

(2001) 07 BOM CK 0065

In the Bombay High Court

Case No : Income Tax Appeal No. 591 of 2000 alongwith other Income Tax Appeal

Synco Industries Ltd. (Formerly known as Synco Textiles Pvt. Ltd.)

APPELLANT

Vs

Assessing Officer of Income Tax and Others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 260, 80A(2), 80B(5), 80E, 80HH

Citation : (2002) 173 CTR 1 : (2002) 254 ITR 608 : (2001) 119 TAXMAN 503

Hon'ble Judges : V.C. Daga, J;S.H. Kapadia, J

Bench : Division Bench

Advocate : Pradeep Sancheti and A.H. Mehta, for the Appellant; R.V. Desai, J.P. Deodhar and P.S. Jetly, i.b., H.D. Rathod, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Kapadia. J.

1. Although several questions have been raised in the Memo of Appeal, the point which arises for determination by this Court in the present Appeals u/s 260A of the Income Tax Act, 1961 is as follows :

"Whether the Assessing Officer was right in rejecting the claim of the assessee on the ground that the gross total income of the assessee, computed as per the provisions of the Act before deductions under Chapter VI-A, was NIL..?"

2. For the purposes of deciding these Appeals, the relevant facts are as follows :

In these Appeals, we are concerned with the assessment years 1990-91 and 1991-92. Since both the Appeals raise common question of law and fact, they are disposed of by this common Judgment. However, for the sake of convenience, the facts in Appeal No. 591 of 2000 are mentioned herein-below.

3. The assessee is engaged in the business of oil and chemicals. It has a Unit for

Oil Division in Sriphi District, Rajasthan. It has a Chemical Division at Jodhpur. The assessee claimed deductions u/s 80HH and Section 80I in respect of the aforesaid two Divisions. The Assessing Officer rejected the claim of the assessee on the ground that the gross total income of the assessee before deductions under Chapter VI-A, was "Nil" and, therefore, the Assessing Officer came to the conclusion that the assessee was not entitled to the benefit of the deductions under Chapter VI-A and in particular Sections 80HH and 80I. Being aggrieved, the assessee carried the matter in Appeal. The Order of the Assessing Officer was confirmed by C.I.T. (Appeals). Being aggrieved, the assessee went in Appeal to the Tribunal which dismissed the Appeal of the assessee and, therefore, the assessee has come by way of Appeal to this Court u/s 260-A of the Income Tax Act.

4. It is urged on behalf of the assessee that it had earned profits from the Chemical Division during the assessment years in question. In respect of the Oil Division, the assessee had carried forward the losses and to that extent, the assessee did not claim the deductions under Sections 80HH and 80I. However, with regard to the Chemical Division, it was contended that Section 80HH and Section 80I provide for a deduction in respect of profits and gains of the Undertaking/Division. It was contended that profits and gains of the Chemical Division were required to be determined in accordance with the provisions of the Act as if the only source of income of the assessee is the income from that Unit. That, the assessee had earned income from the Chemical Division and that such income formed part of the gross total income. It was urged on behalf of the assessee that computation of income from profits and gains of business is to be made in accordance with the provisions of the Act. That, once the income was computed under the aforesaid Sections, deduction under Chapter VI-A is required to be computed. It was urged that for the purposes of applying the provisions of Sections 80HH and 80I, each Unit has got to be treated separately and the loss suffered by the Oil Division cannot be adjusted against the profits of the Chemical Division in arriving at the deductions u/s 80HH and 80I. In this connection, reliance was placed on the Judgment of the Supreme Court in the case of Commissioner of Income Tax v. Canara Workshops Put. Ltd.,.

5. On behalf of the department, it was contended that deductions under Chapter VIA were allowable out of the gross total income. That, in the present case, the gross total income was "Nil" and, therefore, deduction u/s 80HH or Section 80I were not allowable.

6. We find merit in the stand taken by the department. At the outset, it may be mentioned that it is not in dispute that if the interpretation placed by the assessee is accepted, then it would result in violation of the provisions of Section 80A(2) in the sense that the deductions claimed would exceed the gross total income of the assessee. In the case of Commissioner of Income Tax v. Nima Specific Family Trust, this Court took the view that Section 80HH was inserted by Direct Tax Amendment Act, 1974 with effect from 1st April, 1974. That, it has

continued to remain on the Statute Book without any change in the Statute Book. That, Section 80I was a successor to Section 80J. That, u/s 80I, as inserted with effect from 1st April, 1981, it was provided that where gross total income of an assessee included profits derived from an Industrial Undertaking to which the Section applied, then there shall be a deduction from such profits of an amount equal to twenty percent. In the said judgment it was further laid down that where an Undertaking/Unit was entitled to relief u/s 80HH and also u/s 80I, then priority shall be given first to the deduction u/s 80HH. This is in view of Section 80HH(9). It was also laid down that Section 80HH did not contemplate carry forward of shortfall as in the case of Section 80J(3). That, after 1st April, 1981, Section 80HH and Section 80I both, dealt with deductions based on profits. In that matter, the Court gave a hypothetical example by pointing out that if profits derived from an Industrial Undertaking was Rs. 80.00 and simultaneously, if there was a loss from another Unit of Rs. 50.00, then the gross total income would be Rs. 30.00. However, for the purposes of deductions u/s 80HH and 80I, the total deduction available would be Rs. 32.00. To this extent, there is no conflict in the views of the department and the assessee. However, we have taken the view that in view of Section 80A(2), the deduction under Chapter VI-A is restricted to the gross total income of Rs. 30.00 and since the total deduction of Rs. 32.00 u/s 80HH and Section 80I exceeds the gross total income of Rs. 30.00, the deductions are restricted to Rs. 30.00. In other words, the Legislature has introduced Section 80A(2) and Section 80B(5) in order to put a ceiling on the claim for deduction. Section 80A(2), inter alia, lays down that the aggregate amount of deduction under Chapter VIA shall not exceed the gross total income of the assessee. This indicates that if the deductions under Chapter VIA are required to be claimed, then the gross total income should be sufficient to absorb such deduction. In other words, if the gross total income is Nil, then deduction u/s 80HH and 80I cannot be claimed because it would mean that the aggregate amount of deduction would exceed the gross total income of the assessee. So also Section 80B(5) defines "gross total income" to mean total income computed in accordance with the provisions of the Act before making any deduction under Chapter VIA. Therefore, it is clear that in order to determine the gross total income, the loss of Oil Division is required to be adjusted against the profit of the Chemical Division before making any deductions under Chapter VIA. This is the view which we have taken in the aforesaid judgment of Nima Specific Family Trust (supra). In our view, the said judgment applies to the facts of the present case. However, it is urged on behalf of the assessee that in that matter, this Court was not required to consider the ambit of Section 80I(6). It was contended that to a certain extent, the above judgment of this Court was applicable. It was contended, however, that u/s 80I(6) the profits of an Industrial Undertaking were required to be computed as if such Industrial Undertaking was the only source of income and it was, therefore, contended that profits of the Chemical Division were required to be treated as the only source of income and, therefore, such profits could not be reduced to the extent of the loss suffered by the Oil Division. It was accordingly contended that while calculating deduction,

the profits from Chemical Division alone should be taken into account and the Assessing Officer erred in appropriating the loss from the Oil Division against the profits from the Chemical Division. It was contended that Sub-section (6) starts with a non obstante clause. It was, therefore, contended that the provisions of Section 80A(2) 80A(2) and Section 80B(5) cannot be read while interpreting Sub-section (6) of Section 80I. In this connection, reliance was placed on the judgment of the Supreme Court in the case of Canara Workshops Put. Ltd. (supra). We do not find any merit in the above last contention of the assessee. Section 80I(1) lays down that where the gross total income of an assessee includes any profits derived from a priority Undertaking/Unit/Division then, in computing the total income of the assessee, deduction from such profits of an amount equal to twenty percent shall be made. Therefore, Section 80I(1) lays down the broad parameters indicating circumstances under which an assessee would be entitled to claim deduction. On the other hand, Section 80I(6) is the Section which deals with determination of the quantum of deduction. Section 80I(6) lays down the manner in which the quantum of deduction shall be effected. After such computation of the quantum of deduction; one has to go back to Section 80I(1) which categorically states that where the gross total income includes any profits and gains derived from an Industrial Undertaking to which Section 80I applies, then there shall be a deduction from such profits and gains of an amount equal to twenty percent. The words "includes any profits" in Section 80I(1) are very important. It indicates that the gross total income of an assessee shall include profits from a priority Undertaking. u/s 80I(6), while computing the quantum of deduction, the Assessing Officer shall, undoubtedly, treat the profits from the Chemical Division as the only source of income in order to arrive at the deduction under Chapter VIA. There is no dispute on this point. The quantum of deduction will have to be calculated on the basis of the profits derived by the assessee from the Chemical Division. However, the non obstante clause is applicable only to the quantum of deduction whereas the gross total income u/s 80B(5), which is also referred to in Section 80I(1), is required to be computed in the manner provided in the Act which presupposes that the gross total income shall be arrived at by adjusting the losses of the Oil Division against the profits of the Chemicals Division. This interpretation is also important because u/s 80A(2), the total amount of deduction claimed under Chapter VIA cannot exceed the gross total income. If the argument of the assessee was to be accepted, then there would be clear infraction of Section 80A(2). It may also be mentioned that u/s 80I(6), for the purpose of calculating the deduction, the loss of the Oil Division 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, as held by us in the case of Nima Specific Family Trust (supra), Section 80A(2) and Section 80B(5) are declaratory in nature. They will apply to all the Sections falling in Chapter VIA. They impose a ceiling on the total amount of deduction and, therefore, the non obstante clause in Section 80I(6) cannot restrict Section 80A(2) and 80B(5). They operate in different spheres. Section 80I(6) deals with actual computation of deduction whereas

Section 80I(1) deals with the treatment to be given to such deductions in order to arrive at the total income of an assessee and, therefore, while interpreting Section 80I(1), which refers to gross total income, one has to read the expression "gross total income" in Section, 80I(1) as defined in Section 80B(5). In the circumstances, the judgment of this Court in Nima Specific Family Trust (supra) applies to the present case also. The learned counsel for the assessee, however, vehemently relied upon the Judgment of the Supreme Court in the case of Canara Workshops Pvt. Ltd. (supra). In our view the judgment of the Supreme Court, on facts, does not apply to the present case. In that matter, the assessee was a Public Limited Company engaged in the manufacture of automobile spares. During the assessment year 1966-67, the assessee commenced another activity viz. manufacture of alloy steels. Both the activities fell within the Vth Schedule to the Income Tax Act. The assessee sustained a loss in the manufacture of alloy steel, whereas profits were earned from the manufacture of automobile spares. The assessee claimed relief u/s 80B, as it then stood. The Assessing Officer declined to grant the relief on the ground that the assessee had ignored the losses incurred in alloy steel industry. He held that the assessee would be entitled to deduction u/s 80E on the profits from manufacture of automobile spares only after setting off the loss in alloy steel. He accordingly granted a limited relief to the assessee u/s 80E. Ultimately, the matter reached the Supreme Court. It was held by the Apex Court that the Legislature, u/s 80E, had clearly stipulated that while computing the deduction, the following conditions were required to be satisfied viz. that it must be a company to which Section 80E applied; that the total income, as computed in accordance with the income Tax Act, should include profits and gains attributable to the business or industry mentioned in Section 80A without taking into account the provisions of Section 80E and lastly, from the profits and gains attributable to such business, a deduction has to be allowed of an amount equal to eight percent of the profits and effect must be given to that deduction when computing the total income of the Company. The Supreme Court held further that the object of Section 80E was properly served only by confining the application of that Section to the profits of a single industry. In our view, the controversy before this Court in the present case was not the controversy before the Supreme Court in the case of Canara Workshops Pvt. Ltd. (supra). u/s 80I(6), the profits of the Chemical Division are required to be treated as if they were the only source of income. That, the losses from the Oil Division are required to be ignored. That, while calculating the quantum of deduction, the profits of the Chemical Division alone are to be taken. Upto this stage, there is no dispute. However, after calculating the deduction on the basis that the profit from the Chemical Division was the only source of income, one has to give effect to the computed deduction in order to arrive at the total income of the Company and while giving effect, one has to consider the provisions of Section 80I(1) read with Section 80A(2) and 80B(5). In other words, in the example given by us in Nima's case, even if the total amount of deduction under Sections 80HH and 80-I is Rs. 32.00, but the gross total income is Rs. 30.00, then to that extent, the amount of deduction shall stand reduced.

That, while calculating the gross total income of the Company, one has to adjust the losses from one priority Unit against the profits of the other priority Unit and if the resultant gross total income is "Nil" then the assessee cannot claim deduction under Chapter VIA. In the circumstances, the judgment of the Supreme Court in Canara Workshops Pvt. Ltd. (supra) has no application to the facts of the present case.

7. For the aforesaid reasons, the above question is answered in the affirmative i.e. in favour of the department and against the assessee. Hence both the above Appeals are dismissed. No order as to costs.