IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 27TH DAY OF MAY, 2011

PRESENT

THE HON'BLE MR. JUSTICE N. KUMAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

I.T.A.NO.5050/2010

Between:

1. The Commissioner of
Income Tax,
Hubli.

2. The Income Tax Officer,
Ward-3(1),
Hubli.

... Appellants

(By Sri. Y.V Raviraj, Advocate.)

And:

M/s. Swarnagiri Wire
Insulations Pvt. Ltd.,
Industrial Estate,
Gokul Road,
Hubli.

... Respondent

(By Sri. A Shankar, Advocate.)

This Income Tax Appeal is filed under Section 260 A of the Income-Tax Act, 1961, against order dated 21/05/2010 passed in ITA No.200/BANG/2010

on the file of the Income Tax Appellate Tribunal, "A" Bench, Bangalore, allowing the appeal filed by an assessee.

This appeal coming on for Final Hearing this day, N.Kumar, J., delivered the following:

JUDGMENT

This appeal was admitted to consider the following substantial question of law.

> *Whether the order of the Tribunal impugned in this appeal directing the Assessing Authority to set off the loss/unabsorbed depreciation of the eligible business under Section 80IA(4) against the income from other non-eligible business carried out by the assessee having regard to the facts and circumstances of the case is perverse and arbitrary?*

2. The assessee is in the business of manufacturing of super enameled copper winding wires, besides installing a windmill in Tamilnadu. The

assessee put up the windmill for power generation at a cost of ₹.98.4 lakhs and claimed a depreciation of ₹.39.36 lakhs which was negated by the Assessing Officer on the ground that windmill was not installed during the relevant Financial Year 2004-05 relevant to the Assessment Year 2005-06. Thereafter during the relevant assessment year the assessee filed a revised statement of income claiming income from business at ₹.60,00,829/- from which he deducted ₹.73,20,339/- towards loss/depreciation from windmill operation. The assessee was in receipt of ₹.5.51 lakhs from Tamilnadu Power Corporation for the sale of power from windmill during the accounting year under dispute. The assessee had set off this profit against the depreciation on power windmill and after adjusting the same, the unabsorbed depreciation remained at ₹.73.20 lakhs. The assessee in its original return of income had shown the profits from its business activities at ₹.60 lakhs and after claiming depreciation of ₹.55.56 lakhs, furnished 'Nil' income. The claim of depreciation was negated by the Assessing Officer on the ground as aforesaid that the Windmill was not

installed in that accounting year. In the revised computation he claimed deduction of depreciation on windmill of ₹.73.20 lakhs against the business profit of ₹.60 lakhs and the remaining balance of ₹.13.19 lakhs was claimed as carried forward to the next accounting year. Even then the total income as per the revised statement of income was arrived at ₹.nil and also under Section 80IA was made. The Assessing Authority held that the non taxable income under Section 80IA cannot be set off against eligible business income and thus loss/depreciation of ₹.73.20 lakhs from windmill was carried forward to subsequent year to set off against the eligible income of the assessee.

3. The said order was confirmed in appeal by the Commissioner of Income Tax (Appeals) by holding that the case of the assessee is in contravention of the provisions of law in as much as firstly, that appellant has set off the depreciation loss/income from power generation business against the profits of manufacturing of copper wires and secondly that the

non taxable income under Section 80IA is set off against non eligible business income of the assessee. Thirdly, the depreciation from windmill has not got absorbed fully against eligible business profits. All these cumulative factors entail the assessee disqualified to claim set off of such loss against the non-eligible business profits being in contravention to the relevant provisions of law. Therefore, the action of the Assessing Officer to allow the depreciation loss of ₹.73,20,339/- to be carried forward for set off against the eligible business and bringing the profits of ₹.60,00,829/- attributable to the regular business activity of manufacturing of copper wires is justified.

4. Against the said order of the Commissioner of Income Tax (Appeals), the assessee preferred appeal. The Tribunal held, the carried forward loss of the eligible business was required to be set off first against the income of the subsequent years of eligible business while determining the profits eligible for deduction under Section 80IA of the Act and set off losses from other sources under the same head is not

permissible. However, it should not forgotten that section 80IA of the Act is a beneficial section permitting certain deduction in respect of certain income under Chapter VIA of the Act. A provision granting incentive for promotion of economic growth and development in taxing statues should be liberally construed and restriction placed on it by way of exception, should be construed in a reasonable and purposive manner so as to advance the objects of the provision. It is a generally accepted principle that deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80IA(5) cannot override the section 70(i) of the Act. The assessee incurs loss after claiming eligible depreciation. Hence section 80IA becomes insignificant since there is no profit from which this deduction can be claimed. Section 70(i) comes to the rescue of the assessee, whereby he is entitled to set off the losses from one source against income from another source under the same head of income. However, once set off is allowed under section 70(1) from the income from another source under the

same head, another deduction on the same count is not permissible i.e., during the subsequent years if the assessee makes surplus profits after claiming eligible allowances and he is entitled to claim deduction under section 80IA, the earlier benefit given under other sections of the Act should be taken into account before granting deduction under Section 80IA. Therefore, the order of the Commissioner of Income Tax (Appeals) came to be set aside and the assessee was given the benefit of setting off the profits of one business against the losses incurred in another business.

5. The Supreme Court had an occasion to consider the same question in the case of ***Synco Industries Ltd., vs. Assessing Officer (Income Tax) and Another,*** reported in **(2008) 299 ITR 444 (SC),** and at para 13 it has been held as under:

> 13. The contention that under section 80-I(6) the profits derived from one industrial undertaking cannot be set off against loss suffered from another and the profit is required to be computed as if profit making industrial undertaking was the only source of income, has no merit. Section 80-

I(1) lays down that where the gross total income of the assessee includes any profits derived from the priority undertaking/unit/division, then in computing the total income of the assessee, a deduction from such profits of an amount equal to 20 percent has to be made. Section 80-I(1) lays down the broad parameters indicating circumstances under which an assessee would be entitled to claim deduction. On the other hand, section 80-I(6) deals with determination of the quantum of deduction. Section 80-I(6) lays down the manner in which the quantum of deduction has to be worked out. After such computation of the quantum of deduction, one has to go back to section 80-I(1) which categorically states that where the gross total income includes any profits and gains derived from an industrial undertaking to which section 80-I applies then there shall be a deduction from such profits and gains of an amount equal to 20 percent. The words "includes any profits" used by the Legislature in section 80-I(1) are very important which indicate that the gross total income of an assessee shall include profits from a priority undertaking. 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 deductions 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 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.

6. In view of the law laid down by the Apex Court as aforesaid, there is no error in the order

passed by the Tribunal. As such, no case is for interference is made out. Accordingly, the substantial question of law as framed is answered against revenue and in favour of the assessee. Hence we pass the following:

ORDER

Appeal is dismissed. No costs.

Sd/-
JUDGE

Sd/-
JUDGE

Mrk/-