

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

INCOME TAX APPEAL NO.184 OF 2007

The Commissioner of Income Tax,
Central-III

..Appellant.

Vs.

M/s. Eskay K'N'IT (India) Ltd.

..Respondent.

....

Ms. Anamika Malhotra for the Appellant.

Mr. P.J. Pardiwala, Senior Advocate with Mr. S.G. Lakhani for the
Respondent.

....

**CORAM : DR. D.Y.CHANDRACHUD &
J.P. DEVADHAR, JJ.**

25th March, 2010.**P.C.:**

1. The Appeal arises out of an order passed by the Income Tax Appellate Tribunal on 28th September, 2005 in relation to Assessment Year 1998-99. The question of law formulated by the Revenue in the appeal under Section 260-A of the Income Tax Act is as follows -

“(a) Whether on the facts and the circumstances of the case and in law the ITAT was justified in confirming the order of CIT(A) that the deduction u/s.80-IA had to be calculated at 100% of the eligible profits which was Rs.59.75 Crores in the Assessee’s case?”

2. During the course of the Assessment Year in question the assessee claimed the benefit of a deduction under Section 80-IA. The eligible unit of the assessee for the purposes of Section 80-IA is at Silvassa. The assessee returned a total income of Rs.55.66 Crores. The assessee had profits from the Silvassa unit of Rs.70.24 Crores but restricted its claim to Rs.55.66 Crores. In other words, the assessee restricted the claim under Section 80-IA to the extent of the gross total income as computed. The Assessing Officer made certain disallowances as a result of which the gross total income was computed at Rs.59.74 Crores. However, the deduction under Section 80-IA was restricted by the Assessing Officer to Rs.56.54 Crores which constituted the profits and gains of business. In appeal, the CIT(A) held that the assessee was entitled to a deduction under Section 80-IA to the extent of its gross total income as computed by the Assessing Officer after making additions. The Tribunal affirmed the view of the CIT(A) following its decision in the case of the assessee pertaining to Assessment Year 1996-97.

3. Section 80-IA as it stood at the material time provided that where the gross total income of the assessee included any profits and gains derived from the eligible business, to which the Section applies, he would in accordance with, but subject to the provisions of the Section, be allowed in computing the total income, a deduction from such profits and gains of an amount equal to the amount specified in sub section (5) and for the Assessment Years specified in sub section (6). By the provisions of Section 80-A(2) the aggregate amount of the deductions under Chapter VI-A shall not, in any case, exceed the gross total income. It was in view of the provisions of Section 80-A(2) that the assessee restricted its claim of deduction under Section 80-IA to the gross total income. There was no basis or justification for the Assessing Officer to confine the deduction only to the extent of the profits and gains of business. In this regard our attention has been drawn to a judgment of this Court dated 4th February, 2010 in **The Commissioner of Income Tax v. M/s. Tridoss Laboratories Ltd.** (ITA 2432 of 2009). Section 80-IA allows a deduction in

computing the total income of the assessee and the expression 'total income' is as defined in Section 2(45) viz. the total amount of income referred to in Section 5, computed in the manner laid down in the Act. Following the view which we have taken in **Tridoss Laboratories**, we answer the question of law which has been raised in the present appeal against the Revenue and in favour of the assessee. The Appeal is accordingly disposed of.

There shall be no order as to costs.

(Dr. D.Y.Chandrachud, J.)

(J.P. Devadhar, J.)