (9) of section 80IA does not limit its effect only to disallowing deduction over and above the profit or gain of an enterprise or undertaking. Second aspect is that such provision does not have a non-obstante clause. What would be the effect of these two forces emerging from sub-section (9) of section 80IA needs to be appreciated. In our opinion, the combined effect of these two factors would be that sub-section (9) of section 80IA of the Act would operate as

along as there is nothing contrary contained in any other provisions of subchapter C of Chapter VI. In the present case, our enquiry would be limited to finding out if there is anything contrary provided in section 80HHC of the Act. Thus, if there is any indication of legislative intent to allow the full deduction u/s 80HHC of the Act irrespective of the provision contained in subsection (9) of section 80IA, such legislative intent must prevail. On the other hand, if we find that section 80HHC of the Act is not immune to outside influence, full play of the provision of sub-section (9) of section 80IA must be allowed, even if it means restricting the claim of an assessee for deduction u/s 80HHC of the Act. In other words, merely because sub-section (9) of section 80IA does not contain non-obstante clause would not by itself mean that it can have no effect on the deduction u/s 80HHC of the Act. As is well known, the Legislature uses the non-obstante clause typically using expression 'notwithstanding anything contained in any other provision, Act or law for the time being in force'. Ordinarily, such expression would be equivalent to saying that in spite of the provision of the Act mentioned in non-obstante clause, the enactment following any such provision have full operation. Thus, often times, non-obstante clause is used to override other statutory provisions specified in such a section in specified circumstances. It can thus be seen that a provision containing non-obstante clause would prevail irrespective of anything contrary contained in any other provision referred to in such non-obstante clause. This, however, could not mean that in absence of a non-obstante clause, even if there is no conflict between the two statutory provisions, the provision restricting the ambit of a benefit must yield in absence of such non-obstante expression.

25. In this context, we have perused the provisions of section 80HHC of the Act. Though previously as held and observed by Madhya Pradesh High Court in J.P. Tobacco Products Private Limited (supra), the deduction provisions contained in Chapter VI were seen as independent stand-alone provisions, such views were expressed prior to introduction of sub-section (9) of section 80IA and sub-section (13) of section 80B of the Act. In case of Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair, , the Supreme Court observed that,

At the outset, we may state that, in the present case, we are dealing with the law as it stood during assessment year 1993-94. At that time Section 80HHC(3) of the IT. Act constituted a Code by itself. Subsequent amendments have imposed restrictions/qualifications by which the said provision has ceased to be a code by itself.

26. Sub-section (9) of section 80IA was aimed at restricting the successive claims of deduction of the same profit or gain under different provisions contained in sub-chapter C of Chapter VI of the Act. This provision, therefore, necessarily impacts other deduction provisions including section 80HHC of the Act. Nothing contained in section 80HHC suggests that the deduction provided therein was immune from any outside influence or that the provision was

impregnable by any other statute or enactment. Accepting any such theory would lead to incongruous results. Even the assessee concedes that sub-section (9) of section 80IA would operate as to limiting the combined deductions to a maximum of the profits and gains from an eligible business of the undertaking or enterprise. If section 80HHC contained a protective shell making it immune from any outside influence, even this effect of sub-section (9) of section 80IA could not be applied. This would completely render the provisions of subsection (9) of section 80IA redundant and meaningless.

27. It is true, as pointed out by the counsel for the assessee that in different provisions the Legislature has used different language for restricting or limiting the claim of deductions. The use of language in statutory provisions in such complex situations must be peculiar to every situation the Legislature may seek to meet with. Merely because in some of the provisions certain disallowances are expressed in different language would not by itself mean that sub-section (9) of section 80IA was aimed to have restricted and limited scope of application.

28. The contention that no such matching provision was made in section 80HHC of the Act would clearly indicate the Legislative intent also, in our opinion, is not a valid argument. Sub-section (9) of section 80IA was enacted to have universal application to all deductions under subchapter C of Chapter VI. It was neither possible nor expected of the Legislature to make individual matching provisions in large number of statutory provisions recognizing deductions under various situations. Such provisions are often times made for a limited period, new deductions are introduced from time to time and old deductions withdrawn.

29. Reference to the circular No. 772 dated of 23rd December 1998 also would not resolve this controversy. In the said circular, it is merely amplified that it was noticed that certain assessees claimed more than hundred per cent deduction of profits and gains of same undertaking, where they were entitled for deduction under more sections than one. It was, therefore, to prevent the tax payers from taking undue advantage of the existing provisions of claiming repeated deductions in respect of the same amount of eligible income, even in cases where it exceeds such eligible profits, inbuilt restrictions u/s 80HHC and section 80IA have been provided. This explanation nowhere restricts the scope of sub-section (9) of section 80IA. It only provides that the provision was made because under the existing provisions the assessees were claiming double deductions, and in some cases such deduction would exceed hundred per cent of the profits and gains of the same undertaking. The clarification does not provide that sub-section (9) would apply and operate only when such claim exceeds the profits and gains of the undertaking.

30. We are unable to follow the line of logic adopted by the Bombay High Court in case of Associated Capsules P. Ltd. (supra) that section 80IA(9) of the Act in the context of section 80HHC would operate not at the stage of computation but at the stage of allowing the deduction. In plain terms subsection (9) of section 80IA disentitles an assessee from claiming deduction under any other provision

of sub-chapter C to the extent deduction is already claimed and allowed for certain profit or gain of an undertaking or enterprise u/s 80IA. Such provision, therefore, would have to be applied at the very stage to assessee's claim for deduction u/s 80HHC of the Act is considered. While computing such deduction the effect of sub-section (9) of section 80IA would have to be given. We do not think that in the process we are tinkering with the formula for computation of eligible profit for deduction u/s 80HHC of the Act. We have noticed that different formulae have been provided for manufacturing exporter and trader and in case of an assessee whose exports comprise of both the sources. It is, therefore, at the stage of sub-section (3) of section 80HHC effect of sub-section (9) of section 80IA would apply. It is true that clause (baa) to explanation to section 80HHC defines a term 'profits of the business'. While working out the business profits as specified therein, in terms of sub-section (9) of section 80IA the profit or gain which had already been allowed deduction to the extent mentioned therein would have to be ignored.

31. This interpretation, which we have adopted, would not be disturbed by reference to section 80AB of the Act. The said section only provides that while computing a deduction under any other provisions contained in sub-chapter C of Chapter VI in respect of any income specified in such section, then, notwithstanding anything contained in that section, for the purpose of computing deduction, the amount of income of that nature as computed in accordance with the provisions of the Act shall alone be deemed to be the amount of income of that nature, which is derived or received by the assess, and which is included in his gross total income. The non-obstante expression used in this section is notwithstanding contained in 'that section' namely, the section under which the claim of deduction is to be examined. By no means this provision of expression 'notwithstanding anything contained in that section' can be used to interpret that section 80HHC of the Act can have no effect of sub-section (9) of section 80IA. As noted earlier, if this were so, the second part of sub-section (9) limiting the total deductions to the profit and gain from the eligible business also could not be applied.

32. In case of IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, the Supreme Court observed as under:

Section 80AB is also in Chapter VI-A. It starts with the words "where any deduction is required to be made or allowed under any Section of this Chapter". This would include Section 80HHC. Section 80AB further provides that "notwithstanding anything contained in that Section". Thus Section 80AB has been given an overriding effect over all other Sections in Chapter VIA. Section 80HHC does not provide that its provisions are to prevail over Section 80AB or over any other provision of the Act. Section 80HHC would thus be governed by Section 80AB. Decisions of the Bombay High Court and the Kerala High Court to the contrary cannot be said to be the correct law. Section 80AB makes it clear that the computation of income has to be in accordance with the provisions of

the Act. If the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration.

In the result, we side with the view of Delhi High Court following by Kerala and Punjab and Haryana High Courts. The question is answered in favour of the Revenue. Tax appeal is allowed. Judgment of the Tribunal is reversed to that extent. Appeal is disposed of accordingly.

At this stage, counsel for the assessee requested for grant of certificate that the case involves substantial question of law of general importance. The request is rejected.