

In the High Court of Judicature at Madras

Dated: 12.01.2015

Coram

The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) Nos.2386 & 2387 of 2006

M/s.Carborundum Universal Limited
Tiam House,
28, Rajaji Salai,
Chennai - 600 001.

.... Appellant in both T.C.(A)s

Vs.

The Joint Commissioner of Income Tax
Special Range I,
Chennai - 600 034.

.... Respondent in both T.C.(A)s

APPEALS under Section 260A of the Income Tax Act against the order dated 29.9.2005 made in I.T.A.Nos.311&312/(Mds)/2001 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai.

For Appellant : Mr.R.Vijayaraghavan

For Respondent: Mr.T.Ravi Kumar
Standing counsel for Income Tax

COMMON JUDGMENT

(Delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) filed by the assessee as against the order of the Income Tax Appellate Tribunal were admitted by this Court

on the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the losses incurred by the industrial undertaking claiming deduction under Section 80 I, which has been already set off against the profits of the other industrial undertaking should be notionally carried forward and set off against profit generated by the industrial undertaking during the relevant assessment year for determining the deduction under Section 80 I?

2. Whether on the facts and circumstances of the case, the Tribunal ought to have held that the issue of restricting the relief under Section 80I was debatable and hence cannot be carried out in an order of rectification under Section 154 particularly when a concurrent bench of the same Tribunal has held the issue in favour of the assessee?

3. Whether on the facts and circumstances of the case, the Tribunal was right in not appreciating that the rectification under Section 154 is permissible only where the mistake is apparent on the face of the record but not when the issue requires deliberation on legal issues and extensive investigation of facts from the records of earlier years?"

2. The appellant is engaged in the business of manufacturing and selling of abrasives, refractories, grinding wheels etc. For the assessment year 1992-93, the Assessing Officer allowed deductions under Section 80I of the Income Tax Act. Subsequently, notice under Section 154 of the Income Tax Act was issued calling upon the assessee to show cause why

losses incurred by the assessee upto the assessment year 1991-92 should not be set off against the profits that have been derived from the industrial undertaking during the assessment year 1992-93. In response to the show cause notice, the assessee filed a reply stating that deduction under Section 80 I of the Income Tax Act should be construed as profits earned during any year and it should not be treated as profits after setting off of the carried forward losses. However, the Assessing Officer did not agree with the said reply of the assessee and passed the rectification order by notionally carried forward the losses of the earlier years and setting off the same against the profit available during the assessment year 1992-93. Since deduction under Section 80I was negated for the assessment year 1992-93, the Assessing Officer withdrew the deduction for the assessment year 1993-94 also.

3. Aggrieved by the assessment orders, the assessee filed appeals before the Commissioner of Income Tax (Appeals), who dismissed the appeals, thereby confirmed the order of the Assessing Officer.

4. As against the said orders of the Commissioner of Income Tax (Appeals), the assessee filed further appeals before the Income Tax Appellate Tribunal contending that notional carry forward losses should not be set off in computing the deduction under Section 80I of the Income Tax Act. Before the Tribunal, the assessee relied on the decision of the

Tribunal in the case of TTK Pharma Limited in ITA No.2698 of 1994.

5. The Tribunal, without following its own decision, dismissed the appeals filed by the assessee holding that provisions of sub-section (6) of Section 80I has not been considered properly in the said decision and hence the said decision would not apply to the case of the assessee.

6. Aggrieved by the order of the Tribunal, the present Tax Case (Appeals) have been filed.

7. Learned counsel appearing for the appellant/assessee submits that the said decision of the Tribunal in the case of Commissioner of Income Tax, Chennai V. M/s.TTK Pharma Limited, Chennai has been taken on appeal by the Revenue before this Court and this Court after considering the entire gamut of the case, decided the issue in favour of the assessee. He further submitted that the said decision of this Court has not been challenged by the Revenue and hence had become final. He also submitted that the issue involved in the present case is identical to the issue decided by this Court dated 23.12.2009 made in T.C.(A)No.298 of 2004 in the case of Commissioner of Income Tax, Chennai V. M/s.TTK Pharma Limited, Chennai.

8. Heard learned counsel appearing for the assessee and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

9. Whether the issue raised in these appeals is identical to the issue in the above-said decision of this Court in the case of TTK Pharma Limited (supra) needs to be seen.

10. The question raised in the above-said decision of this Court was whether for the purpose of allowing deduction under Section 80 I, the brought forward losses and unabsorbed depreciation etc., of the new industrial undertaking need not be taken into consideration, once they have been set off against other sources of income, especially in view of the clear provisions of sub-section 6 of Section 80I, the application of which is mandatory.

11. The Division Bench of this Court relied upon the decision of the Supreme Court in the case of ***Synco Industries Ltd. Vs. Assessing Officer (Income Tax) and Another*** reported in ***(2008) 299 ITR 444***, came to the conclusion that once the depreciation allowance and development rebate for the past assessment years were fully set off against the total income of the assessee for those assessment years, the question of carry forward the same does not arise, more so for the

purpose of determining the deduction under Section 80I of the Income Tax Act. For better clarity, the relevant portion of the above-said decision of this Court reads as follows:

"14. Again in the case of **Synco Industries Ltd. Vs. Assessing Officer (Income Tax) and Another** reported in **(2008) 299 ITR 444**, while rejecting the contention of a similar nature raised by the Revenue before it, the Hon'ble Supreme Court observed as under:

*"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 merit. 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 per cent 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 per cent. 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 the 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 deductions under Chapter VI-A. However, this court finds that the non obstinate clause appearing in section 80-I(6) of the Act, is applicable only to the quantum of deduction, whereas, the gross total income under section 80B(5) which is also referred to in section 80-I(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 obstinate 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)...." (emphasis supplied)

15. The cumulative consideration of the principles set out in the above referred to decisions and the other factors involved in this case, wherein admittedly the entire depreciation allowance and development rebate for the past assessment years were fully set off against the total income of

the assessee for those assessment years and no further depreciation allowance or development rebate remain unabsorbed and nothing could be deducted in respect of the set off while determining the deduction under Section 80I of the Act."

12. A reading of the above-said decision of this Court reveals that the issue raised in the present appeals is identical to the issue decided by this Court. It is relevant to note that the Revenue has not challenged the decision of this Court and hence the said decision has become final.

13. Since the issue raised in these appeals has been decided by this Court and we see no reason to differ with the view taken by this Court, following the decision of this Court dated 23.12.2009 made in T.C.(A)No.298 of 2004, the above Tax Case (Appeals) are allowed. No costs.

Index :Yes/No
Internet:Yes/No
sl

(R.S.,J) (R.K.,J)
12.01.2015

To

1. The Income Tax Appellate Tribunal 'A' Bench, Chennai
2. The Commissioner of Income Tax (Appeals) - V, Chennai-34.
3. The Joint Commissioner of Income Tax, Special Range I, Chennai-34.

R.SUDHAKAR,J.

AND
R.KARUPPIAH,J.

sl

Tax Case (Appeal) Nos.2386 and 2387 of 2006

12.01.2015