(2004) 11 P&H CK 0033

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax C. No. 22 of 1998

Commissioner of Income Tax	APPELLANT
Vs	
S.B. Oil Industries Pvt. Ltd.	RESPONDENT

Date of Decision: Nov. 29, 2004

Acts Referred:

- Direct Taxes (Amendment) Act, 1974 - Section 80HH, 80HH(9)
- Finance (No. 2) Act, 1980 - Section 80I
- Income Tax Act, 1961 - Section 143(3), 256(2), 80B, 80B(5), 80J

Citation: (2006) 203 CTR 218 : (2005) 274 ITR 495

Hon'ble Judges: M.M. Aggarwal, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Rajesh Bindal, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.
In this petition filed u/s 256(2) of the Income Tax Act, 1961, (for short, "the Act"), the Revenue has prayed for issuance of a direction to the Income Tax Appellate Tribunal, Delhi Bench "E", Delhi (for short, "the Tribunal"), to refer the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case and in view of the provisions of Section 80HH(9), the Income Tax Appellate Tribunal is right in holding that the deduction under Sections 80HH and 80I are independent deductions and are to be allowed with reference to the gross total income ?"

2. The assessee is a private limited company engaged in the manufacture of oil from mustard seeds. For the assessment year 1988-89, it filed the return on July 27, 1988, declaring an income of Rs. 2,33,450. By an order dated September 29, 1989, passed u/s 143(3) of the Act, the Assistant Commissioner of Income Tax, Investigation Circle,

Hisar (hereinafter described as "the Assessing Officer"), made an addition of Rs. 1,46,752 on account of low yield declared by the assessee. He also rejected the assessee''s claim for deduction u/s 80I of the Act on the gross total income and allowed deduction under that Section after excluding deduction granted u/s 80HH of the Act. On appeal, the Commissioner of Income Tax (Appeals), Rohtak, vide his order dated January 15, 1991, held that the deductions u/s 80I and 80HH of the Act are independent of each other and are to be worked out with reference to the gross total income as defined u/s 80B of the Act. He further held that the Assessing Officer was not justified in allowing deductions u/s 80I after reducing the gross total income by excluding the deduction granted u/s 80HH. Accordingly, he directed the Assessing Officer to recompute the deduction admissible to the assessee u/s 80I of the Act. The appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals), Rohtak, was dismissed by the Tribunal vide its order dated October 25, 1996.

3. Shri Rajesh Bindal relied on the judgment of the Rajasthan High Court in Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, and argued that the Tribunal may be directed to refer the question framed by the Revenue for the opinion of this court. He, however, fairly stated that the question has been answered in favour of the assessee by the Bombay, Madhya Pradesh and the Rajasthan High Courts in CIT v. Nima Specific Family Trust [2001] 248 ITR 29; J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, and CIT v. Chokshi Contacts P. Ltd. [2001] 251 ITR 587.

4. We have thoughtfully considered the entire matter. In Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, a Division Bench of the Rajasthan High Court referred to Sections 80AB and 80HH of the Act and held as under (headnote):

"For the determination of the relief u/s 80HH, the total income of the assessee has to be worked out after deducting unabsorbed losses and unabsorbed depreciation and the income eligible for deduction will be the net income as computed in accordance with the provisions of the Act and not the gross income."

5. In J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, , a Division Bench of the Madhya Pradesh High Court, after noticing the provisions of Sections 80HH, 80I and 80J of the Act, held as under (headnote):

"Sub-section (9) of Section 80HH of the Income Tax Act, 1961, as it stood prior to insertion of Section 80I by the Finance (No. 2) Act, 1980, with effect from April 1, 1981, originally included only Section 80J. Section 80J providing for deduction in respect of the profits and gains from newly established industrial undertakings or ships or hotel business in certain cases did not make any provision for reduction of the gross total income by the amount of deduction admissible to the assessee u/s 80HH. It was only by an amendment of the said Section 80J that the provision for reducing the gross total income by the amount of deduction u/s 80HH of the Act by

the Direct Taxes (Amendment) Act, 1974, with effect from April 1, 1974, was inserted. Section 80I was inserted in its present form by the Finance (No. 2) Act, 1980, with effect from April 1, 1981, and by the same Finance (No. 2) Act, Section 80HH(9) was amended and the words ''Section 80I or'' were inserted to make the said provision applicable to Section 80-I as well. However, no provision was made in Section 80I to provide for deduction of the gross total income by deduction allowed u/s 80HH for the purpose of allowing deduction u/s 80-I. It would, thus, be seen that when Section 80J already existed in Sub-section (9) of Section 80HH, an amendment was made in Section 80J in the year 1974 but no such provision was made in so far as Section 80I was concerned. This clearly contra-indicates that Sub-section (9) of Section 80HH by itself meant that deduction allowed u/s 80HH is to be reduced from the gross total income for granting the benefit of Section 80J and, for that matter, of Section 80I. It was provided in Section 80J itself by later amendment while no such provision was made in Section 80I even though inserted on a later date. The provision of law is, therefore, clear that in so far as the benefit of Section 80I is concerned, it has to be granted on the gross total income and not on the income reduced by the amount allowed u/s 80HH."

6. In CIT v. Nima Specific Family Trust [2001] 248 ITR 29, a Division Bench of the Bombay High Court considered the scope of Sections 80HH and 80I along with Section 80J of the Act and held (headnote) :

"Section 80HH of the Income Tax Act, 1961, falls in Chapter VI-A of the Act. Chapter VI-A deals with deduction in respect of certain payments. Section 80HH falls under the heading ''C'' which deals with deductions in respect of certain incomes. Briefly, a special deduction is provided in cases where the assessee has established an industrial undertaking in a backward area. This section indicates that the deduction contemplated is based on profits derived from such industrial undertakings. Hence, the deduction is profit-based. Section 80HH was inserted by the Direct Taxes (Amendment) Act, 1974, with effect from April 1, 1974. It has continued to remain without any change on the statute book. Section 80J prior to its omission with effect from April 1, 1989, also fell under Chapter VI-A. It dealt with deductions in respect of profits from newly established industrial undertakings in certain cases. The quantum of deduction u/s 80J(1) was limited to six per cent. per annum of the capital employed in the new undertaking. Therefore, although the base for calculation of the quantum of deduction was supplied by the amount of capital employed, the deduction was made from the profits of the new unit. If a unit was eligible for deductions both under Sections 80HH and 80J as they stood at the relevant time, then priority to the deduction u/s 80HH would be given before calculating the deduction u/s 80J. After April 1, 1989, Section 80J came to be omitted. At this stage, it is also important to bear in mind that Section 80I was a dead section during the period April 1, 1973, to April 1, 1981. Section 80I was brought back into the Income Tax Act by the Finance (No. 2) Act, 1980, with effect from April 1, 1981. u/s 80I, as inserted with effect from April 1, 1981, it was provided that where the gross total

income of an assessee included profits derived from an industrial undertaking, after a certain date, to which the section applied, there shall be a deduction from such profits of an amount equal to twenty per cent. This Section 80I was in a way a successor to Section 80J. However, Section 80J was founded on the concept of capital employed which has been done away with by the successor. Section 80I is now based on profits as is the case with deductions u/s 80HH. Moreover, the concept of shortfall in Section 80J(3) was also done away with by Section 80-I. Section 80J, however, continued to remain on the statute book till April 1, 1989, so that the assessees who had set up new industries before the specified date would get the tax-holiday for the entire period as promised. However, after April 1, 1989, Section 80J was deleted. It is for this reason that the same Finance (No. 2) Act, 1980, which reintroduced Section 80-I, also brought into force, the bracketed portion in Section 80HH(9). Reading the bracketed portion in Section 80HH(9), it is clear that Section 80-I is a successor to Section 80J. u/s 80HH(9), it is provided that where the unit is entitled to relief u/s 80HH and also u/s 80J, then priority shall first be given to the deduction u/s 80HH. However, from April 1, 1981, since there was an entire structural change brought into force in Section 80-I under which deduction became profit-based and not capital employed based, and particularly after April 1, 1989, when Section 80J stood omitted, the Legislature also introduced the bracketed portion in section 80HH(9) which shows that where the asses-see was entitled to deduction u/s 80-I or Section 80J as well as Section 80HH, then priority shall be given to Section 80HH. The word ''or'' is very important. Section 80HH(9) only talks about priority. It does not refer to the quantum of deduction as was the case u/s 80J(1). Section 80HH does not talk of carry forward of shortfall as in the case of Section 80J(3). In fact, after April 1, 1981, Sections 80HH and 80-I are both dealing with deductions based on profits. The concept of deduction based on capital employed is completely given a go-by. Special deduction is first given u/s 80HH and then special deduction will be given u/s 80I to the extent available."

7. In CIT v. Chokshi Contacts P. Ltd. [2001] 251 ITR 587, a Division Bench of the Rajasthan High Court referred to the judgments in Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, and CIT v. Nima Specific family Trust [2001] 248 ITR 29 and laid down the following proposition (headnote):

"Chapter VI-A, which consists of Sections 80A to 80V of the Income Tax Act, 1961, becomes operative on reaching the last stage of computation of income from different sources. The expression "gross total income", in various sections of Chapter VI-A, has been assigned a special meaning to mean total income computed in accordance with the provisions of the Income Tax Act, 1961, except any provision under Chapter VI-A. Computation of gross total income of the industrial undertaking for the purpose of deduction u/s 80HH and Section 80-I operates independently and has to be made without making any deduction under Chapter VI-A.

The language and intent of the provisions of Sub-section (9) of Section 80HH make it clear that the three deductions, viz., u/s 80HH, Section 80I and Section 80J, are simultaneously permissible and not mutually exclusive. The provision only fixes the priority of order in which deduction under each provision is to be adjusted in the gross total income derived from such industrial undertaking to which Section 80HH or Section 80I or Section 80J respectively apply simultaneously. In case any industrial undertaking falls in the category of new unit established in a backward area and it is entitled to avail of the benefit under all the provisions, deduction u/s 80HH is to be made in the first instance which is with an object to promote industrial establishment in backward areas and only thereafter deduction computed u/s 80I or Section 80J shall be given effect to."

8. The Bench then referred to an earlier judgment of the same court in CIT v. Shree Engineers (D. B. I. T. Reference No. 38 of 1995, decided on January 10, 1996) and observed as under (page 596) :

"Coming to the judgment relied on by learned counsel for the Revenue in Shree Engineers'' case, we are of the opinion that the answer to question No. 3 which was referred by the Tribunal has been rendered solely with the reference to the earlier decision of the court in Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, only without noticing the relevant provisions of Sections 80A and 80AB and Section 80B(5) and also Section 80HH(9). It may be noticed that the decision in Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, dealt with the question whether in computing the gross total income for the purpose of Chapter VI-A requires adjustments of unabsorbed carried forward loss or unabsorbed carried forward depreciation in terms of Part D of Chapter IV or in terms of Chapter VI of the Act, which as seen above has to be computed without taking into account the provisions of Chapter VI-A, but after taking into account other provisions of Act--whether under Chapter IV or Chapter VI. However, the court was not dealing with interaction of the various sections contained in Chapter VI-A on the issue of deduction of any amount which is to be allowed under Chapter VI-A. Thus, the decision rendered in Shree Engineers'' case without reference to the relevant provisions of the Act merely by reference to Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, was per incuriam and cannot be taken as a binding precedent and does not assist the Revenue in any manner."

9. We respectfully agree with the identical views expressed by the Bombay, Madhya Pradesh and the Rajasthan High Courts in the last mentioned three judgments and hold that the computation of gross total income of the industrial undertaking for the purpose of deduction under Sections 80HH and 80I operate independently. We further hold that the Assessing Officer committed a grave illegality in computing deduction u/s 80I after reducing the gross total income with reference to deduction admissible u/s 80HH of the Act and the Commissioner of Income Tax (Appeals), Rohtak, rightly directed the Assessing Officer to compute deduction u/s 80I on the

total gross income without excluding the deduction admissible u/s 80HH of the Act.

10. As a result of the above discussion, we hold that no referable question of law arises in this petition which is liable to be dismissed. Ordered accordingly.