THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.02.2010

+ ITA 1279/2008

THE COMMISSIONER OF INCOME TAX - III … Appellant

- versus –

SONA KOYO STEERING SYSTEMS LIMITED ... Respondent

WITH

+ ITA 194/2009

THE COMMISSIONER OF INCOME TAX - III … Appellant

- versus –

SONA KOYO STEERING SYSTEMS LIMITED ... Respondent

AND

+ ITA 416/2009

THE COMMISSIONER OF INCOME TAX - III … Appellant

- versus –

SONA KOYO STEERING SYSTEMS LIMITED ... Respondent

AND

+ ITA 761/2009

THE COMMISSIONER OF INCOME TAX - III … Appellant

- versus –

SONA KOYO STEERING SYSTEMS LIMITED ... Respondent

AND

+ ITA 788/2009

- versus –

SONA KOYO STEERING SYSTEMS LIMITED ... Respondent

Advocates who appeared in this case:
For the Appellants : Mr Sanjeev Sabharwal, Ms Rashmi Chopra
For the Respondent : Mr R. Santhanam

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether 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 Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. These appeals filed by the revenue pertain to the assessment years 1992-93, 1993-94, 1994-95, 1995-96 and 2000-01. Two orders of the Income-tax Appellate Tribunal are challenged before us, being the order dated 28.09.2007 relating to assessment years 1992-93 and 1993-94 arising out of ITA Nos. 2703/Del/2004, 2704/Del/2004 and the order dated 06.06.2008 which relates to assessment years 1994-95, 1995-96 and 2000-01 in ITA Nos.3877/Del/2005, 3878/Del/2005 and 5480/Del/2003.

2. The assessee has two units, namely, a steering unit and an axle unit. In all these years, the assessee was incurring losses in one of the two units and profits in the other unit. The assessee claimed deduction under Section 80-I of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'). The assessing officer, while computing the deduction allowable to the assessee, set off the losses of one unit against the profits of the other

Income-tax (Appeals) also took the same stand as that of the Assessing Officer. The plea of the assessee before the Income-tax Appellate Tribunal was that the two units are independent units and only the profit making unit should be considered eligible for the purposes of computing the deduction under Section 80-I read with the provisions of Section 80-I(6). The Tribunal accepted the plea of the assessee and by the said order dated 28.09.2007, pertaining to the assessment years 1992-93, 1993-94 held as under:-

> "6. We have carefully considered the relevant facts. Learned CIT (Appeals) has not addressed the issued in its proper perspective. Whether two businesses are one and same business is not relevant to arrive at a finding as to whether the two units are independent units. While computing the income under the head profits and against of business under Section 28 of the Act. Even though the profits of business may contain certain receipts so long as such receipt is not "profit derived from industrial undertaking". Deduction under Section 80-I is not available. The profit of such industrial undertaking is to be computed as if it is a separate assessee by itself. Thus, the test laid down as to whether two businesses are same business cannot be applied industrial undertaking or are extension of one of another. Even, in a situation, where the assessee was carrying on a business of a particular product and another distinct industrial unit is set up to manufacture the very same product, though it can be held that the new units is for carrying on the same business yet it is a distinct industrial undertaking for the two units were capable of functioning autonomously without relying on another unit. The two units are functioning distinctly inasmuch as they manufacture different products using different technology and located in separate premises although in the same compound. In the instant case, the products manufactured, technology used, premises utilized, establishment, managerial personnel and input are all different and can be said to be functioning as two separate units even separate sales-tax numbers are allotted and sale-tax benefit scheme was also granted separately. Having common management

> Thus, it is to be held that steering unit and axle unit are two different units for the purpose of computing deduction under Section 80- I . The Assessing Officer shall grant deduction without set off of loss of one unit against the profit of another subject to the availability of gross profits as per Section 80-B(5) of the Act."

The same view has been followed by the Income-tax Appellate Tribunal in respect of the other years which have been dealt with by its order dated 06.06.2008.

3. After hearing the counsel for the parties, we feel that the following substantial question of law arises for our consideration.

> "Whether, in the facts and circumstances of the case, the Income-tax Appellate Tribunal erred in law in holding that the loss of one unit could not be set off against the other unit in view of the provisions of Section 80-I(1)(6) and 80-B (5) of the Income-tax Act, 1961 ?"

4. Since the issue involved is purely legal, the counsel for the parties agreed that the matter may be disposed of at this stage itself without the requirement of filing any paper book. We have, therefore, heard the counsel for the parties at length on the aforesaid question.

5. The learned counsel for the appellant submitted that the question of adjustment / setting off of the loss of one unit as against the profit of the other unit stands covered by the decision of the Supreme Court in the case of ***Synco Industries Ltd v. Assessing Officer (Income-tax) and Another*****: 299 ITR 444 (SC)**. The learned counsel for the appellant, however, fairly

ITR 305 (Delhi) which has considered the *pari materia* provisions of Section 80-IA(7) of the said Act and has held against the revenue. The learned counsel submits that though the decision of the Delhi High Court is against him, the latter decision of the Supreme Court in the case of ***Synco Industries Ltd.*** *(supra)* is clearly in his favour and, therefore, the question ought to be answered in favour of the revenue and against the assessee.

6. On the other hand, the learned counsel appearing on behalf of the assessee, submitted that the decision of this court in ***C.I.T. v. Dewan Kraft Systems*** *(supra)* is clearly in favour of the assessee and there is nothing in the Supreme Court decision in ***Synco Industries Ltd.*** *(supra)* which would enable us to detract from that position. Consequently, he submitted that the question be answered in favour of the assessee and against the revenue.

7. Section 80-I(1) reads as under:-

> **"80-I. Deduction in respect of profits and gains from industrial undertakings after a certain date, etc. –** (1) Where the gross total income of an assessee includes any profits and gains derived from 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 this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof:
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> **Provided** that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty per cent", the words "twenty-five per cent" had been substituted."

> "(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 sub-section (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."

Section 80-B (5), which defines gross total income, is as follows:-

> "(5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter."

A plain reading of the said provisions makes it clear that gross total income referred to in Section 80-I has to be computed in accordance with the provisions of the said Act before making any deduction under Chapter VI-A. It is, therefore, clear that while computing gross total income, the deductions referred to in Chapter VI-A, which includes Section 80-I, are not to be considered. The gross total income of the assessee has to be computed after making all other adjustments of losses and carry forward losses ignoring the deductions available under Chapter VI-A. There is no dispute with this proposition.

8. It is further clear from a plain reading of the aforesaid provisions

undertaking, etc.., in case such profits and gains are included in the gross total income of the assessee. The deduction in the case of a company, in view of the proviso to Section 80-I (1), is to be given to the extent of 25% of such profits and gains of such an industrial undertaking. It is also clear that in view of Section 80-I (6), which begins with a *non-obstante* clause, the quantum of deduction is to be computed as if the industrial undertaking were the only source of income of the assessee during the relevant years. In other words, each industrial undertaking or unit is to be treated separately and independently. It is only those industrial undertakings, which have a profit or gain, which would be considered for computing the deduction. The loss making industrial undertaking would not come into the picture at all. The plain reading of the provision suggests that the loss of one such industrial undertaking cannot be set off against the profit of another such industrial undertaking to arrive at a computation of the quantum of deduction that is to be allowed to the assessee under Section 80-I (1) of the said Act.

9. In this regard, we may refer to the decision of this court in the case of ***Dewan Kraft Systems*** *(supra)*, which considered the *pari materia* provisions of Section 80-IA(7) of the said Act. In that case, the question arose with respect to computation of the deduction in relation to three units – the *Kalamb* Unit, the Delhi Unit and the Noida Unit. This court held that while computing the deduction under Section 80-IA of the said Act, the profits and gains of the Kalamb unit for the purposes of determining the

eligible business of the said unit was the only source of income of the assessee. This court observed that the Assessing Officer had erroneously mixed the profits of the Delhi and Noida units and had thereby restricted the deduction to the extent of business income and that such an exercise was in total disregard of the provisions of sub-section (7) of Section 80-IA of the said Act. It was held that the Kalamb unit, being the only unit of the assessee eligible for deduction under Section 80-IA of the said Act, was to be treated as an independent unit and the same was to be treated as the only source of income of the assessee for the purposes of computing deduction under Section 80-IA.

10. We now came to the decision of the Supreme Court in the case of ***Synco Industries Ltd*** *(supra)* which was strongly relied upon by the learned counsel for the appellant. On going through the entire decision, we find that the Supreme Court was primarily concerned with the question as to whether any deduction could be allowed under Chapter VI-A if the gross total income was 'Nil'. It is in that context that the Supreme Court considered the concept of gross total income and came to the conclusion, following its earlier decision in ***CIT v. Kotagiri Industrial Co-operative Tea Factory Ltd*****: 224 ITR 605**, that the gross total income has to be computed in accordance with the Act after adjusting the losses, etc. and that, if the gross total income so determined is positive, then the question of allowing deductions under Chapter VI-A would arise, but not otherwise. While doing so, the Supreme Court further made it clear that the gross total income

allowing deduction under Chapter VI-A and that if the resultant income is 'Nil', then the assessee cannot claim any deduction under Chapter VI-A. While coming to the aforesaid conclusion, the Supreme Court was also confronted with an argument which had been raised on the basis of the provisions of Section 80-I(6) that the profits of one industrial undertaking cannot be set off against the losses suffered by the other industrial undertaking. The Supreme Court was of the view that the provisions of Section 80-I (6) were only for the purposes of computing the quantum of deduction, whereas the gross total income was to be computed in terms of the Act as provided in Section 80-B(5). It is apparent that the Supreme Court distinguished the provisions of Section 80-I(6) which was for the purposes of computing the quantum of deduction from the provisions of Section 80-I (1) and Section 80-B(5) which deal with the manner in which the gross total income is to be considered. The Supreme court observed as under:-

> "13. …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 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

> 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.
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> 14. The proposition of law, emerging from the above discussion is that the gross total income of the assessee has first got to be determined after adjusting losses, etc., and if the gross total income of the assessee is "nil" the assessee would not be entitled to deductions under Chapter VI-A of the Act."
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> (underlining added)

11. From the above extract, it is apparent that the Supreme Court did not at all hold that while computing the deduction under Section 80-I(6), the loss of one eligible industrial undertaking is to be set off against the profit of another eligible industrial undertaking. All that the Supreme Court said was that in computing the gross total income of the assessee, the same has to be determined after adjusting the losses and that, if the gross total income of the assessee so determined turns out to be 'Nil', then the assessee would not be entitled to deduction under Chapter VI-A of the said Act.

12. We agree with the submissions made by the learned counsel for

Industries Ltd *(supra)* which would enable us to detract from the position indicated by this court in ***Dewan Kraft Systems*** *(supra)* and, as indicated by us above. In fact, the Supreme Court clearly held that 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 of the assessee in order to arrive at a deduction under Chapter VI-A. The Supreme Court also held that under Section 80-I(6), for the purposes of calculating the deduction, the loss sustained in one of the units is not to 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.

13. The above discussion makes it absolutely clear that the Supreme Court decision sought to be relied upon by the learned counsel for the appellant / revenue, rather than deciding the issue in favour of the revenue, clinches the matter in favour of the assessee. In view of the foregoing discussion, the substantial question of law, referred to above, is decided in favour of the assessee and against the revenue.

The appeals are dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

February 10, 2010
bs/dutt