Commissioner Of Income Tax-I vs M/S Reliance Energy Ltd (Formerly Bses ... on 28 April, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2151, AIRONLINE 2021 SC 227

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Bench: Vineet Saran, L. Nageswara Rao

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 1327 of 2021

Commissioner of Income Tax-I .... Appellant(s)
Versus

M/s. Reliance Energy Ltd.
(Formerly BSES Ltd.) through its M.D. ….Respondent (s)

WITH

Civil Appeal No. 1328 of 2021
Civil Appeal No. 1329 of 2021
Civil Appeal No. 2537 of 2016
Civil Appeal No. 1408 of 2021
Civil Appeal No. 1508 of 2021
Civil Appeal No. 1509 of 2021

JUDGMENT

L. NAGESWARA RAO, J.

For the sake of convenience, we are referring to the facts of Civil Appeal No.1328 of 2021.

Civil Appeal No. 1328 of 2021

1. By an order of assessment dated 31.01.2005, the Assessing Officer restricted the eligible deduction under Section 80-IA of the Income Tax Act, 1961 (hereinafter “the Act”) to the extent of ‘business income’ only. On 23.03.2006, the Commissioner of Income-Tax (Appeal)-I (hereinafter “the Appellate Authority”) partly allowed the Appeal filed by the Assessee and reversed the order of the Assessing Officer on 1 | Page the issue of the extent of deduction under Section 80-IA of the Act. The Income Tax Appellate Tribunal (hereinafter “the Tribunal”), upheld the decision of the Appellate Authority on the issue of deduction under Section 80-IA. The High Court refused to interfere with

the Tribunal's order as far as the issue on deduction under Section 80-IA is concerned. Therefore, this Appeal by the Revenue.

2. This Appeal pertains to the assessment year 2002-03 for which the income-tax return was filed by the Assessee on 31.10.2002 declaring the total income as 'NIL'. The return was subsequently revised on 06.12.2002 and thereafter, on 30.03.2004. At the time of the assessment proceedings, the Assessee submitted a revised computation of income by revising its claim of deduction under Section 80-IA of the Act.

3. The Assessee is in the business of generation of power and also deals with purchase and distribution of power. The Assessee-Company generated power from its power unit located at Dahanu. In respect of deduction under Section 80- IA of the Act, the Assessee was asked to explain as to why the deduction should not be restricted to business income, as had been the stand of the Revenue for the assessment year 2000-01. The Assessee had revised its claim under Section 80-IA of the Act to Rs. 546,26,01,224/-, having admitted that there was an error in calculation of income-tax depreciation.

2 | Page The Assessing Officer considered the revised claim of the Assessee under Section 80-IA and determined the amount eligible for deduction under Section 80-IA at Rs. 492,78,60,973/- against the Assessee's claim of Rs. 546,26,01,224/-. However, the Assessing Officer stated in the assessment order that the actual deduction allowable shall be to the extent of 'income from business' as per provisions of Section 80AB of the Act. The 'business income' of the Assessee was computed at Rs. 355,74,73,451/- and the 'gross total income' at Rs. 397,37,70,178/-. Inclusion of 'income from other sources' of Rs. 41,62,96,727/- in the 'gross total income' and deduction claimed under Chapter VI- A of the Act against such 'gross total income' was not accepted by the Assessing Officer. The Assessing Officer rejected the claim of the Assessee for allowing deduction under Section 80-IA of the Act, along with other deductions available to the Assessee, to the extent of 'gross total income' and restricted the deduction allowed under Section 80-IA at Rs.354,00,75,084/-, by limiting the aggregate of deductions under Sections 80-IA and 80-IB of the Act to 'business income' of the Assessee.

4. The Assessing Officer rejected the contention of the Assessee that Section 80AB of the Act is not applicable. It was held that Section 80AB of the Act makes it clear that for 3 | Page the purposes of deduction in respect of certain incomes, deduction had to be given on the income of the nature specified in the relevant section and allowed against income of that nature alone. The Assessing Officer elaborated on this point by stating that 'income from business' alone had to be considered for allowing any deduction computed on 'income from business' and using the same analogy, deduction computed on 'income from other sources' should be allowable against 'income from other sources' only. As the deduction under Section 80-IA of the Act pertains to profits and gains from a business undertaking, the deduction is allowable only against 'income from business'. It was held by the Assessing Officer that deduction computed under Section 80-IA of the Act could not be allowed against any source other than business. The Assessing Officer also relied upon the words 'that nature' and 'shall alone' in Section 80AB of the Act to hold that deduction under a relevant section has to be given to the extent of the income from that particular source only on which deduction is

available. In the matter before us, this would mean that deduction under Section 80- IA of the Act has to be allowed only to the extent of 'income from business'.

5. It was argued by the Assessee before the Appellate Authority that the conclusion of the Assessing Officer on 4 | Page deduction under Section 80-IA of the Act being restricted to 'business income' needs to be set aside. The Assessee contended that the observation of the Assessing Officer that deduction under a particular section is permissible only against income under that particular head was erroneous. Deductions related to various incomes under various sections of Chapter VI-A have to be quantified in accordance with the respective sections. The Assessee urged before the Appellate Authority that the deductions so quantified under various sections under Chapter VI-A have to be aggregated and allowed against the 'gross total income'. Finally, the submission of the Assessee before the Appellate Authority was that restricting the deduction under Section 80-IA of the Act to the extent of 'business income' was unjustified. With reference to Section 80AB, the Assessee contended that the operation of the said section related only to quantification of deduction on the basis of net income.

6. The Appellate Authority partly allowed the Appeal filed by the Assessee by an order dated 23.03.2006 and reversed the finding of the Assessing Officer on the issue of deduction under Section 80-IA of the Act for the reasons stated hereinafter. In respect of Section 80AB of the Act, the Appellate Authority referred to the background of insertion of the said section with effect from 01.04.1981. The Appellate 5 | Page Authority referred to Circular No. 281 dated 22.09.1980 of the Central Board of Direct Taxes (CBDT) wherein the reason for introduction of Section 80AB was explained. The Supreme Court in the case of Cloth Traders (P) Ltd. v. Additional CIT, Gujarat-I1 held that deduction under Section 80M of the Act, which deals with deduction in respect of certain inter-corporate dividends, was allowable on the gross amount of the dividends received. It was decided to undo the decision of this Court as it was contrary to the legislative intent, which was that deduction under Section 80M was to be allowed on the dividend income as computed under the Act, i.e., on the net income after deduction of admissible expenses. The Appellate Authority proceeded to hold that Section 80AB places a ceiling on the quantum of deductions in respect of incomes contained in Part-C of Chapter VI-A. Such deductions are to be computed on the net eligible income, which will be deemed to be included in the gross total income. The Appellate Authority observed that Section 80AB is limited to determining the quantum of deductible income included in the gross total income. Following a decision of the Income Tax Appellate Tribunal, Mumbai dated 25.04.2003 in Royal Cushion Vinyl Products Ltd. v. Dy. Commissioner of Income Tax, 1 (1979) 3 SCC 538 6 | Page Mumbai (ITA No. 770/MUM/98), the Appellate Authority set aside the order of the Assessing Officer on this count. The Appellate Authority directed the Assessing Officer not to restrict the deduction admissible under Section 80-IA of the Act to income under the head 'business'. The Assessing Officer was further directed to aggregate the deduction under Section 80-IA of the Act with the other deductions available to the Assessee and then to allow deductions of such aggregate amount to the extent of 'gross total income'. The order of the Appellate Authority was affirmed by the Tribunal and the High Court on this issue. Aggrieved thereby, the Revenue has come in Appeal.

7. The contention on behalf of the Revenue before us is that the Assessing Officer was right in holding that the deduction under Section 80-IA of the Act should be restricted to 'business income'

only. Mr. Arijit Prasad, learned Senior Counsel appearing on behalf of the Revenue, submitted that Section 80AB of the Act contemplates deductions in respect of incomes against income of the nature specified in the relevant section. He further submitted that Section 80-IA(5) makes it clear that the determination of quantum of deduction under sub-section (1) of Section 80-IA should be on the basis that the source of income from the eligible business was the only source of income of an assessee and 7 | Page therefore, the deduction so determined should be allowed only against 'business income'. According to him, the phrase 'derived ... from' in sub-section (1) of Section 80-IA of the Act indicates that the computation of deduction is restricted only to the profits and gains from the eligible business. He relied upon the judgment of this Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT 2, followed in Synco Industries Ltd. v. Assessing Officer, Income Tax, Mumbai & Anr. 3 and Pandian Chemicals Ltd. v. Commissioner of Income Tax, Madurai4.

8. In response, the Assessee supported the order passed by the Appellate Authority which was upheld by the Tribunal and the High Court. It is the argument of Mr. Ajay Vohra, learned Senior Counsel appearing on behalf of the Assessee, that Section 80AB of the Act is with reference to computation of deduction on the basis of net income. He submitted that there is no indication in sub-section (5) of Section 80-IA that the deduction under sub-section (1) is restricted to 'business income' only. On the other hand, according to him, sub- section (5) deals with determination of the quantum of deduction by treating eligible business as the only source of income of the Assessee. Sub-section (5), therefore, is 2 (1978) 2 SCC 644 3 (2008) 4 SCC 22 4 (2003) 5 SCC 590 8 | Page concerned with computation of the deduction, which is at a stage prior to allowing the deduction so computed. He submitted that there is no dispute that the computation of deduction is only from the eligible business. The claim of the Assessee, as accepted by the Appellate Authority, is that there is no restriction on taking into account income from any other source while allowing the deduction computed under Section 80-IA, subject to the aggregate of all deductions under Chapter VI-A not exceeding the 'gross total income'. He relied upon judgments of this Court in CIT (Central), Madras v. Canara Workshops (P) Ltd., Kodialball, Mangalore5 and Synco Industries (supra) to argue that sub-section (5) of Section 80-IA of the Act does not restrict permissible deduction under sub-section (1) to be allowed against 'business income' only. The learned Senior Counsel for the Assessee relied upon the judgment of the Bombay High Court in Commissioner of Income-tax v. Tridoss Laboratories Ltd.6 to argue that the Appeal should not be allowed.

9. The controversy in this case pertains to the deduction under Section 80-IA of the Act being allowed to the extent of 'business income' only. The claim of the Assessee that deduction under Section 80-IA should be allowed to the 5 (1986) 3 SCC 538 6 [2010] 328 ITR 448 (Bombay) 9 | Page extent of 'gross total income' was rejected by the Assessing Officer. It is relevant to reproduce Section 80AB of the Act which is as follows:

> "80AB. Deductions to be made with reference to the income included in the gross total income. — Where any deduction is required to be made or allowed under any section included in this Chapter under the heading "C. — Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under

> that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income." As stated above, Section 80AB was inserted in the year 1981 to get over a judgment of this Court in Cloth Traders (P) Ltd. (supra). The Circular dated 22.09.1980 issued by the CBDT makes it clear that the reason for introduction of Section 80AB of the Act was for the deductions under Part C of Chapter VI-A of the Act to be made on the net income of the eligible business and not on the total profits from the eligible business. A plain reading of Section 80AB of the Act

10 | P a g e shows that the provision pertains to determination of the quantum of deductible income in the 'gross total income'. Section 80AB cannot be read to be curtailing the width of Section 80-IA. It is relevant to take note of Section 80A(1) which stipulates that in computation of the 'total income' of an assessee, deductions specified in Section 80C to Section 80U of the Act shall be allowed from his 'gross total income'. Sub-section (2) of Section 80A of the Act provides that the aggregate amount of the deductions under Chapter VI-A shall not exceed the 'gross total income' of the Assessee. We are in agreement with the Appellate Authority that Section 80AB of the Act which deals with determination of deductions under Part C of Chapter VI-A is with respect only to computation of deduction on the basis of 'net income'.

10. Sub-section (1) and sub-section (5) of Section 80-IA which are relevant for these Appeals are as under:

> "80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.— (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing

11 | P a g e the total income of the assessee, a deduction of an amount equal to hundred per cent. of the profits and gains derived from such business for ten consecutive assessment years.

**** (5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub- section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year 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."

11. The essential ingredients of Section 80-IA (1) of the Act are:

a) the 'gross total income' of an assessee should include profits and gains;

b) those profits and gains are derived by an undertaking or an enterprise from a business referred to in sub-

section (4);

c) the assessee is entitled for deduction of an amount equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years; and

d) in computing the 'total income' of the Assessee, such deduction shall be allowed.

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12. The import of Section 80-IA is that the 'total income' of an assessee is computed by taking into account the allowable deduction of the profits and gains derived from the 'eligible business'. With respect to the facts of this Appeal, there is no dispute that the deduction quantified under Section 80-IA is Rs.492,78,60,973/-. To make it clear, the said amount represents the net profit made by the Assessee from the 'eligible business' covered under sub-section (4), i.e., from the Assessee's business unit involved in generation of power. The claim of the Assessee is that in computing its 'total income', deductions available to it have to be set-off against the 'gross total income', while the Revenue contends that it is only the 'business income' which has to be taken into account for the purpose of setting-off the deductions under Sections 80-IA and 80-IB of the Act. To illustrate, the 'gross total income' of the Assessee for the assessment year 2002-03 is less than the quantum of deduction determined under Section 80-IA of the Act. The Assessee contends that income from all other heads including 'income from other sources', in addition to 'business income', have to be taken into account for the purpose of allowing the deductions available to the Assessee, subject to the ceiling of 'gross total income'. The Appellate Authority was of the view that 13 | P a g e there is no limitation on deduction admissible under Section 80-IA of the Act to income under the head 'business' only, with which we agree.

13. The other contention of the Revenue is that sub-section (5) of Section 80-IA refers to computation of quantum of deduction being limited from 'eligible business' by taking it as the only source of income. It is contended that the language of sub-section (5) makes it clear that deduction contemplated in sub-section (1) is only with respect to the income from 'eligible business' which indicates that there is a cap in sub-section (1) that the deduction cannot exceed the 'business income'. On the other hand, it is the case of the Assessee that sub-section (5) pertains only to determination of the quantum of deduction under sub-section (1) by treating the 'eligible business' as the only source of income. It was submitted by Mr. Vohra, learned Senior Counsel, that the final computation of deduction under Section 80-IA for the assessment year 2002-03 as accepted by the Assessing Officer, was arrived at by taking into account the profits from the 'eligible business' as the 'only source of income'. He submitted that, however, sub-section (5) is a step antecedent to the treatment to be given to the deduction under sub- section (1) and is not concerned with the extent to which the computed deduction be allowed. To explain the interplay 14 | P a g e between sub-section

(5) and sub-section (1) of Section 80-IA, it will be useful to refer to the facts of this Appeal. The amount of deduction from the 'eligible business' computed under Section 80-IA for the assessment year 2002-03 is Rs. 492,78,60,973 /-. There is no dispute that the said amount represents income from the 'eligible business' under Section 80-IA and is the only source of income for the purposes of computing deduction under Section 80-IA. The question that arises further with reference to allowing the deduction so computed to arrive at the 'total income' of the Assessee cannot be determined by resorting to interpretation of sub- section (5).

14. It will be useful to refer to the judgment of this Court relied upon by the Revenue as well as the Assessee. In Synco Industries (supra), this Court was concerned with Section 80-I of the Act. Section 80-I(6), which is in pari materia to Section 80-IA(5), is as follows:

> " 80-I(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 any

15 | P a g e subsequent assessment year, be computed as if such industrial undertaking or ship or the business of the 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." It was held in Synco Industries (supra) that for the purpose of calculating the deduction under Section 80-I, loss sustained in other divisions or units cannot be taken into account as sub-section (6) contemplates that only profits from the industrial undertaking shall be taken into account as it was the only source of income. Further, the Court concluded that Section 80-I(6) of the Act dealt with actual computation of deduction whereas Section 80-I(1) of the Act dealt with the treatment to be given to such deductions in order to arrive at the total income of the assessee. The Assessee also relied on the judgment of this Court in Canara Workshops (P) Ltd., Kodialball, Mangalore (supra) to emphasize the purpose of sub-section (5) of Section 80-IA. In this case, the question that arose for consideration before this Court related to computation of the profits for the purpose of deduction under Section 80-E, as it then existed, after setting off the loss incurred by the assessee in the 16 | P a g e manufacture of alloy steels. Section 80-E of the Act, as it then existed, permitted deductions in respect of profits and gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule. It was argued on behalf of the Revenue that the profits from the automobile ancillaries industry of the assessee must be reduced by the loss suffered by the assessee in the manufacture of alloy steels. This Court was not in agreement with the submissions made by the Revenue. It was held that the profits and gains by an industry entitled to benefit under Section 80-E cannot be reduced by the loss suffered by any other industry or industries owned by the assessee.

15. In the case before us, there is no discussion about Section 80-IA(5) by the Appellate Authority, nor the Tribunal and the High Court. However, we have considered the submissions on behalf of the Revenue as it has a bearing on the interpretation of sub-section (1) of Section 80-IA of the Act. We hold that the scope of sub-section (5) of Section 80- IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income'.

17 | P a g e Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'. An attempt was made by the learned Senior Counsel for the Revenue to rely on the phrase 'derived ... from' in Section 80-IA (1) of the Act in respect of his submission that the intention of the legislature was to give the narrowest possible construction to deduction admissible under this sub-section. It is not necessary for us to deal with this submission in view of the findings recorded above. For the aforementioned reasons, the Appeal is dismissed qua the issue of the extent of deduction under Section 80-IA of the Act.

Civil Appeal No. 1327 of 2021, Civil Appeal No. 1329 of 2021, Civil Appeal No. 2537 of 2016, Civil Appeal No. 1408 of 2021 and Civil Appeal No. 1508 of 2021 are disposed of in terms of the above judgment.

Civil Appeal No. 1509 of 2021 is de-tagged as the questions arising therein are not related to the aforementioned issue.

.....J. [L. NAGESWARA RAO] .....J. [VINEET SARAN] New Delhi, April 28th 2021.

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