Bombay High Court The Commissioner Of Income Tax vs Nima Specific Family Trust on 11 December, 2000 Equivalent citations: (2001) 165 CTR Bom 518 Author: S H Kapadia Bench: S Kapadia, V Daga JUDGMENT S. H. Kapadia, J. 1. The following question of law has been raised by the department in this Appeal under Section 260-A of the Income Tax Act : Whether the assessee was entitled to claim 40% of the profit as deduction (20% under section 80HH and 20% under section 80-I) even though section 80-HH(9) provides that deduction under section 80-HH shall be given first, followed by deduction under section 80-I? 2. The facts giving rise to this Appeal are as follows. The assessee is a Specific Family Trust, carrying on proprietary business in the name and style of Nirma Detergent in Gujarat. It is assessable to tax under Section 161(1A) of the Income Tax Act. In this Appeal, we are concerned with the assessment year 1988-1989 relevant to the accounting year ending 31st December. 1987. The A. O. allowed the deduction claimed by the assessee under section 80-I at 20% of the total income and on the balance income, the A. O. granted deduction under section 80-HH at 20%. Being aggrieved by the Order of A. O., the matter was carried in Appeal to the Commissioner by the assessee. The Commissioner rejected the Appeal on the above point. The assessee carried the matter in Appeal to the Tribunal. In view of the decision for the earlier assessment year 1987-1988, the Appeal was allowed. Hence the department has come in Appeal, against the said decision of the Tribunal. 3. Mr. Desai, learned Senior Counsel appearing on behalf of the Department, contended that section 80-HH provides for deductions to assessees who set up Industrial Undertakings in backward areas. He contended that section 80-I which also falls under Chapter VI-A provides for deductions in respect of profits from Industrial Undertakings set up after the certain date. He contends that both the above sections fall in Chapter VI-A. He submits that the Unit in question, in the present case, attracts both the above sections. He contends that under section 80-HH(9) where an assessee is entitled to the above mentioned two deductions then the Legislature has expressly provided for priority to be given to the deductions under section 80HH. He contended that the object of section 80-HH(9) was to restrict the quantum of deduction under section 80-I particularly in view of the fact that the assessee was also entitled to deduction under section 80-HH. He further points out that section 80-HH(9) indicates priority to be given to the deduction under section 80-HH before giving effect to the deduction under section 80-I. He submitted that the bracketed portion in section 80-HH(9) which contains the words viz., "section 80-I or" were introduced by Finance Act, 1980 with effect from 1.4.1981. He submitted that under the same Finance Act, the Legislature also revived and brought back, simultaneously, section 80-I and it is for this reason that the Legislature has introduced the abovementioned bracketed portion in section 80-HH(9). Therefore, according to the learned Counsel, the intention of the Legislature is clearly established viz., that where an assessee is entitled to two deductions, priority shall be given first to the deduction under section 80-HH(9). He further contended that 80-I was a dead section from 1.4.1973 upto 31.3.1981. During that period, section 8-J was on the statute book. He contended that under section 80-J. as it stood at the relevant time, the legislature had expressly

reduced the quantum of deduction. He invited our attention to section 80-J(1) as it stood at the relevant time. Under section 80-J, it was provided, inter alia, that where the gross total income of an assessee included any profits derived from an Industrial Undertaking to which the said section applied then there shall be allowed in computing the total income of the assessee a deduction from such profits of the eligible Undertaking as reduced by the deduction admissible to the assessee under section 80-HH. He invited our attention to the bracketed portion in section 80-J(1) viz., "reduced by the deduction admissible to the assessee under section 80HH. Hence, he contended that the Legislature had always intended to reduce the quantum of deduction in cases where an assessee was entitled to benefit under the above two sections. He accordingly contended that if an assessee was entitled to two deductions then the quantum of deduction under section 80-I which was preceded by section 80-J stood correspondingly reduced. He, therefore, submitted that the assessee was not entitled to claim 40% of the profit as deduction particularly in view of section 80-HH(9). 4. Per contra, Mr. Inamdar, learned counsel for the assessee contended that section 80-HH which gives deduction to the assessee for setting up Industry in a backward area is on the statute from 1.4.1974. That, the Legislature in its wisdom saw that the same unit may also satisfy the conditions of section 80-J which dealt with deductions given to certain newly set up Industries in certain places. He pointed out that at the relevant time between 1.4.1973 and 1.4.1981, section 80-I was a dead section. That, only two sections were in the field viz., section 80-HH and section 80-J and It is for this reason that the Legislature gave priority to the deduction under section 80-HH in cases where the units set up by the assessee also attracted section 80-J. It is for this reason that when section 80-I came to be reintroduced with effect from 1.4.1981, that the Legislature introduced the bracketed portion in section 80-HH(9) which reads as"under section 80-I or section 80-J". He further points out that the Legislature was fully aware that section 80-J which provided for special deduction to newly set up Industrial undertakings was required to be continued because section 80-J gave deductions to new industries which were set up before a cut-off date. It is for this reason that section 80-J continued to remain on the statute book till 1.4.1989. Therefore, under section 80-HH(9), it is expressly laid down that in a case where the assessee is entitled also to the deduction under section 80-I or section 80-J in relation to profits of the eligible industrial undertaking, then effect shall be given first to the provisions of section 80HH. The learned counsel accordingly has given reasons for introducing the above words in section 80-HH(9) which are put expressly in the bracketed portion by Finance Act, 1980. He accordingly contended that it is for this reason that the Legislature has used the word"or" to indicate that in cases where the assessee is entitled to deduction under section 80-I or under section 80-J as also under section 80-HH, then priority shall be given first to section 80-HH. He further contended that the concept of priority contemplated by section 80-HH(9) was different from quantum of deduction. He contended that quantum of deduction does not come into picture under section 80-HH(9). In this connection, he has submitted that right from 1.4.1974, 80-HH(9) has remained the same. He pointed out that even when section 80-I was

a dead section during the period 1.4.1973 to 1.4.1981. 80-HH remained on the statute. During that period. 80-J was in the field. He pointed out that during the period when section 80-I was dead and when section 80-J was in the field, in cases where the assessee had set up a new industry which also satisfied the conditions of section 80-HH the deductions were computed on the footing that priority was to be given first to the deductions under section 80-HH followed by deductions under section 80-I. He accordingly contended that section 80-J referred to quantum of deduction whereas section 80-HH(9) referred to priority being given to the deduction under section 80-HH. He accordingly contended that these two were separate and distinct concepts. He contended that after 1.4.1989 when section 80-J was omitted, section 80-I had come back on the statute book with effect from 1.4.1981. He submitted that section 80-I was brought back with an entire different structure. Initially, before 1.4.1973 section 80-I deduction was based on stipulated percentage of the capital employed in the eligible industrial undertaking whereas after 1.4.1989, the deduction under section 80-I was based on stipulated percentage of profits derived from that undertaking. Similarly, he contended that under the new scheme of section 80-I. the provision for carry forward of deficiency which was there in section 80-J(3), was given a go-by. In other words there was a complete overhaul of the scheme under sections 80-J and 80-I. It is for this reason that section 80-J ultimately stood omitted with effect from 1.4.1989. It is for this reason that the Legislature has continued the same phraseology in section 80-HH(9) which only deals with the concept of priority and not with the quantum of deduction which was there in-built into section 80-J till 1.4.1989 when it was omitted from the Income Tax Act. Mr. Inamdar further contended that the phraseology used in section 80-J, as it then stood, provided that where the gross total income of an assessee included any profits derived from any eligible industrial undertaking, there shall be allowed in computing a total income of the assessee, a deduction from such profits as reduced by the deduction admissible to the assessee under section 80-HH of so much of the amount thereof which did not exceed six percent per annum on the capital employed in such industrial undertaking. The bracketed portion in section 80-J, as it then stood, viz., reduced by the deduction under section 80-HH, was introduced by Taxation Law Amendment Act. 1975. Such a provision does not find place in section 80-HH. It is for this reason that the department is relying upon 80-HH(9) which, according to the learned counsel for the assessee, only refers to priority to be given to the deductions under section 80-HH and which does not refer to the quantum of deduction, whereas the bracketed portion in section 80-J expressly refers to the quantum of deduction to be given to an assessee in cases where the assessee is entitled to deduction under section 80-J. Mr. Inamdar further pointed out that under section 80-J(3), as it stood at the relevant time, in cases where the amount of profits derived from eligible industrial undertaking included in the total income falls short of the amount of capital employed during the previous year, the amount of such shortfall or deficiency shall be carried forward in set-off against the profits in the next following assessment year. Therefore, he contended that section 80-J also provided for carry forward of shortfall or deficiency. That, however,

when a totally new scheme was introduced under section 80-I and under which deductions were based on profits, section 80-J was omitted. He further pointed out that the concept of carry forward was also given a go-by under the new section 80-I. Therefore, learned counsel for the assessee contended that it was not the object of section 80-HH(9) to reduce the deduction under section 80-I. That, the object of the said section was to set a priority. That the section has remained unaltered even when section 80-J was on the statute book. That, section 80-I is a successor to section 80-J. That section 80-J was kept alive from 1.4.1981, even after introduction of section 80-I upto 1.4.1989, because deductions under section 80-J were made available for units which commenced their business before a prior cut-off stipulated date. All these above submissions are only to show the true meaning, scope and content of section 80-HH(9) and the difference in the phraseology used in section 80-HH(9) vis-a-vis section 80-J(1) and 80-J(3) as it stood prior to 1.4.1989. He further pointed out that section 80-HH falls in Chapter VI-A. That section 80-B defines the expression "gross total income". This definition is relevant in the context of Chapter VI-A which covers section 80-A to section 80-U. He submitted that under section 80-B(5), the word "gross total income" has been defined to mean an income arrived at before making any deductions under Chapter VI-A. He, therefore, contended that the Legislature has not intended to reduce the quantum of deductions falling under section 80-HH or 80-I (after deletion of section 80-J). He pointed out that if the Legislature intended to prescribe a ceiling on deduction under section 80-HH, then the Legislature would have so stated in section 80-HH, as they did, at the relevant time, under section 80-J. On the contrary, in the structural change in section 80-I, no such limitation has been prescribed, particularly in view of the fact that deduction is now based on profits and not on capital employed. In the circumstances, he contended that the Tribunal was right in not restricting the claim for deduction made by the assessee in this case under section 80-I. Mr. Inamdar further pointed out that, however, under section 80-A, the Legislature has provided an in-built ceiling on the amount of deduction under section 80-I where the assessee claims deduction, both under section 80-HH and section 80-I. He points out that under section 80-A(2). It is laid down, inter alia, that the aggregate amount of the two deductions shall not exceed the gross total income of the assessee. To that extent, he contended that there is a ceiling/limit placed on the claim for deductions, particularly when the aggregate amount of deduction exceeds the gross total income. He further pointed out that in the facts of the present case, the Tribunal has given effect to section 80-HH(9) by giving priority to the deductions under section 80-HH. Similarly, the Tribunal has also given effect to section 80-I. He accordingly submitted that this Court should not interfere with the decision of the Tribunal. He also relied upon the judgment of the Madhya Pradesh High Court in J. P. Tobacco Products Pvt., Ltd. (supra). 5. For the sake of convenience, section 80-HH(9) is quoted hereinbelow alongwlth section 80-J(1), as it stood at the relevant time : "Section 80-HH (9) In a case where the assessee is entitled also to the deduction under [Section 80-I or] section 80-J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall

first be given to the provisions of this section." "Section 80-J (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, 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 [(reduced by the deduction, if any, admissible to the assessee under section 80-HH [or section 90HHA]]] of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent, per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, [computed in the manner specified in sub-section (1A)] in respect of the previous year relevant to the assessment year (the amount calculated as aforesaid being hereafter, in this section, referred to as the relevant amount of capital employed during the previous year): (2) ..... (3) Where the amount of the profits and gains derived from the industrial undertaking or ship or business of the hotel, as the case may be, included in the total income (as computed without applying the provisions of section 64 and before making any deduction under Chapter VI-A [**] in respect of the previous year relevant to an assessment year commencing on or after the 1st day of April, 1967. (not being an assessment year prior to the initial assessment year or subsequent to the fourth assessment year as reckoned from the end of the initial assessment year) falls short of the relevant amount of capital employed during the previous year, the amount of such shortfall, or, where there are no such profits and gains, an amount equal to the relevant amount of capital employed during the previous year (such amount, in either case, being hereafter, in this section, referred to as deficiency) shall be carried forward and set off against the profits and gains referred to in sub-section (11 (as computed after allowing the deductions. If any, admissible under [**] section 80-HH (or section 80HHA]] [**] and the said sub-section (1) in respect of the previous year relevant to the next following year and, if there are no such profits and gains for that assessment year, or where the deficiency exceeds such profits and gains for the next following assessment year and if and so far as such deficiency cannot be wholly so set off, it shall be set off against such profits and gains assessable for the next following assessment year and so on : Provided that - (i) in no case shall the deficiency or any part thereof be carried forward beyond the seventh assessment year as reckoned from the end of the initial assessment year; (ii) where there is more than one deficiency and each such deficiency relates to a different assessment year, the deficiency which relates to an earlier assessment year shall be set off under this sub-section before setting off the deficiency in relation to a later assessment year : Provided further that in the case of an assessee being a co-operative society, the provisions of this sub-section shall have effect as if for the words"fourth assessment year", the words,"sixth assessment year" had been substituted." 6. Section 80-HH falls in Chapter VI-A of the Income Tax Act. Chapter VI-A deals with deductions in respect of certain payments. Section 80A lays down that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of Chapter VI-A, the deductions specified in sections 80-C to 80-U. It

further provides that the aggregate amount of deductions under Chapter VI-A shall not, in any case, exceed the gross total income of the assessee. Section 80-B(5) defines "gross total income" to mean total income computed in accordance with the provisions of the Act, before making any deductions under Chapter VI-A. Section 80-HH falls under Heading C which deals with deductions In respect of certain incomes. Section 80-HH comes under this category. It lays down that where the gross total income, as defined above, includes any profits and gains derived from industrial undertaking to which the said section applies, there shall be allowed, in computing the total income of the assessee, a deduction from such profits derived from such industrial undertaking equal to twenty percent thereof. 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 deduction is profit-based. As stated above, section 80-HH was inserted by Direct Tax Amendment Act. 1974 with effect from 1.4.1974. It has continued to remain without any change on the statute book. Section 80-J, prior to its omission with effect from 1.4.1989, 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 under section 80-J(1) was limited upto six percent 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. Under section 80-J(3) as it stood prior to 1.4.1989. the amount by which the profits derived by an assessee from the eligible undertaking and included in gross total income fell short of the amount calculated at six percent per annum on the capital employed, constituted deficiency or shortfall which was allowed to be carried forward. Section 80-J(3) was required to be read with section 80-J(1). Reading section 80-J(1) with section 80-J(3), It is clear that where there is profit the relevant amount of capital employed during the previous year shall be allowed as deduction and if there is deficiency, it shall be carried forward and set off against the profit of the following assessment year. Section 80-J(10 provided that where the gross total income of an assessee includes any profits, there shall be allowed, in computing the total income, a deduction from such profits as reduced by the deduction admissible under section 80-HH of so much of the amount which did not exceed the amount calculated at the rate of six percent per annum on the capital employed in the eligible Industrial undertaking. The bracketed portion in section 80-J(1) quoted above was introduced by Taxation Law Amendment Act, 1975. It was during the period when section 80-J was in force. Such similar provision does not find place in section 80-HH. This bracketed portion in section 80-J not only provides for priority to section 80-HH, but also restricts the quantum of deduction. The phraseology of section 80-HH(9) and the above quoted bracketed portion in section 80-J(1) is quite different. Section 80-HH(9) refers to priority. In other words, if a unit is eligible for deductions, both under section 80-HH and 80-J, as it stood at the relevant time, then priority to the deduction under section 80-HH would be given before

calculating the deduction under section 80-J. After 1.4.1989, however, section 80-J came to be omitted. At this stage, it is also important to bear in mind that section 80-I was a dead section during the period 1.4.1973 upto 1.4.1981. Section 80-I was brought back into the Income Tax Act by Finance Act, 1980 with effect from 1.4.1981. Under section 80-I, as inserted with effect from 1.4.1981, it was provided that where the gross total income of an assessee included profits derived from 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 percent. This section 80-I was in a way, a successor to section 80-J. However, section 80-J was founded on the concept of capital employed which has been done away with by the successor section 80-I which was now based on profits as is the case with deductions under section 80-HH. Moreover, the concept of shortfall in section 80-J(3) was also done away with by section 80-I. Section 80-J, however, continued to remain on the statute book till 1.4.1989 so that assessees who had set up new industries before the specified date would get the tax-holiday for the entire period as promised. However, after 1.4.1989, section 80-J was deleted. It is for this reason that the same Finance Act, 1980, which re-introduced section 80-I, also brought into force, the bracketed portion in section 80-HH(9). Reading the bracketed portion in section 80-HH(9), it Is clear that section 80-I is a successor to section 80-J. Under section 80-HH(9), it is provided that where the unit is entitled to relief under section 80-HH and also under section 80-J, then priority shall first be given to the deduction under section 80-HH. However, from 1.4.1981, 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 1.4.1989 when section 80-J stood omitted, the Legislature also introduced the bracketed portion in section 80-HH(9) which shows that where the assessee was entitled to deduction under section 80-I or section 80-J as well as section 80-HH, then priority shall be given to section 80-HH. The word "or" is very important in support of our above conclusion. Threfore, section 80-HH(9) only talks about priority. It does not refer to the quantum of deduction as was the case under section 80-J(1). Section 80-HH does not talk of carry forward of shortfall as in the case of section 80-J(1). In fact, after 1.4.1981, section 80-HH and section 80-I are both dealing with deductions based on profits. The concept of deduction based on capital employed is completely given a go-by. Our interpretation is also supported by a hypothetical example submitted by the parties. In a given case, profit derived from a new industrial undertaking eligible under section 80-HH and 80-I is, let us say, Rs. 80.00. The loss in another unit is Rs. 50.00. The gross total income would be Rs. 30.00. Deduction under section 80-HH at 20% of such profits of Rs. 80.00 would be Rs. 16.00 and, thereafter, the deduction will be calculated under section 80-I also at 20% of such profits which would be Rs. -16.00. Therefore, the total deduction available would be Rs. 32.00. However, the total deduction available would become Rs. 32.00 (Rs. 16.00 + Rs. 16.00). In view of section 80-A(2). as interpreted above, the deductions under Chapter VI-A shall be restricted to gross total income of Rs. 30.00 because the total deduction of Rs. 32.00 would then exceed the gross total

income of Rs. 30.00. This Illustration points out that due weightage is given to the priority under section 80-HH(9). That, to the extent of provisions of section 80-A(2), deductions are restricted to Rs. 30.00 and to that extent, there is an inbuilt ceiling prescribed on the amount of total deductions. Accordingly, the above example shows that deduction is firstly given to the benefit under section 80-HH at twenty percent of Rs. 80.00 which works out to Rs. 16.00 and then, deduction shall be given under section 80-I to the extent available i.e. Rs. 14.00. However, according to the department, in the above example, there is no dispute upto the first deduction under section 80-HH calculated at Rs. 16.00. However, according to the department, after deducting Rs. 16.00 from Rs. 80.00, the balance would be Rs. 64.00 and in view of section 80-I, twenty percent of Rs. 64.00 should be calculated for the purposes of calculating the deduction under section 80-I. Hence, according to the department, the deduction under section 80-I should be Rs. 14.00 and not Rs. 16.00 [the department has applied twenty percent of Rs. 64.00 whereas the assessec claims full deduction of twenty percent under section 80-I of the profit of Rs. 80.00). As stated hereinabove, section 80-HH(9) only refers to priority unlike section 80-J(1) which also restricts the quantum of deduction. This was at the time when deductions were based under section 80-J on capital employed in the unit. At that time also, deduction under section 80-HH was profit-based whereas deduction under section 80-J was based on capital employed in the unit. This difference has been done away with. Section 80-J has been followed by section 80-I. Both section 80-HH and section 80-I are based on profits. Therefore, section 80-HH only states that in cases where the unit is entitled to the benefit both under section 80-HH and section 80-I, then priority shall be given first to the deduction under section 80-HH. We agree respectfully with the judgment of the Madhya Pradesh High Court in the case of J. P. Tobacco Products Pvt. Ltd. v. C. I. T. (M. P.) 7. For the above reasons, the above question is answered In the affirmative i.e. in favour of the assessee and against the department. 8. Question No. 2 has not been properly framed by the appellants. The Tribunal has remitted the matter back to the A. O. for want of particulars. Therefore, the correct question, which is refrained by us, is as follows : “Whether the Tribunal was right in remanding the matter back to the A. O. with a direction to examine the issue again in the light of accounting standards, particularly alternative II?” We agree with the order of the Tribunal in remanding the matter for want of particulars. Hence the above question, as reframed, is answered in the affirmative i.e. in favour of the assessee and against the department. 9. Appeal is accordingly disposed of with no order as to costs. Issuance of certified copy expedited.