

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL
MEMBER AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1096 & 1097/Bang/2019
Assessment Years:2013-14 & 2014-15

Deputy Commissioner of Income-tax Circle-1(1)(1) Bengaluru	Vs.	M/s. Atria Power Corporation Pvt. Ltd. # 11, 1 st Floor Commissariat Road Bangalore 560 025 PAN NO : AABCA1880E
APPELLANT		RESPONDENT

Appellant by	:	Shri K. Sankar Ganesh, D.R.
Respondent by	:	Shri V. Srinivasan, A.R.

Date of Hearing	:	12.10.2021
Date of Pronouncement	:	12.10.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals filed by the revenue are directed against the orders passed by Ld. CIT(A)-1, Bengaluru and they relate to the assessment years 2013-14 & 2014-15. Both the appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The common issue urged in both the years by the revenue relate to the quantum of deduction allowed u/s 80IA of the Income-tax Act,1961 [‘the Act’ for short]. In assessment year 2014-15, the revenue has raised one more issue, i.e, the revenue challenged the

relief granted by Ld. CIT(A) in respect of addition made u/s 14A of the Act.

3. We shall first take up the dispute relating to deduction u/s 80IA of the Act in AY 2013-14. The assessee is engaged in the business of generation of transmission of electric power through Hydal and Solar Renewable energy sources. The assessee runs and operates 5 distinct undertakings engaged in power generation. Out of the above said 5, Unit No.4 is eligible for deduction u/s 80IA(4)(iv) of the Act.

4. The assessment for the assessment year 2013-14 was completed by the A.O. u/s 143(3) of the Act. In the return of income, the assessee had claimed deduction u/s 80IA of the Act to the extent of Rs.1,09,84,906/- and accordingly returned Nil income. The A.O. determined the total income at Rs.52,92,989/- after making disallowance u/s 14A of the Act to the extent of Rs.1,15,54,108/-. The assessee challenged the disallowance made u/s 14A of the Act by filing appeal before Ld. CIT(A), who granted partial relief to the assessee. The A.O. thereafter, passed the order giving effect to the order passed by Ld. CIT(A), wherein the deduction u/s 80IA was granted at Rs.1,72,46,025/-.

5. The A.O. subsequently noticed that the assessee has declared loss under the head "income from business" and it has earned interest income of Rs.2,95,92,915/-, which was declared under the head Income from other sources. Accordingly, the A.O. took the view that the deduction u/s 80IA of the Act has been allowed against interest income assessed under "Income from other sources". Accordingly, the AO took the view that the deduction u/s

80IA has been wrongly allowed and accordingly reopened the assessment by issuing notice u/s 148 of the Act.

6. The assessee submitted before the AO that the deduction u/s 80IA of the Act is allowable in respect of Unit No.4 and the loss of other units need not be adjusted for allowing deduction u/s 80IA of the Act. The A.O. did not accept the said contentions of the assessee by placing reliance on the decision rendered by the Hon'ble Supreme Court in the case of Liberty India Vs. CIT (SLP{c}No.5827/07), wherein it was held that the deduction u/s 80IB of the Act is allowable in respect of profit derived from the eligible business. Accordingly, the A.O. took the view that the deduction u/s 80IA of the Act has been allowed erroneously. Accordingly, he did not allow the deduction claimed u/s 80IA of the Act in the order passed u/s 143(3) r.w.s. 147 of the Act.

7. Before Ld. CIT(A), the assessee contended that the decision rendered by Hon'ble Supreme Court in the case of Liberty India (supra) was on a different issue i.e. where the amount received by way of duty drawback is eligible for deduction u/s 80IA of the Act or not. Hence the said decision is not applicable to the facts of the present case. The assessee submitted that, in the instant case, the issue related to the manner of computation of deduction u/s 80IA of the Act. By placing reliance on following decisions, the assessee submitted that deduction u/s 80IA of the Act is allowed on the profits of eligible unit and the loss incurred in other units should not be adjusted for determining the quantum of deduction eligible u/s 80IA of the Act. It was further deduction so claimed by the assessee does not exceed gross total income:

- a) Jindal Aluminium Ltd. (IT appeal No.1021/Bang/2011
- b) Canara Work Shops Pvt. Ltd. (1986) 27 Taxman 262.

c) Dewan Kraft System Pvt. Ltd. (IT appeal No.977/2005 & 186/2006 dated 27.2.2007) (Del).

8. The Ld. CIT(A) was convinced with the contentions of the assessee and accordingly deleted the disallowance made by th A.O. with the following observations:-

(5.1 The First ground of the appellant is regarding the claim u/s 80-IA against the action of the AO in adjusting the loss of non 80-IA unit with the profit of 80-IA unit, before computing the deduction u/s. 80-IA on the netted of profit. The appellant in support of its claim has relied on various case laws viz. 2927 ITR 305 in the case of Dewan Kraft System Ltd (2010), Canara Workshop P.L. (1986) 161 ITR 3201, etc., [2012] 26 taxmann.com 317 (Bang.) in the ITAT BANGALORE BENCH 'B' Jindal Aluminium Ltd. In IT APPEAL NO. 1021 (BANG.) OF 2011.

In the Jindal Aluminium Ltd. The Hon'ble ITAT BANGALORE has held as under:

*"Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings - Computation of deduction - Assessment year 2004-05 - Assessee claimed unit-wise deduction without deducting losses of other eligible units - Gross total income of assessee was positive and more than deduction claimed under section 80-IA - *Whether deduction was to be allowed as claimed - Held, yes [Para 13]"*

[1986]27 Taxman 262 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. Canara Workshops (P.) Ltd CIVIL APPEAL NOS. 1685 AND 1686 (NT) OF 4,JULY 15, 1986, wherein it was held as under:

Section 80E [as it stood prior to 1-4-1968 (now section 80-1)] of the come-tax Act, 1961 - Deductions - Priority industries - Whether deduction der section 80E is to be allowed from profits and gains earned by an industry without reducing such profits by setting off loss suffered by other industry owned by assessee - Held, Yes"

[2007] 160 TAXMAN 343 (DELH) HIGH COURT OF DELHI Dewan Kraft System (P.) Ltd. IT APPEAL NOS. 977 OF 2005 AND 186 OF 2006, FEBRUARY 27, 2007, wherein it was held as under:

"Section 80-IA of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertakings - Assessment years 1997-98 and 1998-99 - Assessee was carrying on its business in units situated at Kalamb which was notified backward area and assessee was entitled to deduction under section 80-IA during assessment years in question in respect of said unit - Other unit of assessee was situated at Delhi and benefit under section 80-IA was not available to said unit - Assessee filed return showing profits from Kalamb unit and losses from Delhi unit and claimed deduction under section 80-IA of certain amount being 100 per cent profit derived from Kalamb unit Assessing Officer adjusted loss of Delhi unit against profit of Kalamb unit and restricted deduction to said amount - Whether in view of section 80-IA(7), Kalamb unit, being only unit of assessee eligible for deduction under section 80-IA, was to be treated as an independent unit and same had to be treated as only source of income for assessee for purpose of computing deduction under section 80-IA and, therefore, Assessing Officer was not justified in restricting deduction - Held, yes"

[2017] 85 taxmann.com 134 (SC) SUPREME COURT OF INDIA Makino India (P.) Ltd CIVIL APPEAL NO. 1062 OF 2017 APRIL 3, 2017

'Section 10A of the Income-tax Act, 1961 - Free trade zone (Computation of deduction) - Whether in view of judgment in CIT v. Yokogawa India Ltd. [2017] 391 ITR 274/244 Taxman 273/77 taxmann.com 41 (SC), after amendment of section 10A by Finance Act, 2000 with effect from 1-4-2001, said section has become a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under Chapter IV of Act and not at stage of computation of total income under Chapter VI of Act - Held, yes"

The issue involved in the present appeal is regarding the methodology of computation of the deduction U/s. 80(IA) of the Act. The appellant made a claim u/s 80-IA against the action of the AO in adjusting the loss of non 80-IA unit with the profit of 80-IA unit, before computing the deduction u/s. 80-IA on the netted of profit. The judicial precedents cited by the appellant particularly, **Dewan Kraft System (P.) Ltd**(supra) and in the ITAT BANGALORE BENCH 'B' **Jindal Aluminium Ltd in IT APPEAL NO. 1021 (BANG.) OF 2011**[2012] 26 taxmann.com317 (Bang.), support the view that no adjustment of the loss of non 80-IA unit with the profit of -IA

*unit is to be made before computing the deduction u/s. 80-IA. Thus, it is an
ted method to compute the deduction u/s. 80-IA unit-wise without ting
losses of other eligible units. Respectfully, following binding judicial
precedents I allow the claim of the appellant for computing the
deduction U/s. 80-IA unit-wise without deducting losses of other
eligible units. In the result the AO is directed to re-compute the said
deduction under Section 80-IA by taking into account the consequent
to order giving effect to the order dated 12-03-2018.”*

9. We heard the parties on this issue and perused the record. We notice that the decision rendered by Ld CIT(A) finds support from the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Reliance Energy Ltd (Civil Appeal No.1327 of 2021 dated 28.4.21). In the case before Hon'ble Supreme Court, the assessee therein had claimed deduction u/s 80IA to the extent of Rs.546.26 crores. The AO determined the quantum of deduction at Rs.492.78 crores. The Gross total income of the assessee consisted of following income:-

Business income	-	355.74 crores
Other sources	-	41.62 crores

Gross Total Income	-	397.36 crores
		=====

The AO restricted the deduction u/s 80IA and 80IB to the extent of business income of Rs.355.74 crores, out of which, the deduction allowed u/s 80IA was Rs.354 crores. The contention of the assessee was that the maximum amount of deduction should be restricted to Rs.397.36 crores (the amount of Gross Total income) and not 355.74 crores, since the eligible amount of deduction was higher than the gross total income. The Ld CIT(A), Tribunal and High Court accepted the claim of the assessee. Hence the revenue filed appeal before Hon'ble Supreme Court. The Hon'ble Apex Court upheld the view of the High Court and dismissed the appeal of the revenue. Relevant observations made by the Hon'ble Supreme Court are extracted below:-

*“12. The import of Section 80-IA is that the ‘total income’ of an assessee is computed by taking into account the allowable deduction of the profits and gains derived from the ‘eligible business’. With respect to the facts of this Appeal, there is no dispute that the deduction quantified under Section 80-IA is Rs.492,78,60,973/-. To make it clear, the said amount represents the net profit made by the Assessee from the ‘eligible business’ covered under sub-section (4), i.e., from the Assessee’s business unit involved in generation of power. The claim of the Assessee is that in computing its ‘total income’, deductions available to it have to be set-off against the ‘gross total income’, while the Revenue contends that it is only the ‘business income’ which has to be taken into account for the purpose of setting-off the deductions under Sections 80-IA and 80-IB of the Act. **To illustrate, the ‘gross total income’ of the Assessee for the assessment year 2002-03 is less than the quantum of deduction determined under Section 80-IA of the Act. The Assessee contends that income from all other heads including ‘income from other sources’, in addition to ‘business income’, have to be taken into account for the purpose of allowing the deductions available to the Assessee, subject to the ceiling of ‘gross total income’. The Appellate Authority was of the view that there is no limitation on deduction admissible under Section 80-IA of the Act to income under the head ‘business’ only, with which we agree.***

13. The other contention of the Revenue is that sub-section (5) of Section 80-IA refers to computation of quantum of deduction being limited from ‘eligible business’ by taking it as the only source of income. It is contended that the language of sub-section (5) makes it clear that deduction contemplated in sub-section (1) is only with respect to the income from ‘eligible business’ which indicates that there is a cap in sub-section (1) that the deduction cannot exceed the ‘business income’. On the other hand, it is the case of the Assessee that sub-section (5) pertains only to determination of the quantum of deduction under sub-section (1) by treating the ‘eligible business’ as the only source of income. It was submitted by Mr. Vohra, learned Senior Counsel, that the final computation of deduction under Section 80-IA for the assessment year 2002-03 as accepted by the Assessing Officer, was arrived at by taking into account the profits from the ‘eligible business’ as the ‘only source of income’. He submitted that, however, sub-section (5) is a step antecedent to the treatment to be given to the deduction under subsection (1) and is not concerned with the extent to which the computed deduction be allowed. To explain the interplay between sub-section (5) and sub-section (1) of Section 80-IA, it will be useful to refer to the facts of this Appeal. The amount of deduction from the ‘eligible business’ computed under Section 80-IA for the assessment year 2002-03 is Rs. 492,78,60,973 /-. There is no dispute that the said amount represents income from the ‘eligible business’ under Section 80-IA and is the only source of income for the purposes of computing deduction under Section 80-IA. The question that arises further with reference to allowing the

deduction so computed to arrive at the 'total income' of the Assessee cannot be determined by resorting to interpretation of subsection (5).

14. *It will be useful to refer to the judgment of this Court relied upon by the Revenue as well as the Assessee. In Synco Industries (supra), this Court was concerned with Section 80-I of the Act. Section 80-I(6), which is in pari materia to Section 80-IA(5), is as follows:*

“ 80-I(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 subsection (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.”

It was held in Synco Industries (supra) that for the purpose of calculating the deduction under Section 80-I, loss sustained in other divisions or units cannot be taken into account as sub-section (6) contemplates that only profits from the industrial undertaking shall be taken into account as it was the only source of income. Further, the Court concluded that Section 80-I(6) of the Act dealt with actual computation of deduction whereas Section 80-I(1) of the Act dealt with the treatment to be given to such deductions in order to arrive at the total income of the assessee. The Assessee also relied on the judgment of this Court in Canara Workshops (P) Ltd., Kodialball, Mangalore (supra) to emphasize the purpose of sub-section (5) of Section 80-IA. In this case, the question that arose for consideration before this Court related to computation of the profits for the purpose of deduction under Section 80-E, as it then existed, after setting off the loss incurred by the assessee in the manufacture of alloy steels. Section 80-E of the Act, as it then existed, permitted deductions in respect of profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule. It was argued on behalf of the Revenue that the profits from the automobile ancillaries industry of the assessee must be reduced by the loss suffered by the assessee in the manufacture of alloy steels. This Court was not in agreement with the submissions made by the Revenue. It was held that the profits and gains by an industry entitled to benefit under Section

80-E cannot be reduced by the loss suffered by any other industry or industries owned by the assessee.

15. In the case before us, there is no discussion about Section 80-IA(5) by the Appellate Authority, nor the Tribunal and the High Court. However, we have considered the submissions on behalf of the Revenue as it has a bearing on the interpretation of sub-section (1) of Section 80-IA of the Act. We hold that the scope of sub-section (5) of Section 80- IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income'. Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'. An attempt was made by the learned Senior Counsel for the Revenue to rely on the phrase 'derived ... from' in Section 80-IA (1) of the Act in respect of his submission that the intention of the legislature was to give the narrowest possible construction to deduction admissible under this sub-section. It is not necessary for us to deal with this submission in view of the findings recorded above. For the aforementioned reasons, the Appeal is dismissed qua the issue of the extent of deduction under Section 80-IA of the Act."

10. The Hon'ble Supreme Court held that there is no limitation on deduction admissible under Section 80-IA of the Act to income under the head 'business' only. Hence the view expressed by the AO in the instant case was not right and accordingly, we confirm the order passed by Ld CIT(A) on this issue.

11. We shall now take up the appeal filed by the revenue for AY 2014-15. The first issue relates to the quantum of deduction allowable u/s 80IA of the Act. The assessee claimed deduction of Rs.3,85,82,607/- u/s 80IA of the Act. The assessee had declared interest income of Rs.2,24,64,911/- also under the head Income from business and accordingly declared income of Rs.5,78,25,345/- under the head Income from Business. The assessee declared loss under the head Income from Capital gains and the same was carried forward. The income declared under the head income from other sources was claimed as exempt. Hence the Gross total income came to be computed at Rs.5,78,25,345/-. The AO took the

view that the deduction u/s 80IA is not allowable on the interest income of Rs.2,24,64,911/-. Accordingly, he reduced the deduction u/s 80IA to the extent of interest income. The Ld CIT(A) deleted the disallowance as done in AY 2013-14.

12. We heard the parties on this issue and perused the record. There is no dispute with regard to the fact that the eligible amount of deduction u/s 80IA was Rs.3,85,82,607/-. Even, if the interest income is reduced from business income and shown under other sources, the gross total income would remain the same, i.e. Rs.5,78,25,345/-. Hence, as per the decision rendered by Hon'ble Supreme Court in the case of Reliance Energy Ltd (supra), the assessee would be entitled for deduction of Rs.3,85,82,607/-. Hence the view taken by the AO was not right and accordingly, we confirm the order passed by Ld CIT(A) for the detailed reasons discussed in AY 2014-15 (supra).

13. The next issue contested by the revenue in AY 2014-15 relates to the disallowance made u/s 14A of the Act. The assessee declared exempt income of Rs.3,32,140/- and did not disallow anything u/s14A of the Act. The AO disallowed a sum of Rs.1,33,45,993/- u/s 14A. The Ld CIT(A) restricted the disallowance to the amount of exempt income by following the decision rendered by Hon'ble Karnataka High Court in the case of Pragathi Krishna Grameena Bank (IT Appeal No.100001 & 100002 OF 2018) and also various Tribunal decisions. The revenue is aggrieved.

14. We heard the parties and perused the record. We notice that the Ld CIT(A) has decided this issue following the binding decision

of Hon'ble jurisdictional Karnataka High Court. Hence we do not find any reason to interfere with his decision rendered on this issue.

15. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 12th Oct, 2021

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 12th Oct, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.