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Benefit under section 80-IB of the Income-tax Act, 1961 shall be available for each eligible unit, without setting off losses from other eligible units.

In brief

Recently, in the case of Shriram Properties Pvt. Ltd[1]. (the 'taxpayer' or the 'Company'), the Income-tax Appellate Tribunal (the 'Tribunal'), Chennai held that profits derived from an eligible industrial undertaking will qualify for deduction under section 80-IB of the Income-tax Act, 1961 (the 'Act') without setting off losses from other eligible industrial undertakings.

Facts

The taxpayer was in the business of real estate development and had an eligible industrial undertaking for the purpose of section 80-IB of the Act. In the concerned Assessment Year ('AY') 2008-09, the taxpayer had carried out four projects, namely 'Samruddhi', 'Shreyas', 'Spandhana' and 'Coimbatore'.

The gross taxable income of the taxpayer included profit from the projects 'Samruddhi' and 'Shreyas' of INR 2,23,22,237 and loss from the projects 'Spandhana' and 'Coimbatore' of INR 2,87,71,682. Accordingly in its return of income, the taxpayer had computed a loss of INR 64, 49,445 under the head 'profits and gains from business'. Apart from the above, the taxpayer had also

[1] Shriram Properties Pvt. Ltd. *v.* ACIT [TS-334-ITAT-2013(CHNY)]

shown interest income of INR 3,20,87,421, under the head 'income from other sources'.

The gross total income of the taxpayer was computed as follows:

Particulars	**Amount (INR)**
Profit from 'Samruddhi' and 'Spandhana'	2,23,22,237
Loss from 'Shreyas' and 'Coimbatore'	(2,87,71,682)
Income under 'Profits and Gains of Business' **(A)**	(64,49,445)
Income from Other Sources - Interest Income **(B)**	3,20,87,421
Gross Total Income (A+B)	**2,56,37,975**

Against the above gross total income, the taxpayer had claimed a deduction of INR 2,23,22,237, being profits derived from an eligible industrial undertaking, under section 80-IB of the Act.

The assessing officer denied benefit under section 80-IB of the Act on the basis that there was business loss to the taxpayer.

On appeal, the Commissioner of Income-tax (Appeals) ('CIT(A)') referred to the Tribunal decision in the case of Propene Products Ltd *v.* JCIT, Kanpur[2], which involved a claim for deduction under section 80-IA of the Act. In that case, the ITAT had held that the assessee was entitled to claim deduction under section 80-IA of the Act only if there was a gross total income in respect of eligible business to which section 80-IA of the Act applied. Further, such gross total income had to be computed in accordance with the provisions of the Act, i.e. *inter-alia* intra- head and/or inter-head losses have to be adjusted.

Applying the ratio of the above Tribunal decision, the CIT(A) held that the taxpayer was not entitled to deduction under section 80-IB of the Act as it had a negative income (i.e., loss) from eligible business.

Aggrieved by the order of the CIT(A), the taxpayer filed an appeal before the Tribunal.

Taxpayer's contention

The taxpayer contended that according to section 80-IB, profit of each eligible unit had to be determined separately and deduction allowed on such profits under section 80-IB of the Act.

The loss from the other projects (namely 'Spandhana' and 'Coimbatore') should not be adjusted against the profits of the eligible projects while determining deduction allowable under section 80-IB of the Act.

In support of the above contentions, the taxpayer placed reliance on the decision of the Hon'ble Madras High Court in the case of Viswas Promoters Pvt. Ltd *v.* ACIT[3] and on the decision of the Bangalore Bench of the Tribunal in the case of Jindal Aluminium Ltd *v.*ACIT[4].

Revenue's contention

The DR contended that the taxpayer had a loss of INR 64,49,445 from its eligible undertaking. Accordingly, deduction under section 80-IB should not be allowed, as the same would result in the deduction being allowed from interest income, which was not income from an eligible undertaking of the taxpayer.

[2] [2007] 12 SOT 158 [Lucknow]

[3] [2013] 29 taxmann.com 19 (Mad) / [2013] 255 CTR 149 (Mad)

[4] [2012] 26 taxmann.com 317 (Bang) / [2012] 19 ITR(T) 255 (Bang) / [2012] 54 SOT 283 (Bang)

Issues before the Tribunal

Is the taxpayer entitled for deduction under section 80-IB considering the fact that though there is positive gross total income, the amount computed under the head 'Profits and Gains from Business' by aggregating the profits and losses of all businesses was a loss?

Tribunal Ruling

The Tribunal analysed the provisions of section 80-IB(4) and observed that the sub-section (4) provides that the amount of deduction is available in respect of the profits and gains derived from such industrial undertaking. The term 'such industrial undertaking' is a clear pointer for granting deduction in respect of profit earned by each such eligible industrial undertaking separately.

It further observed that there is no warrant for reducing the loss of one eligible undertaking from the profit of the other eligible undertaking and such interpretation will lead to violence to the unambiguous language of the section, which otherwise talks of granting deduction in respect of the 'profits and gains derived from such industrial undertaking'.

The Tribunal further observed that a reading of section 80-IB(13) and 80-IA(5) provides that computation of income from eligible business is to be done as if the eligible business was the only source of income and any other income/loss from other business or other activities is to be ignored for determining the amount of deduction under section 80-IB.

Furthermore, the Tribunal noted that it is mandatory to work out the eligible amount of deduction under Chapter VIA of the Act individually and such amount should be restricted to the gross total income computed under the Act.

In support to the above observations, the Tribunal placed reliance on the Hon'ble Supreme Court ruling in the case of CIT *v.* Canara Workshop (P) Ltd[5] and the Andhra Pradesh High Court decision in the case of CIT *v.* Visakha Industries Ltd[6] which held that the deductions contemplated under section 80-IB are to be allowed with reference to the profits of the particular industrial undertaking and not with reference to the gross total income of the assessee, and therefore loss in any other unit cannot be set off against the profits of the eligible unit.

Hence the Tribunal held that the taxpayer is entitled to a deduction under section 80-IB of the Act.

Conclusion

The ruling is an important decision on the issue of whether or not losses from one eligible unit are to be set off from profits of another eligible unit for claiming deduction under chapter VIA. It is a welcome ruling which holds that loss of one eligible unit should not be set off from profits from another eligible unit.

In this regard, attention is invited to the CBDT Circular dated 16 July 2013, which in respect of deduction under section 10A/ 10B of the Act, expressed a view that such deduction shall be available only after setting off losses from other eligible and ineligible units and losses under other head of income. Though the circular is not binding on the taxpayer, it will certainly invite avoidable litigation.

[5] [1986] 27 Taxman 262 (SC) / [1986] 161 ITR 320 (SC) / [1986] 58 CTR 108 (SC)
[6] [2001] 118 Taxman 777 (AP) / [2001] 251 ITR 471 (AP) / [2001] 171 CTR 300 (AP)

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