IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-01-2019

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

T.C.(A).No.1045 of 2009

Commissioner of Income Tax,
Coimbatore ...Appellant

-Vs-

M/s.Bannari Amman Sugars Limited ...Respondent

Appeal filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 16.03.2009, passed in ITA No.1162/Mds/2008 against the order dated 24/03/2018 passed by the Commissioner of Income Tax(Appeals)-I, Coimbatore for the Assessment year 2004-05 against the Assessment order dated 29.12.2006 passed by the Assistant Commissioner of Income Tax Company Circle-I(2), Range-I, Coimbatore - 641 018.

For appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel,
and Mrs.K.G.Usharani.

For respondent: Mr.R.Vijayaraghavan,
For M/s.Subbarayar Aiyar Padmanabhan

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JUDGMENT

[Judgment of the Court was delivered by Dr.Anita Sumanth,J.]

Revenue has filed this appeal under Section 260A of the Income Tax Act (in short, 'the Act') aggrieved by order dated

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16.03.2009, passed by the Income Tax Appellate Tribunal, (in short, 'Tribunal') in respect of Assessment Year 2004-2005.

2. The substantial questions of law framed for determination in this appeal are as follows :

> "(1) Whether in the case where a company engaged apart from its regular business in the business of generation and distribution of power, owning more than one industrial undertaking, deduction under Section 80-1A of the Act is to be allowed to single industrial unit or to all the units taken together ?
>
> (2) Whether the Tribunal was right in holding that for the purpose of computing deduction under Section 80-1A, the assessee was entitled to exemption in respect of the unit situated in Karnataka for which claim was made even though only combined profit and loss account and balance sheet in respect of all business was maintained ?

3. The admitted facts are that the respondent-assessee operates three units engaged in the manufacture and sale of sugar: two units situated at Karnataka with a capacity of 16 and 20 MW respectively and the third unit at Tamil Nadu with a capacity of 20 MW. A claim was made under section Section 80-1A of the Act for the first time in respect of the 16 MW unit situated at Karnataka in AY 2004-05 in respect of profits amounting to Rs.16,71,52,433/-. The Assessing Officer, in quantifying the profits, set off the losses incurred in the prior years amounting to Rs.2,53,93,558/- against the profits, arriving at a figure of Rs.14,17,58,875/- as profits of the unit.

4. Though this Court, in Velayudhaswamy Spinning Mills (P) Ltd. v. Assistant Commissioner of Income-Tax, (reported in 340 ITR 477 and since affirmed by the Supreme Court in (2017) 244 Taxmann 58), has taken the view that the losses suffered in the years prior to the initial year that have been set off against the profits in the respective years should not be carried forward notionally and set off again against the eligible profits of later years, it appears that the assessee has not challenged this adjustment made to the profits for AY 2004-05 and, as such, this adjustment stands.

5. Further, the Assessing Officer proceeded to set off the losses suffered by the units at Karnataka (20 MW) and Tamil Nadu against the profits earned by the eligible unit coming to the conclusion that the assessee had no positive profits after such

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set off and, as such, no deduction was liable to be granted under Section 80-1A of the Act.

6. The Commissioner of Income Tax (Appeals) before whom the assessee filed an appeal challenging the order of assessment dismissed the same. The argument of the assessee was that it had claimed the deduction only in regard to the 16 MW unit at Karnataka ('eligible unit') and the other two units were only co-generation units in respect of which no deduction had been claimed. Thus, there was no question, according to the assessee, of setting off the losses of the two units against the profits of the eligible unit. The CIT(A) found from the record that the return of income filed by the assessee had been accompanied by a consolidated balance sheet and profit and loss account for the entity as a whole. Thus, according to him, the assessee had not substantiated its submission that it owned and managed three separate and identifiable undertakings, generating power. He noticed that no evidence had been produced by the assessee in respect of its claim that there existed separate undertakings and even in the depreciation statement filed along with the tax audit report, depreciation in respect of the co-generation units was included as part of the block of assets.

7. The CIT(A) further notes that at the time of appellate proceedings, figures relating to unit wise bifurcation in relation to the three units were furnished before him. He concluded that the co-generation units had been set up captively only to meet the power shortages faced by the various sugar manufacture units. Applying the order of the Income Tax Appellate Tribunal, Madras in the case of Chettinad Cement Corporation Ltd. V. ACIT, he concluded that only a separate undertaking set up for the generation or generation and distribution of power would be entitled to the deduction claimed and not a captive power plant set up by an undertaking to meet power shortages to maintain its own industry. He noted that the 20 MW units at Tamil Nadu and Karnataka had been set up only to boost power generation for their own sugar industry and only the surplus, after captive consumption, had been sold. Such undertakings, according to him, could not be treated as separate undertakings for the purpose of deduction under Section 80 I (A).

8. In this view of the matter he negated the submission of the assessee that the units were to be considered as separate units and concluded that all units were to be clubbed as a single generation unit. In fine, the assessee's appeal was dismissed as against which the assessee approached the Tribunal in second appeal.

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9. The Tribunal, following the judgment of the Delhi High Court in the case of Commissioner of Income Tax v. Dewan Kraft System (P) Ltd., 297 ITR 305 (Del), held that the provisions of Section 80-1A of the Act would stand attracted only in the case of the specific unit claiming deduction and, as such, the action of the lower authorities in clubbing the profit and loss of the three units would not be tenable. Accordingly, the orders of the lower authorities were reversed by the Tribunal, as against which, the present appeal has been filed by the Revenue.

10. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue; and Mr.R.Vijayaraghavan, learned counsel for the respondent/Assessee.

11. The Tribunal has found as a fact that independent Power Purchase Agreements (PPA) in respect of each unit have been entered into by the assessee with the Karnataka Transmission Limited and Tamil Nadu Electricity Board respectively, being i) Power Purchase Agreement with Karnataka Power Transmission Corporation Ltd. dated 25.09.2000 for 16 MW Co-generation Plant situated at Alaganchi, Mysore District, ii) Power Purchase Agreement with Tamil Nadu Electricity Board dated 24.04.2002 for 20 MW Co-generation Plant situated at Alathukombai, Erode District and iii) Power Purchase Agreement with Karnataka Power Transmission Corporation Ltd dated 11.03.2004 for 20 MW Co-generation Plant situated at Alaganchi, Mysore District.

12. The terms and conditions contained in each PPA are different and distinct from each other. Thus the mere fact that consolidated financials have been prepared for the entire business would not disentitle the assessee from claiming deduction under section 80IA in respect of the one undertaking of its choice. In fact, separate statements have been maintained by the assessee and filed before the Commissioner of Income Tax (Appeals) detailing separate project cost and source of finance in respect of each unit. The assessee has categorically exercised its claim before the Assessing Officer for deduction under section 80IA in respect of only the 16 MW unit at Karnataka.

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13. We may, at this juncture, usefully refer to the provisions of section 80IB(5) of the Act which provides that in determining the quantum of deduction under section 80IA, the eligible business shall be treated as the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year upto and including the assessment year for which the determination is to be made. There is thus no doubt that each unit, including a CPP, has to be seen independently as separate and distinct from

each other and as units for the purposes of grant of deduction under section 80IA of the Act.

14. Coming to the computation itself, reliance is placed by the Department on a judgment of the Supreme Court in the case of Synco Industries Ltd. v. Assessing Officer, Income-Tax, Mumbai (299 ITR 444). The Supreme Court was considering the case of an assessee managing multiple units, some earning a profit and others, losses. The question before the Bench was whether the losses suffered by the eligible oil division ought to be adjusted against the profits of the chemical division in finalizing the grant of deduction under Section 80I of the Act. After considering the provisions of Section 80I, 80A, 80AB and 80B, the Bench holds as follows:

> 12. The contention that under Section 80-I (6) the profits derived from one industrial undertaking cannot be set off against loss suffered from another and the profit is required to be computed as if profit making industrial undertaking was the only source of income, has no merits. Section 80-I (1) lays down that where the gross total income of the assessee includes any profits derived from the priority undertaking/unit/division, then in computing the total income of the assessee, a deduction from such profits of an amount equal to 20% has to be made. Section 80-I (1) lays down the broad parameters indicating circumstances under which an assessee would be entitled to claim deduction. On the other hand Section 80-I (6) deals with determination of the quantum of deduction. Section 80-I (6) lays down the manner in which the quantum of deduction has to be worked out. After such computation of the quantum of deduction, one has to go back to Section 80-I (1) which categorically states that where the gross total income includes any profits and gains derived from an industrial undertaking to which Section 80-I applies then there shall be a deduction from such profits and gains of an amount equal to 20%. The words "includes any profits'' used by the legislature in Section 80-I(1) are very important which indicate that the gross total income of an assessee shall include profits from a priority undertaking. While computing the quantum of deduction under Section 80-I(6) the Assessing Officer, no doubt, has to treat the profits derived from an industrial undertaking as the only source of income in order to arrive at the deduction under Chapter VI-A. However, this Court finds that the non-obstante clause appearing in Section 80-I(6) of the Act, is applicable only to the quantum of deduction, whereas, the gross total

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income under Section 80B(5) which is also referred to in Section 80I(1) is required to be computed in the manner provided under the Act which presupposes that the gross total income shall be arrived at after adjusting the losses of the other division against the profits derived from an industrial undertaking. If the interpretation as suggested by the appellant is accepted it would almost render the provisions of Section 80A(2) of the Act nugatory and therefore the interpretation canvassed on behalf of the appellant cannot be accepted. It is true that under Section 80-I (6) for the purpose of calculating the deduction, the loss sustained in one of the units, 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, Section 80A(2) and Section 80B (5) are declaratory in nature. They apply to all the Sections falling in Chapter VI-A. They impose a ceiling on the total amount of deduction and therefore the non-obstante clause in Section 80-I(6) cannot restrict the operation of Sections 80A(2) and 80B(5) which operate in different spheres. As observed earlier Section 80-I(6) deals with actual computation of deduction whereas Section 80- I(1) deals with the treatment to be given to such deductions in order to arrive at the total income of the assessee and therefore while interpreting Section 80-I(1), which also refers to gross total income one has to read the expression 'gross total income' as defined in Section 80B(5). Therefore, this Court is of the opinion that the High Court was justified in holding that the loss from the oil division was required to be adjusted before determining the gross total income and as the gross total income was 'Nil' the assessee was not entitled to claim deduction under Chapter VI-A which includes Section 80-I also.

15. The conclusion was thus to the effect that where the assessee deserves profits from multiple units, all being eligible for deduction under Chapter VIA, the profits or losses arising from the respective units have to be considered in totality and only if the resultant figure were positive, would the assessee be entitled to its claim. Thus, the judgment considers the interplay between the income and losses arising from eligible units alone, all of which are eligible for deduction under Chapter VIA, and would not apply to the facts and circumstances of the present case whether the claim under Section 80I was restricted only to the 16 MW unit at Karnataka. Mr.Senthil Kumar, fairly, does not dispute this position.

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16. In the light of the above discussion, the questions of law are answered in favour of the Assessee and against the Revenue and the Tax Case (Appeal) is dismissed. No costs.

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Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

To
1. The Income Tax Appellate Tribunal,
   Madras 'D' Bench,
   Chennai.

2. The Commissioner of Income Tax(Appeals)-I,
   Coimbatore.

3. The Assistant Commissioner of Income Tax
   Company Circle-I(2),
   Range - I, Coimbatore - 641 018.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.7137
+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.7138

T.C.A.No.1045 OF 2009

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