



IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA.466/2003

Date of Decision : 24<sup>th</sup> of November, 2005

M/s.Indo Polycoats  
Pvt. Ltd.

.....Appellant,

Through : Mr.P.C.Jain, Advocate

versus

Commissioner of Income  
Tax, New Delhi

.....Respondents,

Through : M.R.D.Jolly, Adv., with  
Mr.Ajay Jha, Advocates.

CORAM:

HON'BLE MR. JUSTICE T.S.THAKUR

HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

T.S.THAKUR, J.(Oral)

1. In IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax; 266 ITR 521 the Supreme Court was examining whether deductions under Chapter VI- A of the Income Tax Act were allowable on the net or gross income that



quantified for such deductions under that Chapter. The Court held that Section 80AB had an overriding effect over all other sections in Chapter VI-A and that all other provisions contained in the said Chapter would remain subject to the said provision. The Court further declared that the provisions of Section 80AB made it clear that computation of income has to be in accordance with the provisions of the Act and that any computation in accordance with the provisions of the Act would not only include profits but losses also. The following passage from the said decision sums up the legal position :

“Section 80AB is also in Chapter VI-A. It starts with the words “where any deduction is required to be made or allowed under any section of this Chapter”. This would include section 80HHC. Section 80AB further provides that “notwithstanding anything contained in that section”. Thus section 80AB has been given an overriding effect over all other sections in Chapter VI-A. Section 80HHC does not provide that its provisions are to prevail over section 80AB or over any other provision of the Act. Section 80HHC would thus be governed by section 80AB. The decisions of the Bombay High Court and the Kerala High Court to the contrary cannot be said to be the correct law. Section 80AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. If the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration.”

2. In *Moti Lal Pesticides (I) Pvt. Ltd. Vs. CIT*; 243 ITR 26 (SC) one of the questions which fell for consideration was whether the assessee was



entitled to deduction under Section 80HH of the Act on the gross profit and not the net profit derived by the assessee for the assessment year under consideration. The Supreme Court noticed its earlier decision in Distributors (Baroda) Pvt. Ltd. Vs. Union of India; 155 ITR 120 (SC) and held that deduction was to be allowed under Chapter VI-A of the Act only on the net income and not the gross income earned by the assessee. The Court reiterated that Section 80AB introduced with retrospective effect from 1<sup>st</sup> April, 1981 was only clarificatory in nature and that the decision in Distributors (Baroda) Pvt. Ltd. (supra) case stated the legal position irrespective of the introduction of the said provision. The following passage in this regard apposite:

“.....In Distributors (Baroda) Pvt. Ltd.'s case [1985] 155 ITR 120 (SC), however, this court specifically overturned its earlier decision in Cloth Traders (P) Ltd.'s case [1979] 118 ITR 243 (SC) and held that deduction is to be allowed only on the net income and not on the gross income. With reference to Section 80AB, this court said it was merely of a clarificatory nature and the decision of this court in Distributors (Baroda) P. Ltd.'s case [1985] 155 ITR 120 is thus irrespective of section 80AB of the Act. The High Court, therefore, relying on the decision of this court in Distributors (Baroda) P. Ltd.'s case [1985] 155 ITR 120 answered the question in favour of the Revenue and against the assessee.”

“.....The effect of section 80AB was now that deduction would have to be made from the net income and not from the gross income. But then, in all fairness, Mr. Ramamurti also referred to another decision of this Court in H.H. Sir Rama Varma Vs. CIT [1994] 205 ITR 433, where this court observed that on a parity of reasoning with section 80 AA as given in Distributors (Baroda) P. Ltd.'s case [1985] 155 ITR 120 (SC), it must be held that section 80AB was enacted to declare the law as it always stood in relation to



the deductions to be made in respect of the income specified under the head "C" of Chapter VI-A of the Act."

3. To the same effect is a Division Bench of this Court in Commissioner of Income Tax Vs. Atam Ballabh Finance Pvt. Ltd.; 258 ITR 485 where the issue that had fallen for consideration was whether while computing the income all provisions of Chapter VI-A are required to be applied before allowing the deductions. Relying upon the decision of Supreme Court in Distributors (Baroda) P. Ltd. Vs. Union of India; 155 ITR 120 (supra) this Court observed thus :

"D. So far as question No.2 is concerned, the Commissioner of Income Tax (Appeals) and the learned Tribunal appear to have lost sight of the definition of "Gross total income". "Gross total income" means the total income computed in accordance with the provisions of the said Act, before making any deduction under this Chapter, as contained in sub-section (5) of section 80B of the said Act. There, thus, cannot be any doubt whatsoever that while computing the income, all provisions are required to be applied and thereafter only the deductions had to be allowed."

4. The Tribunal has in the instant case relied upon the decision of Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. CIT Gujarat; 113 ITR 84, Motilal Pesticides (I) Pvt. Ltd. Vs. CIT; 207 CTR 636, H.H. Sir Ram Varma Vs. CIT 205 ITR 433 and Grasim Industries Ltd. Vs. ACIT & Ors.; 245 ITR 677 to hold that deduction under Section 80 I could be computed only after allowing



development rebate and depreciation under Section 30 to 43A from the total income or commercial profit of the assessee. It has therefore followed the very same line of reasoning as has prevailed in the judgments of the Hon'ble Supreme Court, referred to earlier. In that view, therefore, no substantial question of law arises for our consideration. The appeal fails and is accordingly dismissed.

(T.S. THAKUR)  
JUDGE

(B.N. CHATURVEDI)  
JUDGE

November 24, 2005  
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