Karnataka High Court Commissioner Of Income-Tax vs Siddaganga Oil Extractions Pvt. ... on 4 November, 1992 Equivalent citations: 1993 201 ITR 968 KAR, 1993 201 ITR 968 Karn Author: K S Bhat Bench: K S Bhat, R Ramakrishna JUDGMENT K. Shivashankar Bhat, J. 1. In respect of the assessment year 1983-84, the following questions are referred under section 256(1) of the Income-tax Act, 1961 (for short "the Act"), for our consideration : "(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to deduction under section 80J in respect of hydrogenation plant from which there was a loss although the total income was a positive figure ? (2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that for computing the relief under section 80HH, income from lorry hire, weighment charge, miscellaneous receipts, income from fixed deposits, etc., should not be included as they were not income of the industrial undertaking ? (3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that deduction under section 80HH should be allowed in respect of the solvent plant on its income without setting off the loss incurred in respect of hydrogenation plant ?" 2. The assessee is engaged in the business of extraction of oil, having two plants. The hydrogenation plant suffered loss during the relevant previous year; but the solvent plant earned profit. 3. In respect of the hydrogenation plant, the assessee sought benefit under section 80J of the Act. This was denied, in view of the loss suffered by the unit in question. 4. The assessee had also claimed the benefit of section 80HH in respect of its solvent plant. While computing the income from this plant, income received by the assessee from lorry hire, weighment charges and other miscellaneous activities were sought to be added by the assessee, which, again was refused by the Revenue. It was held by the Appellate Tribunal that the assessee could claim the benefit of section 80HH in respect of the exclusive income yielded by the solvent plant. 5. However, the Income-tax Officer had set off the loss from the hydrogenation plant against the profits of the solvent plant in computing the benefit under section 80HH in respect of the solvent plant. The Appellate Tribunal upheld the assessee's claim in this regard and held that the solvent plant should be treated separately for purposes of section 80HH. 6. In these circumstances, the above question were referred, the first two at the instance of the assessee and the third, at the instance of the Revenue. 7. The first question is concluded by our decision in CIT v. H. M. T. Ltd. [1993] 199 ITR 235 (I. T. R. C. No. 189 of 1987, dated July 21, 1992), while the second question is concluded by the decision in Sterling Foods v. CIT . In Sterling Foods' case , it was held that, under section 80HH, the relevant profits should be 'derived' from the unit in question directly; therefore, the income earned by the sale of import entitlement is outside the purview of section 80HH, even though the assessee earned the import entitlement by virtue of exporting the products of an industrial undertaking. The ratio of the said decision would equally govern the present case also. 8. Re : Third question. - The Income-tax Officer set off the loss of the hydrogenation plant against the income from the solvent plant for the purpose of calculating the deduction under section 80HH. This view as affirmed by the Commissioner (Appeals) was

reversed by the Appellate Tribunal which held that the assessee was entitled to the relief under section 80HH in respect of the solvent plant as the net income earned by the said plant, before setting off the loss of the hydrogenation plant. Mr. Ramabhadran contended that 20 percent. of the profits and gains derived from an industrial undertaking (a unit) is allowed as a deduction, while computing the gross total income of an assessee; this is a beneficial provision enacted to encourage setting up of industrial units in backward areas and should be construed to advance the object behind it. 9. According to Mr. Raghavendra Rao, the ratio of the decision of this court in H. M. T. Ltd.'s case [1993] 199 ITR 235 (I. T. R. C. No. 189 of 1987) decided on July 21, 1992, supports the contention of the Revenue, because, if it is open to deduct the depreciation pertaining to one unit, from the income derived from another unit for purposes of section 80J, the same principle should govern the application of section 80HH also. 10. In the said H. M. T. Ltd.'s case , exemption was allowed under section 80J on commercial profits. The net profit of one of the units, prior to depreciation was considered to grant the benefit of section 80J. To avail of the benefit of section 80J, it is necessary that an industrial undertaking of an assessee should have profits and gains; in such a case, six per cent. on the capital employed in the said industrial undertaking is allowed as a deduction while computing the total income of the assessee; if there was no "profits and gains" available from that unit (industrial undertaking) includible in the gross total income of the assessee, but the said unit suffered a loss, the benefit of section 80J would not be available. The question pertained to the mode of arriving at the profits and gains of the unit; the assessee, there, contended that depreciation and investment allowance should not be deducted while computing the profits and gains derived from the unit. This was, because, deduction of depreciation and investment allowance could be postponed while computing the "gross total income", having regard to sections 28, 29 and 32 of the Act; in view of section 32A, the position was the same as to investment allowance. It is in this context that it was observed that the new industrial unit is not to be treated as a compartment by itself, while computing its profits and gains for the purpose of section 80J. The Bench concluded, that, (at page 246) : "Section 80J nowhere compels the computation of the profits and gains, apart from an industrial undertaking, by treating it as a separate entity for all purposes without reference to commercial expediency and practice." 11. The above decision would in no way advance the present case of the Revenue; in fact, the ratio is against it. The case was concerned as to how the "profits and gains" of a unit should be computed. Since depreciation could be postponed to a later stage of grossing up of the total income, it was left to the assessee to do so and compute the profits and gains of the unit without reference to depreciation and investment allowance. The court recognised the practice of adopting "commercial profits" as the basis for applying section 80J. 12. Section 80HH provides for the deduction of 20 per cent. from the "profits and gains" derived from the industrial undertaking. The gross total income of the assessee would include its income derived from several sources or units. The profits and gains of one unit is only one of the constituents of the gross total income. Every item of a additions and deductions to be considered at the stage

of computing the taxable income to be arrived at from the gross total income need not necessarily be considered while computing the profits and gains of one unit, for purposes of section 80HH. Under section 80HH, the relevant question is whether there is "profits and gains" derived from an industrial undertaking which was ultimately added to the gross income of the assessee. If there is any such profits and gains, the assessee is entitled to the benefit of section 80HH. If the loss sustained by another unit is set off against this profits and gains of an industrial undertaking, the resultant figure would not reflect the profits and gains of the said industrial undertaking in any sense, much less in a commercial sense; it will be an unnatural and artificial "profits and gains" of that industrial undertaking. 13. In Cambay Electric Supply Industrial Co. Ltd. v. CIT , while considering the scope of section 80E of the Act, the Supreme Court pointed out that the difference between the "income attributable to" the business and "income derived from the business", the term "attributable to" is of wider import than the expression "derived from". 14. In Sterling Foods v. CIT [1984] 150 ITR 292, a Bench of this court, in the context of section 80HH, held that the expression "derived from" has a definite but narrow meaning and it cannot receive a flexible or wider concept. Therefore, the very industrial undertaking should be the direct source of profit; income derived by the assessee from any other source cannot be held to be the income derived from the industrial unit. The ratio of this decision would govern the present case also. Any deduction has to be a deduction pertaining to the very source of earning the profit. Loss sustained elsewhere cannot be fastened to the profits and gains of the industrial undertaking and the result treated as the "profits and gains" of the industrial undertaking. 15. In the result, the first two questions are answered in the affirmative and against the assessee, while the third question is answered in the affirmative and against the Revenue. 16. Reference is answered accordingly.