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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 469/2024
PR. COMMISSIONER OF INCOME TAX -7 .....Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

PRAGATI POWER CORPORATION LTD. .....Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 30.08.2024

CM APPL. 50071/2024 (123 Days Delay in Refiling)

Bearing in the mind the disclosures made, the delay of 123 days in filing the appeal is condoned.

The application shall stand disposed of.

ITA 469/2024

1. The Principal Commissioner impugns the order rendered by the **Income Tax Appellate Tribunal**[1] dated 13 October 2023 on a Miscellaneous Application which had been filed by the respondent-assessee.

2. We note that while disposing of the appeal in original, the Tribunal has duly taken into consideration the decision rendered by this Court in

[1] Tribunal

Commissioner of Income-tax vs. Sona Koyo Steering Systems Ltd.[2] This becomes evident from a reading of paragraph 5.6 of the rectified order, which is extracted hereinbelow: -

> "5.6 The identical question of quantum of deduction which could be claimed under section 80-IA subject to the limit prescribed under section 80A has been decided in the case of Sono Koyo Steering Systems Ltd. (supra) by the Hon'ble Delhi High Court as under:
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> *"4. After hearing the counsel for the parties, we feel that the following substantial question of law arises for our consideration:*
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> *"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 ?"*
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> *5. 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.*
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> *6. 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 submitted that there is a decision of a Division Bench of this court in the case of Commissioner of Income-tax v. Dewan Kraft Systems P. Ltd: 297 ITA Nos. 1279/08, 194/09, 416/09, 761/ 09 & 788/ 09 Page No.4 of 11 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.*

[2] 2010 SCC OnLine Del 568

7. 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 und 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.

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11. 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.

12. It is further clear from a plain reading of the aforesaid provisions that the deduction under Section 80-I is to be made in case the gross total income includes any profits and gains derived from an industrial ITA Nos. 1279/08, 194/09, 416/09, 761/09 & 788/09 Page No. 6 of 11 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.

13. 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 quantum of deduction under Section 80-IA(5) was to be computed as if such ITA Nos. 1279/08, 194/09, 416/09, 761/09 & 788/ 09 Page No. 7 of 11 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.

14. 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 IV-A would arise, but not otherwise. While doing so, the Supreme Court further made it clear that the gross total income must be determined by setting off business losses of earlier years before ITA Nos. 1279/08, 194/09, 416/09, 761/09 & 788/09 Page No. 8 of 11 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 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 ITA Nos. 1279/08,194/09, 416/09, 761/ 09 & 788/09 Page No.9 of 11 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.

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 total income of the assessee is "nil" the assessee would not be entitled to deductions under Chapter VI-A of the Act."

(underlining added)

15. 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 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 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.

16. We agree with the submissions made by the learned counsel for the assessee that there is nothing in the decision in the case of Synco ITA Nos.1279/08, 1!34/09, 416/09, 761/09 & 788/09 Page No. 10 of 11 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." "

3. However, on a reading of paragraph 5.7 of the original order of Tribunal, we find that the principles laid down therein were incorrectly captured. This becomes apparent from a reading of paragraph 5.7 which is

reproduced hereinbelow:-

> "5.7 Thus, for computing deduction u/s 80IA of the Act, profit of the eligible units have only to be considered subject to the upper limit of Gross total income. In view of the decision of the Hon'ble Delhi High Court, we set aside finding of the Ld. CIT(A) in the instant case to set off the loss of the other non-eligible unit against the profit of the eligible unit for computation of the deduction eligible under section 80-IA of the Act."

4. Undisputedly, the conclusions which stand recorded therein would clearly not sustain bearing in mind the ultimate conclusions which had come to be rendered in paragraph 15 of *Sona Koyo*. It is this which had constrained the respondent-assessee to move the Tribunal by way of a Miscellaneous Application.

5. However, we find that while disposing of the said application, paragraph 5.10 has been modified as under:

> "7. The modified Para 5.10. of the original tribunal order dated 10.1.2020 would be as under:-
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> *5.10. As per the CBDT Circular No. 1/2016 dated 15.2.2016, once an 'initial assessment year' is determined, the assessee would be entitled to claim deduction u/s 80IA of the Act in respect of eligible undertaking on gross basis without resorting to set off of any loss from other units. The grounds of appeal of the assessee are accordingly allowed.*"

It is the conceded case of parties before us that the CBDT Circular which has been referred to would have no application to the question which stood raised.

6. However, and bearing in mind the principles of law as laid down in *Sona Koyo*, the ultimate conclusion as rendered by the Tribunal would clearly not merit interference.

7. In view of the above, we find no substantial questions of law which could be said to arise in the instant appeal.

8. The appeal consequently stands dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 30, 2024/ib