IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH'A', CHANDIGARH

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1505 & 1506/Chd/2017
Assessment Year: 2010-11 & 2011-12

M/s Elin Appliances Private Ltd. Vill- Belikhol, Manpura Nalagarh, Himachal Pradesh	Vs.	The DCIT Circle, Parwanoo
PAN No. AABCE3127E		
(Appellant)		(Respondent)

Appellant By : Shri. Amit Sharma
Shri. Sumit Kharbanda
Respondent By : Shri. Yogendra Mittal

Date of hearing : 09/07/2018
Date of Pronouncement : 07/08/2018

ORDER

PER BENCH:

Both the above appeals have been filed by the Assessee against the order of the Ld. CIT(A), Faridabad dt. 11/08/2017.

2. Assesee has raised the following grounds of appeal in ITA No. 1505/Chd/2017:

1. On the facts and in the circumstances of the case as well as in law the Ld. CIT(A) erred in upholding the disallowing the deduction under section 80IC after setting off losses of one eligible priority unit with the profit of another priority unit by virtue of which the appellant is denied from the eligible deduction of Rs. 7,40,409/- which is bad in law and liable to be set aside.

2. On the facts and in the circumstances of the case as well as in law the Ld. CIT(A) grossly erred in upholding the action of Ld. AO based his reliance on the case of CIT, Shimla Vs. Him Teknoforge ltd. [2012] 26 taxmann.com 129 (H.P.) without appreciating the fact that the judgment was pronounced in respect of adjudication of deduction entitlement under section 80HHC of the act which has no bearing on the interpretation of provision of section 80IC of the Act.

2.1 Assesee has raised the following grounds of appeal in ITA No. 1505/Chd/2017:

1. On the facts and in the circumstances of the case as well as in law the Ld. CIT(A) erred in upholding the disallowing the deduction under section 80IC after setting off losses of one eligible priority unit with the profit of another priority unit by virtue of which the appellant is denied from the eligible deduction of Rs. 25,50,313/- which is bad in law and liable to be set aside.

1.1 On the facts and in the circumstances of the case as well as in law the Ld. CIT(A) grossly erred in upholding the action of Ld. AO based his reliance on the case of CIT, Shimla Vs. Him Teknoforge ltd. [2012] 26 taxmann.com 129 (H.P.) without appreciating the fact that the judgment was pronounced in respect of adjudication of deduction entitlement under section 80HHC of the act which has no bearing on the interpretation of provision of section 80IC of the Act.

3. Brief facts of the case are that the assessee company is engaged in the manufacturing of domestic home appliances and electric goods. The assessee company was doing manufacturing activities from its unit (Unit-1) since 12th May 2004 and has started a new unit (Unit-II) in the relevant F.Y. 2009-10 for manufacturing of electronic and electrical items, light fitting etc. These units are located at Village Belikhol, Manpura. Tehsil Nalagarh and the head office of the company is at 4771, Bharat Ram Road, 23, Darya Ganj, New Delhi.

3.1. The company was claiming deduction under section 80IC with respect to eligible profits of Unit-1 since A.Y. 2005-06 and this was the sixth year of claim of deduction. Accordingly assessee company has claimed deduction under section 80-IC to the tune of 30% of the eligible profits in the current year. Further, the assessee company has commenced its business activities in Unit-II since 12/03/2010 and has claimed A.Y. 2010-11 as its initial assessment year for the same. No claim of deduction under section 80-IC has been made for Unit-II as assessee company has incurred losses in the same.

4. The Assessing Officer has allowed deduction taking into consideration the consolidated profits of Unit-I and Unit-II. The Assessing Officer has deducted the losses of Unit-II from the profit earned from Unit-I and allowed the net profits as eligible deduction under section 80IC. The Assessing Officer while doing so relied on the judgment of the jurisdictional High Court in the case of CIT, Shimla Vs. Him Technoforge Ltd. The Assessing Officer further relied on the judgment of the Apex Court in the case of Synco Industries Ltd. 299 ITR 444.

5. Aggrieved the assessee filed appeal before the Ld. CIT(A) who has confirmed the order of the Assessing Officer based on the judgment of the jurisdictional High Court.

6. Before us, the Ld. AR argued that the assessee was primarily engaged in the business of manufacturing / trading domestic home appliances items and electric goods. The assessee had set up its new independent manufacturing units located at village Belikhol, Baddi, Himachal Pradesh and carried out its

manufacturing / trading activities thereon. It is further submitted that being the units were setup in the specified area as mentioned under section 80IC of the Act, therefore the assessee claimed the entitlement of area based exemption as mentioned in the provision of section 80IC of the Act. The assessee setup first eligible unit in the A.Y. 2005-06 (Unit-I) and another eligible unit in the A.Y. 2010-11(Unit-II). It was argued that the assessee is eligible to claim deduction @30% of the profits of the Unit-I and the Assessing Officer erred himself in setting off the losses of Unit-II in allowing the deduction under section 80-IC. Regarding the claim of deduction the assessee has based on the chart mentioned at page no. 3 & 4 of the Paper Book, where in the assessee has shown deduction under section 80-IC below the column of gross total income whereas the Assessing Officer has shown the deduction at the same column after setting of the loss of Unit-II.

6.1 The Ld. AR further argued that in view of Section 80-IA(5) as referred in section 80IC(7), which begin with a non-obstante clause, the quantum of deduction is to be computed as if the eligible undertaking was the only source of income of the assessee during the relevant years. In other words, each eligible undertaking or unit is to be treated separately and independently. It is only those undertakings, which have a profit or gain, which would be considered for computing the deduction, not the loss making undertakings. The plain reading of the provision suggests that the loss of one such eligible undertaking cannot be set off against the profits of another such eligible undertaking to arrive at a computation of the quantum of deduction that is to be allowed to the assessee under the said sections. Therefore, it was argued, if the judgment in the case of IPCA Laboratory Ltd. has been read into the section 80IA(5), then such provision become redundant and has no evident value which serve the purpose as was incorporated in the Act. He argued that in the case of Him Technoforge (supra), the Assessing Officer had set off profits of eligible business with loss of non - eligible business and in the instant case it had earned the profit as well as loss in units which are considered as eligible units. Further he relied on the ratio laid down in the case of Sonakoyo Steering System Ltd. 321 ITR 463 (Del) for the preposition that deduction shall be calculated only on eligible business unit without setting of another eligible business. It was argued that the case of IPCA Laboratories (supra) is in the context of deduction under section 80HHC whereas the case of the assessee pertains to deduction under section

80IC. He also placed reliance on judgments in the case of Jindal Aluminium Ltd. Vs. Asst. CIT, Circle- 11(5), Bangalore [2012] 26 taxmann.com 317 (Bang.), Shriram Properties (P.) Ltd. Vs. Asst. CIT, Company Circle-VI(2)[2013] 36 taxmann.com 398 (Chennai-Trib.), CIT Vs. Canara Workshop Pvt. Ltd. 161 ITR 320.

7. Ld. DR shri Y. Mittal, relied on the orders of the lower authorities and argued that all these deductions are mentioned under Chapter VI-A and the sequence of computation of income and deduction is common for all the sections under Chapter VI , be it is for section 80 HHC,80IA, 80IB and 80IC. He argued that the deductions come after determination of gross total income and while determining the gross total income the total profits of the business, be it the profit of one unit or profit / loss other units should be taken in a consolidated manner. He argued that there is no provision in the scheme of things to claim deduction from the gross total income and then claim losses which are to be either carried forward or set off.

8. We have heard the arguments of both the parties and perused the material placed before us. We find the moot issue revolves around whether while calculating the gross total income of the assessee loss of other priority unit has to be taken into consideration or not. In the case of Him Technoforge Ltd. (supra) the Hon'ble Court has clearly held that "O*n* perusal of the bare provisions of the Act and the law cited hereinabove, it is clear that while calculating deductions under Chapter VI-A only the profits derived from priority units are to be taken into consideration, Section 80A(2) specifically provides that the amount of deduction shall not in any case exceed the gross total income of the assessee. There can be no manner of doubt that Section 80AB has overriding effect and will govern the other provisions of Chapter VI-A. This also clearly indicates that only the income derived from a priority undertaking is to be taken into consideration while making deduction. Section 80B(5) indicates that gross total income means the total income computed in accordance with the provisions of this Act. Therefore, we are of the considered view that the phrase "gross total income" will include profits and losses from other units whether they be priority units or non-priority units".

8.1 Further, the Hon'ble High Court is of the view that based on Section 80A(2) the judgment rendered by the Apex Court in *IPCA Laboratory Ltd.* lays down the law that the profits of the non-priority units should be first set off while

calculating the income of the priority unit. In *Synco Industries Ltd. 's* case *(supra) the* question before the Apex Court was whether an assessee could get benefit of deduction when the gross total income was nil. In view of the provisions of Section 80A(2) which provides that the deduction under Chapter VI-A shall not in any way exceed the gross total income of the assessee, it is more than obvious that if the income is nil then the assessee is not entitled to any benefit of the deductions.

Hon'ble court has held that they were of the considered view that while calculating the deductions under Section 80 HH of 80IA of the Act, the profits of each unit will have to be calculated separately. However, in case if both of the units are priority units then in view of law laid down in *IPCA Laboratory Ltd. and Induflex Products (P.) Ltd. (supra)* the loss of the non-priority unit will have to be taken into account while calculating the deductions.

9. We find that the Hon'ble High Court has taken into consideration the ratio laid down in the case of Synco Industries Ltd. wherein the Apex Court held that for the purpose of calculating deduction under section 80I(6) the loss sustained in one of the units is not be taken into account because sub section (6) contemplates that only profits can be taken into account s if they were the only source of income. Under that circumstances it was considered that while calculating deductions under section 80IA and 80HH the profits of the each unit will have to be calculated separately. While holding so the Hon'ble High Court has well laid down that if both the units are priority units then the law laid down in IPCA Laboratories and Induflex Products Pvt. Ltd will operate. This clearly shows that when the issue of deduction is among two eligible units one profit yielding the other being loss making the ratio laid down in IPCA Laboratories Ltd. is applicable.

The phrases 'Total Income' and 'Gross Total Income' have different meaning as per the intention of the legislature and scheme of the taxation provisions. Gross Total Income has been defined to mean the total income computed in accordance with the provisions of the Income Tax Act 1961, therefore it will include profits and losses of all units of the assessee, whether they be priority units or non priority units. If the Gross Total Income is Nil then as laid down in Synco Industries(supra) the assessee cannot get any benefit of such deductions. Section 80A(2) leaves no matter of doubt that the amount of deduction cannot

exceed the Gross Total Income of the Assessee. In a nutshell the Hon'ble Court has laid down that

A. That while calculating the deduction under Chapter VI-A only the losses and profits derived from the priority units can be taken into consideration.

B. While calculating the gross total income of the assesee even the income whether profit or loss of the non priority units has to be taken into consideration.

C. That the deductions cannot exceed the gross total income and obviously if the gross total income is nil then the assessee would not be entitled to the benefit of deductions.

In this background the provisions of Section 80IA(5) and Section 80IC(7)

are being visited which reads as under

"(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.

Section 80IC(7)reads as under:

"(7) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section".

10. Even though Section 80IC has to be interpreted in the light of object of giving incentives it still has to be interpreted as per the language mentioned thereon. An interpretation which leads to an unwanted result not contemplated by the legislature cannot be given while computing the deductions. The contention that profits only in respect of one type of unit should be considered and the profits of the eligible unit could not be negativated or set off against the loss from the other unit cannot be accepted. The liberal interpretation has to be based on the wording of the section employed thereon. If the benefits are not available under any section the same cannot be conferred. Gross total income means total income as computed in accordance with the provisions of the Income Tax Act,1961. Section 80AB clearly mentions that 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.

11. Section 80AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. If the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration. Hon'ble Courts have enunciated that from the charging provision of the Act, it is discernible that the words "income" or "profits and gains" should be understood as including losses also, so that, in one sense "profits and gains" represent "plus income" whereas losses represent "minus income". In other words, loss is negative profit. Both positive and negative profits are of revenue character. Both must enter into computation, wherever it becomes material, in the same mode of the taxable income of the assessee."

12. Thus keeping in view the provisions of Section 80AB, signifying the provisions pertaining to the deduction to be made with reference to the income included in the gross total income, Section 80IA(5) which elucidates that 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 an including the assessment year for which the determination is to be made and read with section 80IC(7) which indicates the eligible deductions are on par with sub section 5 of Section 80IA mentioned above and also keeping in view the fact that both the units of the assessee are eligible undertakings, and after interpreting what constitutes gross total income and eligible profits in view of the various judgments quoted above as regards to determination of gross total income, we hereby uphold the decision of the Ld. CIT(A) considering the

setting of the negative income of one priority unit with the positive income of the another priority unit before computing the deduction under 80IC.

13. As a result both the appeals of the assessee are dismissed.

Order pronounced in the open Court.

Sd/-	**Sd/-**
(DIVA SINGH)	**(DR. B.R.R. KUMAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 07/08/2018

AG

Copy to:
1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR