(1993) 07 CAL CK 0004

Calcutta High Court

Case No: IT Reference No. 89 of 1991

Indian Products Ltd.	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: July 29, 1993

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 256(1), 263, 80A, 80A(2)

Citation: (1994) 74 TAXMAN 20

Hon'ble Judges: Shyamal Kumar Sen, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J.
In this reference u/s 256(1) of the income tax Act 1961 (''the Act''), the following question of law has been referred by the Tribunal:

Whether, on the facts and in the circumstances of the case, and on a correct interpretation of sections 80VVA, 80HHC and 80A(2) of the income tax Act, 1961, the Tribunal was right in upholding the Commissioner of income tax''s order by which he had directed the income tax Officer to allow the benefit of carry forward to Rs. 91,822 only, as against Rs. 3,71,146 allowed by the income tax Officer in his assessment order ?

This reference relates to the income tax assessment of the assessee-company for the previous year ending 31-3-1984 corresponding to the assessment year 1985-86. The assessment for the said year was originally completed by the ITO on 24-1-1986 u/s 143(3) of the Act. In making the said assessment, the ITO computed the gross total income of the assessee-company before allowing any deduction under Chapter VIA of the said Act in the sum of Rs. 3,06,071. The only deduction to which the assessee-company was entitled to in the said year under Chapter VIA was in respect of export turnover u/s 80HHC of the Act. This deduction was computed by the ITO in the sum of Rs. 5,85,389. The ITO found that having regard to the provisions of

section 80A(2) of the Act, the aggregate deduction under Chapter VIA could not exceed the gross total income which in this case was Rs. 3,06,071. Therefore, the deduction u/s 80HHC in any case could not have exceeded Rs. 3,06,071. However, having regard to the provisions of section 80VVA(1) of the Act, the ITO computed the deduction u/s 80HHC at 70 per cent of Rs. 3,06,071, i.e., Rs. 2,14,249 and the balance sum of Rs. 91,822(Rs. 3,06,071 - Rs. 2,14,249) was assessed as the total income of the assessee-company for the said year. The ITO, thereafter also observed that the unabsorbed deduction of Rs. 3,71,140 (Rs. 5,85,389 - Rs. 2,14,249) u/s 80HHC, read with section 80VVA is to be carried forward for being set off against the income of the assessee-company in the subsequent years.

2. The Commissioner examined the assessment records of the assessee-company for the said year and found that the ITO had wrongly applied the provisions of section 80VVA in regard to the deduction admissible u/s 80HHC insofar as it related to his directions to carry forward the unabsorbed deduction u/s 80HHC in the sum of Rs. 3,71,140. The Commissioner initiated proceedings u/s 263 of the Act and after giving the assessee-company an opportunity of being heard determined the amount to be carried forward u/s 80VVA, read with section 80HHC, in the sum of Rs. 91,822 only and not Rs. 3,71,140 as indicated by the ITO in his said assessment order dated 24-1-1986. The assessee-company filed appeal to the Tribunal against the said order passed by the Commissioner, West Bengal-II, Calcutta, u/s 263. The Tribunal upheld the view taken by the Commissioner by observing that having regard to the scheme of law and more particularly the provisions of section 80HHC, read with section 80A(2) and 80VVA, the amount to be carried forward on account of unabsorbed deduction u/s 80HHC would be Rs. 91,822 only. This reference arises out of the aforesaid order of the Tribunal.

3. It is an undisputed fact, in this case, that the gross total income of the assessee-company before granting any deduction under Chapter VIA in respect of the assessment year 1985-86 was Rs. 3,06,071. If section 80VVA would not have been on the statute book in relevant year, the deduction u/s 80HHC, which is the only deduction admissible to the assessee-company under Chapter VIA in the said year, would have been limited to the gross total income, i.e., Rs. 3,06,071. There can be no dispute on this account having regard to the clear provisions of sub-section (2) of section 80A, which provides that the aggregate amount of deduction under Chapter VIA shall not, in any case, exceed the gross total income of the assessee. As already mentioned earlier, the only deduction to which the assessee-company is entitled to in the relevant year under Chapter VIA was in respect of export turnover u/s 80HHC. Since the gross total income of the assessee-company for the assessment year1985-86 was Rs. 3,06,071, the deduction u/s 80HHC although computed in the sum of Rs. 5,55,389 could never have exceeded Rs. 3,06,071 having regard to the specific provisions of section 80A(2).

4. We now proceed to consider the impact of section 80VVA. This section was inserted by the Finance Act, 1983 with effect from 1-4-1984 with a view to securing that the aggregate deduction in respect of tax concessions admissible under the Act does not result in reducing the total income of companies to nil or a negligible part of the income before the grant of this tax concessions. In other words, section 80VVA was inserted to place a restriction on certain deduction in the case of companies. This section provides that where, in the case of a company, the aggregate amount of deduction admissible under certain provisions of the Act as specified in sub-section (2) thereof, exceeds 70per cent of the amount of total income as computed before making any such deduction, i.e., the pre-incentive total income, the amount to be deducted under this provision will be restricted to 70 per cent of the total income as computed before making such deduction. For the purpose of the reference it may be convenient to set out the provisions of sub-sections (1) and (4) of section 80VVA :

Restriction on certain deductions in the case of companies. -(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company, the amount or, as the case may be, the aggregate amount which, but for the provisions of this section, would have been admissible as deduction for any assessment year under any one or more of the provisions of this Act specified in subsection (2) exceeds seventy per cent of the amount of total income as computed had no deduction been allowed under any of the said provisions (such total income being hereinafter referred to as the pre-incentive total income), the amount or, as the case may be, the aggregate amount to be allowed as deduction for that year in respect of any one or more of the said provisions shall be restricted, in the manner specified in sub-section (3) to seventy per cent of the pre-incentive total income.

(2) and (3) ******

(4) To the extent to which full deduction cannot be allowed in the assessment year in respect of any provision specified in sub-section (2), by virtue only of the restriction under sub-section (1) (and not by virtue of anything contained in any other section), the amount remaining unallowed shall be added to the amount, if any, to be allowed to the assessee under the said provision for the next following assessment year and be deemed to be part of the deduction admissible to the assessee under the said provision for that year or, if no such deduction is admissible to the assessee for that year, be deemed to be the deduction admissible to the assessee for that year, and so on for succeeding assessment years.

Sub-section (1) of section 80VVA uses the expression ''the aggregate amount which, but for the provisions of this section would have been admissible as deduction for any assessment year under any one or more of the provisions of this Act specified in sub-section (2) ''. In other words, before proceeding to apply section 80VVA one is required to find out, at the first instance, the aggregate amount of deduction which

is admissible to an assessee for any assessment year under anyone or more of the provisions of this Act as specified in sub-section (2) of section 80VVA. In this case, the only item in question is the deduction admissible u/s 80HHC, which is one of the sections specified in sub-section (2) of section 80VVA. As already stated earlier, the assessee would have been entitled to claim the deduction u/s 80HHC only in the sum of Rs. 3,06,071 having regard to the operation of the provisions of section 80A(2), since its gross total income for the said year was only Rs. 3,06,071.

Sub-section (1) of section 80VVA, therefore, further proceeds to say that the aggregate amount of such deduction under anyone or more of the provisions of this Act as specified in sub-section (2) thereof, shall not exceed 70 per cent of the amount of total income as computed, had no deduction been allowed under any of the said provisions. In this case, 70 per cent of such total income within the meaning of sub-section (1) of section 80VVA would be Rs. 2,14,249, being 70 per cent of the gross total income, i.e., Rs. 3,06,071. Accordingly, the deduction u/s 80HHC forming part of Chapter VIA in this case would not have exceeded Rs. 2,14,249, being 70 per cent of Rs. 3,06,071 and the assessee-company was, therefore, rightly assessed to income tax by the ITO in respect of the said year at a total income of Rs. 91,822. There is no dispute and there can be none insofar as the computation of the total income of the assessee-company in the said year in the sum of Rs. 91,822 as has already been computed by the ITO by his said assessment order dated 24-1-1986 passed u/s 143(3).

5. The only dispute that is involved in this reference relates to the determination of the amount of unabsorbed deduction u/s 80HHC which can be carried forward to the subsequent year having regard to the provisions of section 80VVA(4). The ITO deserved that the sum of Rs. 3,71,139 be directed to be carried forward. This sum of Rs. 3,71,139 was determined by the ITO by deduction of Rs. 2,14,250 from Rs. 5,85,389 being the gross amount of deduction computed by the ITO as admissible to the assessee u/s 80HHC. It appears to us that the ITO, clearly misconstrued both the provisions of section 80A(2) as well as section 80VA(4). Sub-section (4) of section 80VVA clearly provides that where full deduction cannot be allowed in any assessment year in respect of the tax concessions specified in anyone or more of the provisions enumerated in sub-section (2) of the said section by virtue only of the restriction under the provisions of sub-section (1) of section 80VVA and not by virtue of anything contained in any other section of the Act, the amount of deduction which could not be so allowed to the assessee shall be added to the amount, if any, to be allowed to the assessee under the said provisions for the next following assessment year and be deemed to be part of the deduction admissible to the assessee under the said provisions for that year or, if no such deduction is admissible to the assessee for that year, be deemed to be the deduction admissible to the assessee for that year, and so on for succeeding assessment years. If we apply the provisions of sub-section (4) of section 80VVA in this case, we find that the deduction u/s 80HHC could not have been claimed by the assessee in the year in

respect of any account in excess of Rs. 3,06,071 having regard to the limiting provisions of section 80A(2) since the deduction under Chapter VIA cannot exceed the gross total income. In other words, the amount of deduction under Chapter VIA in the case of this assessee was limited to Rs. 3,06,071 in the said year not by virtue of the provisions of section 80VVA but by virtue of the provisions of section 80A(2). At this stage, when we apply the provisions of section 80VV(1) we find that the deduction u/s 80HHC forming part of Chapter VIA was limited in the case of this assessee for the said year to 70 per cent of Rs. 3,06,071, that is to say, in the sum of Rs. 2,14,049 having regard to the provisions of sub-section (1) of section 80VVA. In other words, the balance sum of Rs. 91,882 (Rs. 3,06,071 - Rs. 2,14,249) could not be allowed to the assessee-company u/s 80HHC in the said year by virtue only of the restriction contained under sub-section (1) of section 80VVA and not by virtue of anything contained in any other section of the said Act. This sum of Rs. 91,822 is the only amount which remains unallowed having regard to the restriction contained in subsection (1) of section 80VVA and this amount alone can be carried forward to the succeeding assessment year or years as provided in subsection (4) of section 80VVA. This is very clear on a plain reading of subsection (1) and sub-section (4) of section 80VVA. We also find that the Board in Circular No. 372, dated 8-12-1983 (See Taxmann''s Direct Taxes Circulars, Vol. 2, 1985 edn., p. 960) while explaining the provisions of Finance Act, 1983, by which the said section 80VVA was brought on the statute books, also took the same view as stated by us earlier. In this view of the matter, we answer the question referred to us in this case in the affirmative and in favour of the revenue. There will be no order as to costs.

Sen, J.

I agree.