(2008) 11 PAT CK 0108

Patna High Court

Case No: Misc. Appeal no. 117 of 2002

Daya Engineering Works Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Nov. 7, 2008

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 80I, 80I(6)

Citation: (2010) 233 CTR 389 : (2010) 322 ITR 55

Hon'ble Judges: Ravi Ranjan, J; Chandramauli Kumar Prasad, J

Bench: Division Bench

Advocate: Ajay Kumar Rastogi and Shailendra Kumar, for the Appellant; Harshwardhan Prasad and Ms. Archana Sinha, for the Respondent

Final Decision: Dismissed

Judgement

1. Daya Engineering Works Limited is engaged in manufacturing railway sleepers. It has units at Gaya in the State of Bihar and another at Mirza in the State of Assam. The Mirza unit commenced its production in the year 1992-93 and had a loss of Rs. 21,42,843. However, M/s. Daya Engineering Works Limited, hereinafter referred to as the "assessee", had profit from the other unit and after adjusting the loss of the Mirza unit for the assessment year 1992-93, it had profit of Rs. 24,05,210. In the assessment year 1993-94, The Mirza unit had profit of Rs. 15,92,818. The assessee claimed deduction of Rs. 4,77,845 u/s 80-I of the income tax Act, (for short, "the Act"). The Assessing Officer did not allow that as in his opinion, the assessee is not entitled to deduction u/s 80-I of the Act. He observed that the business loss of the assessment year 1992-93 has to be set off against the income of the assessment year 1993-94. The assessee carried the matter in appeal before Commissioner of income tax (Appeals). He accepted the contention of the assessee and held that loss of Mirza unit pertaining to the assessment year 1992-93, which has been set off in

that year, cannot be again set off in the assessment year 1993-94 to deny the claim of deduction u/s 80-I of the Act. The Commissioner of income tax (Appeals), while holding so, observed as follows:

I have carefully considered the above submissions. In this case there is a profit in the new unit at Mirza of Rs. 15,92,818. The loss of this unit pertaining to the assessment year 1992-93 which has been set off in that year cannot again be set off in this year as has been sought to be done by the Deputy Commissioner of income tax in the assessment year 1993-94 to deny the claim of deduction u/s 80-I. I accordingly hold that the deduction u/s 80-I in respect of Mirza unit is admissible to the appellant under the provisions of section 80-I of the income tax Act, 1961. The Deputy Commissioner of income tax is directed to allow the same claimed at Rs. 4,77,845.

2. The Revenue carried the matter in appeal before the Patna Bench of income tax Appellate Tribunal, hereinafter referred to as "the Tribunal". The Tribunal reversed the order of the Commissioner of income tax (Appeals) and restored the order of the Assessing officer. In its opinion, the, Commissioner of income tax (Appeals) erred in holding that the loss at Mirza unit pertaining to the assessment year 1992-93, which has been set off in that year, against the income of the assessee from the Gaya unit, cannot be again set off in the year under consideration. While doing so, the Tribunal observed as follows:

In view of the foregoing reasons, we are of the considered view that the Commissioner (Appeals) had taken a wrong view in holding that the loss at the Mirza unit pertaining to the assessment year 1992-93, which has been set off in that year against the income of the assessee from the Gaya unit, cannot be again set off in the year under consideration to arrive at the quantum of profit in respect of the tax holiday claim. His judgment in this regard is reversed and that of the Assessing Officer is restored.

3. The assessee, aggrieved by the same, has preferred this appeal u/s 260A of the income tax Act, 1961.

4. By order dated September 5, 2006, the appeal has been admitted on the following substantial question of law:

Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that under the provisions of section 80-I(6) the loss of the Mirza unit for the assessment year 1992-93 which was set off fully against income of the same year (the assessment year 1992-93), could be notionally carried forward for set off against the profit of the assessment year 1993-94 for the purposes of relief u/s 80-I.

5. Mr. Ajay Kumar Rastogi, appearing on behalf of the assessee, submits that once the loss of the Mirza unit of the assessment year 1992-93 has been set off, it cannot notionally be carried forward for the purposes of deduction u/s 80-I of the Act

against the profit of the assessee in the assessment year 1993-94.

6. Mrs. Archana Sinha, appearing on behalf of the Revenue, however, submits that the loss of the Mirza unit of the previous year, has to be carried forward notionally for determining the deduction u/s 80-I of the Act.

7. Rival submission necessitate examination of section 80-I(6) of the Act. Same reads as follows:

80-I. Deduction in respect of the profits and gains from industrial undertakings after a certain date, etc. -(1)....

(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 in subsequent assessment year, be computed as if such industrial undertaking or the ship or the business of 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.

8. From a plain reading of section 80-I(6) of the Act, it is evident that for computing the quantum of tax holiday, taxable income derived from each unit is to be treated as independent unit owned by the assessee. In such circumstance, loss of earlier assessment year in respect of each unit has to be taken into account in determining the claim of deduction admissible u/s 80-I of the Act. Section 80-I(6) of the Act starts with a non-obstante clause and it provides for a special mode of computation of the profits and gains eligible for deduction under the said provision. Consequently, we are of the opinion that the loss relating to the Mirza unit has to be taken into account in determining the quantum of deduction u/s 80-I of the Act.

9. Accordingly, our answer to the question formulated is in the affirmative, in favour of the Revenue, against the assessee and it is held that the Tribunal was justified in holding that the loss of the Mirza unit for the assessment year 1992-93, which was taken into account in calculating the income of the assessee of the same year, was rightly carried forward for set off against the profit of the assessment year 1993-94 for the purposes of deduction u/s 80-I of the Act. In the result, we do not find any merit in the appeal and it is dismissed accordingly, but without any order as to costs.