

(2014) 10 AP CK 0012
In the Andhra Pradesh High Court
Case No : I.T.T.A. No. 124 of 2002

Commissioner of Income Tax-II

APPELLANT

Vs

Premier Explosive Ltd.

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Income Tax Act, 1961 — Section 10, 260A, 5, 80AB, 80B(5)

Citation : (2015) 273 CTR 441 : (2015) 373 ITR 177

Hon'ble Judges : T. Sunil Chowdary, J; L.N. Reddy, J

Bench : Division Bench

Advocate : S.R. Ashok, Senior Counsel, Advocate for the Appellant; K. Mamata Chowdary, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—It is too well known that the Income Tax Act, 1961 (for short, the Act) provides for levy of tax on what is known as total income as defined under Section 10 read with Section 5 of the Act. It takes in its fold the various categories of incomes of an assessee. One of the important steps to be taken under the Act in computing the total income is the identification of deductions that are permitted and provided for under Chapters VI and VI-A. While Chapter VI provides for setting off or carry forward of amounts under different heads, Chapter VI-A provides for deduction of certain amounts from the general income of an assessee on the one hand, and deduction of certain amounts in respect of incomes of a specified category on the other hand. For example, Section 80CCA provides for deduction in respect of deposits under the National Savings Scheme or payment to a deferred annuity plan, Section 80CCB provides for deduction in respect of investments made under equity linked savings scheme. Section 80G is in respect of donations to certain funds, charitable institutions etc., from the general income of an assessee.

2. Deductions in respect of specific incomes are covered by part C of Chapter VI-A. Such deductions are to be made only from the income of a particular source. For example, if an assessee establishes industrial undertaking or hotel business

in backward areas, he is entitled to make deduction to the extent of 20% from the profits and gains, under Section 80HH. Similarly, where the assessee establishes small scale industries in certain areas, Section 80HHA provides for identical deduction. Deduction in respect of profits and gains from projects outside India which earn foreign exchange is provided for under Section 80HHB.

3. Certain complications do arise when an assessee is entitled to deductions under more than one provision, more so, when they fall within heading C of Chapter VI-A. The controversy would be as to whether the deduction must be confined to the source of income of that particular category or it can be from the combined income from different sources referable to different sections.

4. The respondent herein is an assessee under the Act. For the assessment year 1993-94, it posted incomes from various sources including those referable to Sections 80HH and 80-I of the Act. In the returns, it sought to claim deductions from the incomes covered by respective sections, separately. While in respect of one source of income it incurred losses, in respect of others it earned profits. The deductions sought to be made by the assessee were from the activity that yielded profits. The assessing officer however insisted that the deductions must be from the combined income from both the categories. That in turn had virtually neutralised the income derived from one source, by the loss incurred in the other source. Hence, the occasion to make any deduction did not exist.

5. Aggrieved by the order of assessment passed by the assessing officer, the respondent filed an appeal before the Commissioner of Income Tax (Appeals)-I, Hyderabad. The appeal was allowed through order dated 31-01-1997 applying the ratio in the judgments of the Supreme Court in CIT v. Canara Work Shops (Pvt.,) Ltd. and H.H. Sir Ramavarma v. CIT. Feeling aggrieved by the order of the Commissioner, the Revenue filed ITA No. 706/Hyd/1997 before the Hyderabad Bench of the Income Tax Appellate Tribunal (for short, the Tribunal). The Tribunal dismissed the appeal through order dated 31-01-2002. Hence, this further appeal under Section 260A of the Act by the Revenue.

6. The following questions are raised in the appeal:

(A) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in confirming the order of CIT(A) in holding that the assessee is entitled to claim deduction U/s. 80HH and 80I, independent of the set off and carry forward provisions?

(B) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in confirming the order of the CIT(A) in holding that the deduction U/s. 80HH, and 80I can be claimed with respect to each unit, separately?

7. Sri S.R. Ashok, learned Senior Counsel for the appellant submits that the Commissioner (Appeals) as well as the Tribunal did not take into account, the purport of the expression gross total income as defined under Section 80B(5) of

the Act and the adjudication undertaken by them runs contrary to the said provision. He contends that once an assessee has income from any sources covered by Chapter VI-A, the first step must be to aggregate all the incomes and thereby arrive at the gross total income and then to effect deductions if permissible. According to the learned Senior Counsel, an assessee cannot be permitted to effect deductions separately from any item or a head of income which forms part of heading C. He has placed reliance upon the judgment of the Supreme Court in *Synco Industries Ltd. v. Assessing Officer (I.T.)* and *Ipca Laboratory Ltd. vs. Deputy Commissioner of Income Tax*. Learned Senior Counsel further submits that the judgment of the Supreme Court in *Canara Workshops case* (1 supra) was delivered at a time when Section 80B(5) was not on the statute book and that the same has no application to the facts of the case.

8. Ms. K. Mamata Chowdary, learned counsel for the respondent, on the other hand, submits that the basis on which the assessing officer refused deduction as claimed by the assessee is contrary to law and that the Commissioner and the Tribunal have taken the correct view of the matter. She contends that each head or item of income covered by the respective provisions in heading C of Chapter VI-A has its own significance and the Parliament itself wanted to restrict the deductions at the stipulated percentage, from that very item of income and not from any other income. She contends that though Section 80B(5) was not in existence when the Supreme Court rendered its judgment in *Canara Workshops case* (1 supra) the basic concept was discussed thread bare and the ratio laid down therein was not disturbed in any subsequent judgments. According to the learned counsel, the judgment of the Supreme Court in *Synco Industries case* (3 supra) rendered in the year 2008 did not take into account, its own judgment in *Canara Workshops case* (1 supra) decided in the year 1986. She contends that the principle of stare decisis mandates that if there are conflicting judgments rendered by the Benches of same strength on a particular principle, the one earlier in point of time deserves to be taken into account. She has placed reliance upon the judgment of the Supreme Court in *Sundeeep Kumar Bafna v. State of Maharashtra*. Reliance is also placed upon a Division Bench judgment of this Court in *CIT v. Visakha Industries Ltd.*.

9. It is not in dispute that the respondent became entitled to claim deductions under Section 80HH of the Act on the one hand and Section 80-I on the other hand. The entire controversy is as to whether the deductions under the respective provisions must be made from the respective incomes of the concerned sources or the aggregate of both. A subsidiary to this would be, as to whether the deductions must be effected after the carry forward loss is set off from the profits, if any, or whether such a setting off must be after the deductions are effected. On both counts, the assessing officer held against the respondent.

10. It has already been mentioned that the respondent earned profits from an activity covered by Chapter VI-A and incurred losses in another activity covered

by that very chapter. The Tribunal took into account the judgment of the Supreme Court in *Canara Workshops* case (1 *supra*). In that case, the facts were: the assessee company established a factory for manufacture of automobiles and spares. It has also established factory for manufacture of alloy steels. The matter arose in respect of the assessing year 1966-67, by which time Chapter VI-A was not enacted. Section 80E (as it stood then) provided for deduction to the extent of 8% of the profits and gains, if the assessee is involved in manufacture or production of articles or things specified in the fifth schedule, appended to the Act. The articles manufactured by the assessee in both the factories figured in the fifth schedule. While in one industry the assessee earned profits, in the other industry, it suffered losses. In the context of effecting deductions provided for under Section 80E of the Act (as it stood then), while the assessee pleaded that the deduction must be from the income of the concerned industry, the assessing officer insisted on clubbing of incomes from both the sources and then making of deductions. Dealing with this aspect, the Supreme Court held:

The assessee in this case carries on two industries, both of which find place in the list in the Fifth Schedule and can, therefore, be described as priority industries. It is urged by the learned Additional Solicitor General, appearing for the Revenue, that on a true application of Section 80E, the profit in the industry of automobile ancillaries must be reduced by the loss suffered in the manufacture of alloy steel, and reference has been made to a number of cases to which we shall presently refer. After giving the matter careful consideration we do not find it possible to accept the contention. It seems to us that the object in enacting Section 80E is properly served only by confining the application of the provisions of that section to the profits and gains of a single industry. The deduction of eight per cent is intended to be an index of recognition, that a priority industry has been set up and is functioning efficiently. It was never intended that the merit earned by such industry should be lost or" diminished because of a loss suffered by some other industry. It makes no difference that the other industry is also a priority industry. The coexistence of two industries in common ownership was not intended by Parliament to result in the misfortune of one being visited on the other. The legislative intention was to give to the meritorious its full reward. To construe section 80E to mean that you must determine the net result of all the priority industries and then apply the benefit of the deduction to the figure so obtained will be, in our opinion, to undermine the object of the section. An example will illustrate this. An industry entitled to the benefit of section 80E could have its profits wholly wiped out on adjustment against a heavy loss suffered by another industry, and thus be totally denied the relief which should have been its due by virtue of its profits. In our opinion, each industry must be considered on its own working only when adjudging its title to the deduction under section 80E. It cannot be allowed to suffer because it keeps company with some other industry in the hands of the assessee. To determine the benefit under section 80E on the basis of the net result of all the industries

owned by the assessee would be, moreover, to shift the focus from the industry to the assessee. We hold that in the application of section 80E, the profits and gains earned by an industry mentioned in that section cannot be reduced by the loss suffered by any other industry or industries owned by the assessee.

(emphasis supplied)

11. Similar factual situation obtains in the case on hand. It is no doubt true that the present case is governed by Chapter VI-A of the Act. The fact however remains that Chapter VI-A, for the most part of it, is an exercise of consolidation than introduction of a total new phenomenon. Except that the items that qualified for deduction were extended and the extent of deduction was varied, the concept and mechanism remained the same.

12. Barring the rearrangement of the section that provide for deductions, the same concept came to be introduced through the Finance Act, 1967 which added Chapter VI-A to the Act. The improvement is mostly the method of deduction under the chapter, in the form of Section 80AB and the concept of gross total income under Section 80B(5). The relevant provisions as they stand now read as under:

Deductions to be made with reference to the income included in the gross total income.

80AB. Where any deduction is required to be made or allowed under any 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 the 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.

80B(5). In this Chapter gross total income means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter.

13. The basis of the argument of the learned Senior Counsel for the Revenue is that deductions provided for under Chapter VI-A can be made only from the aggregate of the incomes from various sources covered by the relevant provisions of the chapter. Expanding further, he pleaded that it is only after the income or loss, as the case may be, from various sources are clubbed together, that the deductions can be made. Incidentally, though the assessing officer also referred to the definition of gross total income under Section 80B(5), his understanding of the gross total income was, income under various heads as per Chapter IV plus income includable whenever necessary as per Chapter V minus set off of current year losses or brought forward losses etc. It was opined that

the deduction under Chapter VI-A can be made only in respect of such gross total income. He has also referred to Section 80AB in support of his view.

14. The deductions claimed by the respondent are under Section 80HH on the other hand and Section 80-I on the other hand. Both the provisions occur in heading C of Chapter VI-A. Section 80AB deals with deductions of that nature. Therefore, it needs to be seen as to whether Section 80AB is suggestive of any mechanism for clubbing of the incomes of various sources covered by heading C. A close perusal of Section 80AB extracted above, discloses that, for the purpose of deduction under a particular section, it is only the income of the nature provided for only under that section, which shall be deemed to be income derived or received by the assessee. The provision does not mandate the clubbing of the incomes from different sources.

15. The definition of gross total income under Section 80B(5) just indicates as to what it constitutes. The total income computed in accordance with the provisions of the Act before any deductions under Chapter VI-A are made is the gross total income. The provision does not go further and insist that the deduction under the respective provisions must be from the gross total income. The method of deduction is ultimately to be decided by the text of the respective provisions. Further, Section 80B(5) is not a charging provision.

16. It is important to mention that the Parliament itself employed the expressions gross total income at some places and total income at other places, in different provisions, depending upon the context. For example, under Section 80HHD which also occurs under heading C in Chapter VI-A, there is no mention of gross total income, whereas in Sections 80HH, 80HHA and 80-I, the expression gross total income is employed. The purpose appears to be to ensure that the deductions provided for under the relevant sections are made in computing the total income of the assessee, in contra-distinction to gross total income. For example, sub-section (1) of Section 80HH reads as under:

Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.

80HH. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, 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 from such profits and gains of an amount equal to twenty per cent thereof.

17. Similarly, Section 80-I(1) reads:

80-I. (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel [or the business of repairs to ocean-going vessels or other powered craft], to which this section applies, 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 from such profits and gains of an amount equal to twenty per cent thereof:

18. Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect [in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel] as if for the words twenty per cent, the words twenty-five per cent had been substituted.

19. Obviously, because there is possibility to understand the provisions in different manner, the Parliament proceeded to add sub-section (6) to Section 80-I which reads:

(6) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking or a ship or the business of a hotel [or the business of repairs to ocean-going vessels or other powered craft] to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-section (1) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such industrial undertaking or ship or the business of the hotel [or the business of repairs to ocean-going vessels or other powered craft] were the only source of income of the assessee during the previous years relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

20. The underlined portion becomes relevant.

21. If these two provisions are kept in mind, it emerges that the intention of Section 80AB is to maintain the distinction between the respective sources of income, referable to the sections contained in heading C of Chapter VI-A. The intention appears to be to discourage or to prevent an assessee from avoiding tax by posting the profits earned in one industry, against the losses incurred in the other. Another way of looking at the provision is that, the hard work put by an entrepreneur resulting in profits in an industry cannot be wiped away if he suffered losses in another industry of the same category. Except that the provisions are different, the principle laid down by the Hon"ble Supreme Court in Canara Workshops case (1 supra) is the same. This decision was followed by our High Court in Visakha Industries case (6 supra).

22. It is no doubt true that the Supreme Court in Synco Industries Case (3 supra) took a different view. Firstly, the said judgment was not in existence when the Commissioner and the Tribunal decided the present case. Secondly, no reference was made to the judgment in Canara Workshops case (1 supra) in Synco Industries case (3 supra), obviously, because it was not brought to their Lordships notice. It is quite possible to argue that the relevant provisions, which the Hon"ble Supreme Court was dealing in those two cases are different. However, the principle involved in both, was broadly, the same. In Synco

Industries case (3 supra), the Supreme Court laid much emphasis upon the definition of gross total income under Section 80B(5) and Section 80AB. It was observed that if the gross total income of an assess is determined as nil, there is no question of deduction being allowed under Chapter VI-A in computing the total income. For this purpose, several judgments rendered by various High Courts were taken note of.

23. Be that as it may, this Court, as of now is faced with two precedents which cover the same factual background and similar legal, principles. Since both the precedents are from the Hon''ble Supreme Court, they are equally binding upon this Court. The only exercise that is to be undertaken is, to choose one of them, as per the settled principles of law. In the process, it cannot be construed, even remotely, that any disrespect whatever, is shown to the other precedent. The exercise undertaken in this behalf may at a future point of time persuade the Hon''ble Supreme Court to say a more authoritative word, in this context.

24. The law in relation to stare decisis is fairly well settled. The situations which crop up are, where a view taken contrary to what was decided earlier by a Bench of the same strength on account of the disinclination or failure on the part of a counsel to bring to the notice of the Court the precedents that already existed. In Sundeep Kumar Bafnas case (5 supra), the Supreme Court dealt with this aspect in detail under the heading Rule of Precedent and Per Incuriam. Situations where the High Courts are faced with two judgments of the Supreme Court rendered by the Benches of the same strength on a particular principle, expressing different views was taken note of. Their Lordships held:

It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.

25. Though we do not intend to express the view that the judgments of the Supreme Court in Canara Workshops case (1 supra) on the one hand and Synco Industries case (3 supra) on the other hand are not reconcilable, we prefer to follow the earlier one since it spelt out the principle, in detail. This, we do even while expressing our unclenching respect to the ratio in Synco Industries case (3 supra). We also make it clear that we would have straightaway followed the judgment in Synco Industries case (3 supra) had there been at least a passing reference to the judgment in Canara Workshops case (1 supra).

26. We therefore dismiss the appeal. There shall be no order as to costs.