IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1168/Del/2018 : Asstt. Year: 2013-14

Pragati Power Corporation Ltd., Himadari, Rajghat Power House Office Complex, Rajghat, New Delhi-110002	Vs	ACIT, Circle-20(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCP8035F		

Assessee by : Sh. Ved Jain, Adv. &
Ms. Supriya Mehta, CA
Revenue by : Sh. P. N. Barnwal, CIT-DR

Date of Hearing: 03.01.2024		**Date of Pronouncement: 05.01.2024**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of ld. CIT(A)-7, New Delhi dated 11.12.2017.

2. Following grounds have been raised by the assessee:

"1. That the order of the learned Commissioner of Income Tax (Appeals) is bad both on law and facts.

2. The part of impugned order is contrary to the evidence and material on record, contrary to the principles of law and binding judgments of the Court, contrary to the relevant provisions of the Act and deserves to be quashed and set aside.

3. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of learned Assessing Officer in restricting the claim of deduction u/s 80IA to Rs.189,92,38,797/- against the appellant claim of deduction u/s 80IA of the Act of Rs.228,41,50,029/- in

complete disregard to the fact that in view of provisions of section 80IA(5) of the Income Tax Act, 1961 the profit from the eligible business for the purpose of deduction u/s 80IA of the Act has to be computed before set off losses of the other undertaking of the assessee."

3. Since, the deduction eligible is more than the gross total income, deduction to the extent of eligible profits is to be allowed. To clarify further since one of the eligible units ended up in loss, the interest income earned and computed under the head income from other sources is allowed to be set off of the losses of the eligible undertaking.

4. The similar issue stands adjudicated by the order of the Co-ordinate Bench of ITAT for A.Y. 2012-13 in ITA No. 2712/Del/2017 and in MA No. 206/Del/2020 in assessee's own case. For the sake of ready reference, the said MA is reproduced hereunder:

"3. We have heard the rival submissions and perused the materials available on record. For the sake of convenience, the adjudication of claim of deduction u/s 80IA of the Act has been addressed by the tribunal in its order dated 10.1.2020 in the following manner:-

"5. We have heard rival submissions and perused the relevant material on record. The assessee is a company of Government of National Capital Territory of Delhi. The assessee has been operating two separate undertakings termed as project GT-1 at Raj Ghat and another undertaking engaged in the business of generation and distribution of power located at Bawana. It is claimed by the assessee that commercial operations in respect of GT-1 Raj Ghat commenced in July, 2002 and as such the income arising out the business of generation and distribution of power by GT-1 Raj Ghat (undertaking) was eligible for deduction under section 80IA of the Act. The unit-wise profit allocation has been provided

by the assessee in the computation of total income, which is reproduced as under:

PRAGATI POWER CORPORATION LIMITED

ASSESSMENT YEAR 2012-2013

	CONSOLIDATED	80IA	OTHER
INCOME FROM BUSINESS			
Net Profit as per Profit & Loss A/c	2,202,609,507	2,309,245,982	(106,636,475)
Less: Other Income(Interest from Banks)	(153,781,256)	(153,781,256)	-
Add: Depreciation for the purpose of P&L A/c*	665,593,509	508,800,787	156,792,722
Add: Income tax on perquisites paid by employer- u/s 40(a)(ia)	621,765	489,437	132,328
Add: Income tax appeal fee for AY 2009-10- u/s 40(a)(ia)	1,000	1,000	-
Add: Interest paid on income tax(AY 2004-05)- u/s 40(a)(ia)	1,340,217	1,340,217	-
Add: Amt disallowed for non deduction of TDS- u/s 40(a)(ia)	932,588	932,588	-
Add: Provision for Obsolence and slow moving inventory	27,446,706	27,446,706	-
Add: Stamp duty for issue of shares	4,000,001	-	4,000,001
Add: Provision for Gratuity- u/s 40(A)(7)	4,344,729	3,800,059	544,670
Add: Contribution to PRMS- u/s 40(A)(9)	3,922,203	3,430,502	491,701
Add: Provision for Leave Encashment- u/s43B	13,402,803	11,722,582	1,680,221
Add: Water Cess & Property tax not paid - u/s 43B	2,023,148	2,023,148	-
Add: Prior Period Expenditure	30,974,437	30,974,437	-
Add: Depreciation claimed as per IT on asset decapitalization ##	29,094,091	29,094,091	-
Add: Advance Against Depreciation	76,100,000	76,100,000	-
Less: Depreciation as per Income Tax Act	(1,223,292,202)	(814,871,495)	(408,420,707)
Less: Gratuity paid during the year	(3,035,806)	(2,655,227)	(380,579)
Less: Water cess liability paid during the year-u/s 43B	(307,709)	(307,709)	-
Less: Water cess written back during the year	(102,571)	(102,571)	-
Less: Deduction U/s 35(D)	(3,500,002)	-	(3,500,002)
Income from Business/ Profession	**1,678,387,158**	**2,033,683,278**	**(355,296,120)**
INCOME FROM OTHER SOURCE			
Interest from Banks on FDR	153,781,256		
Add: Intt on termporary deposits out of Borrowing for capital Exp. #	43,698,289		
Income from Business/ Profession	**197,479,545**		
Gross Total Income	1,875,866,703		
Less: Deduction u/s 80IA	1,875,866,703		
Total Income	-		

5.1 *The assessee has explained that it has claimed deduction under section 80-IA of the Act on the basis of the certificate issued by the Auditor in form No. 10CCB dated 28/08/2012, a copy of which has been placed at pages 35 to 41 of the paper book. According to the certificate, after making adjustment to the book profit of the eligible units, the eligible deduction has been computed at Rs.203,36,83,278/-. While working this deduction, the interest from bank of Rs.15,37,81,256/- has been reduced from the eligible profit for deduction. The*

assessee, then computed the gross total income at Rs.187,58,66,703/- as under and claimed the deduction limited to the gross total income:

Profit from Eligible Unit	*Rs.203,36,83,278/-*
Loss from Other Unit	*Rs.35,52,96,120/-*
Income from other source	*Rs.19,74,79,545/-*
Gross Total	*Rs.187,58,66,703/-*
Less:	*Rs.187,58,66,703/-*
Taxable Income	*Nil*

5.1 *The claim of the assessee is that deduction under section 80IA has to be computed in respect of the profit of the eligible unit only in terms of section 80-IA(5) of the Act, which according to the assessee is Rs.203,36,83,278/-. But according to the section 80A(2), deduction under Chapter VIA has to be restricted to the extent of the gross total income. According to the assessee, the gross total income for the year under consideration, being Rs.187,58,66,703/-, the deduction under section 80-IA of the Act was accordingly restricted to Rs.187,58,66,703/- and net taxable income of nil was declared in the return of income.*

5.2 *But, according to the Revenue for computing eligible profit for deduction under section 80IA the Act, loss of non-eligible units should be first adjusted with the profit of the eligible unit and deduction should be allowed in respect of net profit under the head profit and gain of the business/profession of the assessee.*

5.3 *In view of the arguments raised before us, the dispute is whether any loss of non-eligible unit should be adjusted with the profit of the eligible unit for determining profit eligible for deduction under section 80IA of the Act. The Section 80IA(1) prescribe for deduction for an amount equal to 100% of the profit and gains derived from the eligible business undertaking. Further, section (5) of the section 80-IA prescribe that while computing the profit in gains*

of the eligible business under sub-section (1), the source of income of the eligible business has only to be considered for deduction. For ready reference, the subsection (5) of section 80-IA is reproduced as under:

> *"80-IA (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."*

5.4 *Thus, section 80-IA(5) prescribe maximum deduction which could be claimed under section 80-IA, but the section 80A(2) restrict the aggregate amount of deduction under chapter VIA (the deduction under Section 80-IA is in the chapter VIA), which reads as under:*

> ***"Deductions to be made in computing total income.***
>
> ***80A.*** *(1) …….*
>
> *(2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee."*

5.5 *The gross total income has been further defined in section 80B(5) as under:*

> ***"Definitions.***
>
> ***80B.*** *(5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter;*

5.6 *The identical question of quantum of deduction which could be claimed under section 80-IA subject to the limit prescribed under section 80A has been decided in the case of Sono Koyo Steering Systems Ltd. (supra) by the Hon'ble Delhi High Court as under:*

"4. After hearing the counsel for the parties, we feel that the following substantial question of law arises for our consideration.

"Whether, in the facts and circumstances of the case, the Income-tax Appellate Tribunal erred in law in holding that the loss of one unit could not be set off against the other unit in view of the provisions of Section 80-I(1)(6) and 80-B (5) of the Income-tax Act, 1961 ?"

5. Since the issue involved is purely legal, the counsel for the parties agreed that the matter may be disposed of at this stage itself without the requirement of filing any paper book. We have, therefore, heard the counsel for the parties at length on the aforesaid question.

6. The learned counsel for the appellant submitted that the question of adjustment / setting off of the loss of one unit as against the profit of the other unit stands covered by the decision of the Supreme Court in the case of Synco Industries Ltd v. Assessing Officer (Income-tax) and Another: 299 ITR 444 (SC). The learned counsel for the appellant, however, fairly submitted that there is a decision of a Division Bench of this court in the case of Commissioner of Income-tax v. Dewan Kraft Systems P. Ltd: 297 ITA Nos.1279/08,194/09, 416/09, 761/09 & 788/09 Page No.4 of 11 ITR 305 (Delhi) which has considered the pari materia provisions of Section 80-IA(7) of the said Act and has held against the revenue. The learned counsel submits that though the decision of the Delhi High Court is against him, the latter decision of the Supreme Court in the case of Synco Industries Ltd. (supra) is clearly in his favour and, therefore, the question ought to be answered in favour of the revenue and against the assessee.

7. On the other hand, the learned counsel appearing on behalf of the assessee, submitted that the decision of this court in C.I.T. v. Dewan Kraft Systems (supra) is clearly in favour of the assessee and there is nothing in the Supreme Court decision in Synco Industries Ltd. (supra) which would enable us to detract from that position. Consequently, he submitted that the question be answered in favour of the assessee and against the revenue.

8. Section 80-I(1) reads as under:-

"80-I. Deduction in respect of profits and gains from industrial undertakings after a certain date, etc. -

(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 or the business of repairs to ocean-going vessels or other powered craft 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 of an amount equal to twenty per cent thereof:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty per cent", the words "twenty- five per cent" had been substituted."

9. Section 80-I (6) reads as under:-

"(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 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."

10. Section 80-B (5), which defines gross total income, is as follows:-

"(5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter."

11. A plain reading of the said provisions makes it clear that gross total income referred to in Section 80-I has to be computed in accordance with the provisions of the said Act before making any deduction under Chapter VI- A. It is, therefore, clear that while computing gross total income, the deductions referred to in Chapter VI-A, which includes Section 80-I, are not to be considered. The gross total income of the assessee has to be computed after making all other adjustments of losses and carry forward losses ignoring the deductions available under Chapter VI-A. There is no dispute with this proposition.

12. It is further clear from a plain reading of the aforesaid provisions that the deduction under Section 80-I is to be made in case the gross total income includes any profits and gains derived from an industrial ITA Nos.1279/08,194/09, 416/09, 761/09 & 788/09 Page No.6 of 11 undertaking, etc.., in case such profits and gains are included in the gross total income of the assessee. The deduction in the case of a company, in view of the proviso to Section 80-I (1), is to be given to the extent of 25% of such profits and gains of such an industrial undertaking. It is also clear that in view of Section 80-I (6), which begins with a non-obstante clause, the quantum of deduction is to be computed as if the industrial undertaking were the only source of income of the assessee during the relevant years. In other words, each industrial undertaking or unit is to be treated separately and independently. It is only those industrial undertakings, which have a profit or gain, which would be considered for computing the deduction. The loss making industrial undertaking would not come into the picture at all. The plain reading of the provision suggests that the loss of one such industrial undertaking cannot be set off against the profit of another such industrial undertaking to arrive at a computation of the quantum of deduction that is to be allowed to the assessee under Section 80-I (1) of the said Act.

13. In this regard, we may refer to the decision of this court in the case of Dewan Kraft Systems (supra), which considered the pari materia provisions of Section 80-IA(7) of the said Act. In that case, the question arose with respect to computation of the deduction in relation to three units

- the Kalamb Unit, the Delhi Unit and the Noida Unit. This court held that while computing the deduction under Section 80-IA of the said Act, the profits and gains of the Kalamb unit for the purposes of determining the quantum of deduction under Section 80-IA(5) was to be computed as if such ITA Nos.1279/08,194/09, 416/09, 761/09 & 788/09 Page No.7 of 11 eligible business of the said unit was the only source of income of the assessee. This court observed that the Assessing Officer had erroneously mixed the profits of the Delhi and Noida units and had thereby restricted the deduction to the extent of business income and that such an exercise was in total disregard of the provisions of sub-section (7) of Section 80-IA of the said Act. It was held that the Kalamb unit, being the only unit of the assessee eligible for deduction under Section 80-IA of the said Act, was to be treated as an independent unit and the same was to be treated as the only source of income of the assessee for the purposes of computing deduction under Section 80-IA.

14. We now came to the decision of the Supreme Court in the case of Synco Industries Ltd (supra) which was strongly relied upon by the learned counsel for the appellant. On going through the entire decision, we find that the Supreme Court was primarily concerned with the question as to whether any deduction could be allowed under Chapter VI-A if the gross total income was „Nil". It is in that context that the Supreme Court considered the concept of gross total income and came to the conclusion, following its earlier decision in CIT v. Kotagiri Industrial Co-operative Tea Factory Ltd: 224 ITR 605, that the gross total income has to be computed in accordance with the Act after adjusting the losses, etc. and that, if the gross total income so determined is positive, then the question of allowing deductions under Chapter VI-A would arise, but not otherwise. While doing so, the Supreme Court further made it clear that the gross total income must be determined by setting off business losses of earlier years before ITA Nos.1279/08,194/09, 416/09, 761/09 & 788/09 Page No.8 of 11 allowing deduction under Chapter VI-A and that if the resultant income is „Nil", then the assessee cannot claim any deduction under Chapter VI-A. While coming to the aforesaid conclusion, the Supreme Court was also confronted with an argument which had been raised on the basis of the provisions of Section 80-I(6) that the profits of one industrial undertaking cannot be set off against the losses suffered by

the other industrial undertaking. The Supreme Court was of the view that the provisions of Section 80-I (6) were only for the purposes of computing the quantum of deduction, whereas the gross total income was to be computed in terms of the Act as provided in Section 80-B(5). It is apparent that the Supreme Court distinguished the provisions of Section 80-I(6) which was for the purposes of computing the quantum of deduction from the provisions of Section 80-I (1) and Section 80-B(5) which deal with the manner in which the gross total income is to be considered. The Supreme court observed as under:-

"13. ...While computing the quantum of deduction under Section 80-I(6), the Assessing Officer, no doubt, has to treat the profits derived from an industrial undertaking as the only source of income in order to arrive at the deduction under Chapter VI-A. However, this court finds that the non obstante clause appearing in Section 80-I(6) of the Act, is applicable only to the quantum of deduction, whereas, the gross total income under Section 80B(5) which is also referred to in section 80-I(1) is required to be computed in the manner provided under the Act which presupposes that the gross total income shall be arrived at after adjusting the losses of the other division against the profits derived from an industrial undertaking. If the interpretation as suggested by the appellant is accepted it would almost render the provisions of Section 80A(2) of the Act nugatory and, therefore, the interpretation canvassed on behalf of the appellant cannot be accepted. It is true that under Section 80-I(6) for the purpose of calculating the deduction, the loss sustained in one of the units, cannot be taken into account because Sub-section (6) contemplates that ITA Nos.1279/08,194/09, 416/09, 761/09 & 788/09 Page No.9 of 11 only the profits shall be taken into account as if it was the only source of income. However, Section 80A(2) and Section 80B(5) are declaratory in nature. They apply to all the sections falling in Chapter VI-A. They impose a ceiling on the total amount of deduction and, therefore, the non obstante clause in Section 80-I(6) cannot restrict the operation of Sections 80A(2) and 80B(5) which operate in different spheres. As observed earlier, Section 80-I(6) deals with actual computation of deduction whereas Section 80-I(1) deals with the treatment to be given to such deductions in order to arrive at the total income of the assessee and, therefore, while interpreting Section 80-I(1), which also refers to gross total income one has to read the expression "gross total income" as defined in Section 80B(5). Therefore, this

court is of the opinion that the High Court was justified in holding that the loss from the oil division was required to be adjusted before determining the gross total income and as the gross total income was "nil" the assessee was not entitled to claim deduction under Chapter VI- A which includes Section 80-I also.

14. The proposition of law, emerging from the above discussion is that the gross total income of the assessee has first got to be determined after adjusting losses, etc., and if the gross total income of the assessee is "nil" the assessee would not be entitled to deductions under Chapter VI-A of the Act."

(underlining added)

15. From the above extract, it is apparent that the Supreme Court did not at all hold that while computing the deduction under Section 80-I(6), the loss of one eligible industrial undertaking is to be set off against the profit of another eligible industrial undertaking. All that the Supreme Court said was that in computing the gross total income of the assessee, the same has to be determined after adjusting the losses and that, if the gross total income of the assessee so determined turns out to be „Nil", then the assessee would not be entitled to deduction under Chapter VI-A of the said Act.

16. We agree with the submissions made by the learned counsel for the assessee that there is nothing in the decision in the case of Synco ITA Nos.1279/08,194/09, 416/09, 761/09 & 788/09 Page No.10 of 11 Industries Ltd (supra) which would enable us to detract from the position indicated by this court in Dewan Kraft Systems (supra) and, as indicated by us above. In fact, the Supreme Court clearly held that while computing the quantum of deduction under Section 80-I(6), the Assessing Officer, no doubt, has to treat the profits derived from an industrial undertaking as the only source of income of the assessee in order to arrive at a deduction under Chapter VI-A. The Supreme Court also held that under Section 80-I(6), for the purposes of calculating the deduction, the loss sustained in one of the units is not to be taken into account because sub-section (6) contemplates that only the profits shall be taken into account as if it was the only source of income."

5.7 *Thus, for computing deduction u/s 80IA of the Act, profit of the eligible units have only to be considered subject to the upper limit of Gross total income. In view of the decision of the Hon'ble Delhi High Court, we set aside finding of the Ld. CIT(A) in the instant case to set off the loss of the other non-eligible unit against the profit of the eligible unit for computation of the deduction eligible under section 80-IA of the Act.*

5.8 *But in the instant case, on perusal of Certificate No.10CCB available on Page 35 to 41 of the paper book, we find that two/three undertakings have been mentioned as eligible at point No. 8 as under:*

> *"PPCL-I Plant : GT-1 on July 2002 , GT-II on Dec 2002 & STG on May 2003."*

5.9 *In Point No. 9 two initial assessment years i.e. 2003-04 and 2004-05 have been mentioned.*

5.10 *In view of the facts appearing in the form No.10CCB, it needs verification, whether the loss making unit was also eligible for deduction under section 80-IA of the Act and if so the claim of deduction under section 80-IA of the Act has to be computed for both eligible units. We also find that the Ld. CIT(A) has not adjudicated on the addition made by the AO in respect of the interest income which was not derived from the business of the eligible undertaking. In view of the complete financial information in respect of the two units of the assessee not available before us, in interest of the Justice, we feel it appropriate to set aside the order of the ld. CIT(A) and restore the issue back to him for deciding afresh in accordance with law, after verification of financial statements of both the units of the assessee. It is needless to mention that both the parties, i.e., the assessee as well as the Assessee Officer shall be afforded adequate opportunity of being heard. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes."*

4. We find that this tribunal in Para 5.10. had observed that whether the loss making unit was also eligible for deduction u/s 80IA of the Act and if so the claim of deduction u/s 80IA of the Act has to be computed for both eligible units , requires verification by the ld. CIT(A). But the Hon'ble Madras High Court has already settled the issue in the case of ACIT vs Velayudhaswamy Spinning Mills (P) Ltd reported in 340 ITR 477 (Mad) that the eligible unit deduction u/s 80IA of the Act has to be granted on gross basis treating that is the only undertaking with the assessee without set off of any loss thereon. The essence of the decision of Hon'ble Madras High Court was considered by the Central Board of Direct Taxes (CBDT) and they in turn had come out with a Circular No. 1/2016 dated 15.2.2016 which is reproduced below:-

SECTION 80-IA OF THE INCOME-TAX ACT, 1961 - DEDUCTIONS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS - CLARIFICATION OF TERM 'INITIAL ASSESSMENT YEAR' IN SECTION 80-IA(5)

CIRCULAR NO.1/2016 [F.NO.200/31/2015-ITA-I], DATED 15-2-2016

Section 80-IA of the Income-tax Act, 1961 ('Act'), as substituted by the Finance Act, 1999 with effect from 1-4-2000, provides for deduction of an amount equal to 100 % of the profits and gains derived by an undertaking or enterprise from an eligible business (as referred to in sub-section (4) of that section) in accordance with the prescribed provisions. Sub-section (2) of section 80-IA further provides that the aforesaid deduction can be claimed by the assessee, at his option, for any ten consecutive assessment years out of fifteen years (twenty years in certain cases) beginning from the year in which the undertaking commences operation, begins development or starts providing services etc. as stipulated therein. Sub-section (5) of section 80-IA further provides as under—

> *"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".

In the above sub-section, which prescribes the manner of determining the quantum of deduction, a reference has been made to the term 'initial assessment year'. It has been represented that some Assessing Officers are interpreting the term 'initial assessment year' as the year in which the eligible business/ manufacturing activity had commenced and are considering such first year of commencement/operation etc. itself as the first year for granting deduction, ignoring the clear mandate provided under sub-section (2) which allows a choice to the assessee for deciding the year from which it desires to claim deduction out of the applicable slab of fifteen (or twenty) years.

The matter has been examined by the Board. It is abundantly clear from sub-section (2) that an assessee who is eligible to claim deduction u/s 80-IA has the option to choose the initial/ first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub-section. It is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s 80-IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfilment of conditions prescribed in the section. Hence, the term 'initial assessment year' would mean the first year opted for by the assessee for claiming deduction u/s 80-IA. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity.

The Assessing Officers are, therefore, directed to allow deduction u/s 80-IA in accordance with this clarification and after being satisfied that all the prescribed conditions applicable in a particular case are duly satisfied. Pending litigation on allowability of deduction u/s 80 IA shall also not be pursued to the extent it relates to interpreting 'initial assessment year' as mentioned in sub-section (5) of that section for which the Standing Counsels/D.R.s be suitably instructed.

The above be brought to the notice of all Assessing Officers concerned."

5. Once the CBDT accepts the decision of the Hon'ble Court and issues a Circular to its subordinate officers to follow the same, the subordinate officers of the department are bound to follow the same in true letter and spirit. Hence in view of the CBDT Circular referred supra, we hold that the miscellaneous application of the assessee with regard to the aspect

of set off of loss of another unit with the profits of eligible unit u/s 80IA of the Act need not be done and accordingly, we modify the order passed by this tribunal to that effect in Para 5.10.

6. Yet another mistake that had crept in the order of the tribunal as pointed out by the assessee in its miscellaneous application is that the tribunal had stated whether the interest income derived by the assessee company would be eligible for deduction u/s 80IA of the Act or not also requires to be factually verified by the ld. CIT(A). The ld. AR drew our attention to the orders of the lower authorities from where it is found that this aspect was never in dispute before the lower authorities. Hence the Tribunal erred in making those observations with regard to interest income. It is trite law that tribunal is only entitled to address the issues that are in dispute before it and cannot travel beyond the same. Hence the observations made in Para 5.10 is required to be modified.

7. The modified Para 5.10. of the original tribunal order dated 10.1.2020 would be as under:-

> *5.10. As per the CBDT Circular No. 1/2016 dated 15.2.2016, once an 'initial assessment year' is determined, the assessee would be entitled to claim deduction u/s 80IA of the Act in respect of eligible undertaking on gross basis without resorting to set off of any loss from other units. The grounds of appeal of the assessee are accordingly allowed.*

8. This modified order and the original appellate order should be read together.

9. In the result the Miscellaneous Application of the assessee is allowed."

5. Further, we also find that the similar proposition has been laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Sona Koyo Steering Systems Ltd. (321 ITR 463).

6. Hence, keeping in view the entire facts of the case, the appeal of the assessee is hereby allowed.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 05/01/2024.

Sd/-	**Sd/-**
(C. N. Prasad)	**(Dr. B. R. R. Kumar)**
Judicial Member	**Accountant Member**

Dated: 05/01/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR