
(2010) 02 BOM CK 0101

In the Bombay High Court

Case No : Income-tax Appeal No. 2432 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Tridoss Laboratories Ltd.

RESPONDENT

Date of Decision : 04-02-2010

Acts Referred:

Income Tax Act, 1961 — Section 2(45), 260A, 5, 5(1), 80B(5)

Citation : (2010) 328 ITR 448 : (2011) 198 TAXMAN 31

Hon'ble Judges : J.P. Devadhar, J; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Smt. Padma Divakar, for the Appellant; A.K. Jasani, for the Respondent

Final Decision : Dismissed

Judgement

1. The following questions of law have been raised by the Revenue in an appeal u/s 260A of the Income Tax Act, 1961:

(a) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the profit of the Daman unit which is eligible unit, has been computed at Rs. 98.43 lakhs and if the Assessee had income equivalent to or more than Rs. 98.43 lakhs deduction would be permissible to the Assessee u/s 80IA to the extent of the entire profit ?

(b) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the gross total income of the Assessee after setting off the loss from all sources of income is Rs. 14.57 lakhs, therefore, the Assessee is entitled to deduction u/s 80IA to the extent of gross total income which is far less than the income of eligible unit ?

2. The appeal arises out of the order of the Income Tax Appellate Tribunal dated October 30, 2008 pertaining to the assessment year 1996-97.

3. In the present case, the Assessing Officer has computed the gross total

income of the Assessee u/s 80IA. The profit of the unit at Daman was computed at Rs. 98.43 lakhs. The Assessing Officer computed the gross total income of the Assessee at Rs. 14,57,200. The Tribunal directed the Assessing Officer to restrict the deduction to the extent of the gross total income, since the gross total income of the Assessee is less than the eligible profit of the Daman unit.

4. The contention of counsel appearing on behalf of the Revenue is that in computing the total income of the Assessee, only the income which has been realised from the eligible business should be taken into consideration. In the present case, it is urged that as a major portion of the income of the Assessee comprises income from other sources and this income is not derived from the eligible business, the Assessee is not entitled to a deduction u/s 80IA to the extent of the taxable income of Rs. 14.57 lakhs.

5. 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) ("the eligible business"), there shall, 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. The section contemplates a deduction of an amount representing hundred per cent. of the profits and gains derived from the eligible business in computing the total income of the Assessee. The expression "gross total income" is defined by Section 80B(5), for the purposes of Chapter VI-A., to mean the total income computed in accordance with the provisions of the Act before making any deduction under the Chapter. The expression "total income" has been defined in Section 2(45) to mean that total amount of income referred to in Section 5, computed in the manner laid down in the Act. Section 5(1) enunciates that subject to the provisions of the Act, the total income of any previous year of a person who is a resident, includes all income from whatever source derived. In computing the total income of the Assessee, there is no basis in the provisions of Section 80IA to restrict the expression to total income derived from an eligible business. Having regard to the provisions noted above, the submission which has been urged on behalf of the Revenue cannot be accepted.

6. In *Synco Industries Ltd. (Formerly known as Synco Textiles Pvt. Ltd.) Vs. Assessing Officer of Income Tax and Others*, the Bombay High Court held that gross total income must be determined by setting off against the income, the business loss of earlier years before allowing a deduction under Chapter VI-A and if the resultant income is nil, then the Assessee cannot claim a deduction under Chapter VI-A. In the present case, the Tribunal has noted that the gross total income of the Assessee, after setting off the losses from all other sources of income is Rs. 14,57,200, while the profit of the eligible unit was computed at Rs. 98.43 lakhs. The Tribunal has restricted the deduction to the extent of the gross total income, namely, Rs. 14,57,200. The decision of the Tribunal is in

accordance with the provisions of the Act. In the circumstances, the appeal does not raise any substantial question of law and is accordingly, dismissed.