आयकर अपीलीय अधिकरण "जे" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री आय.पी. बंसल, न्यायिक सदस्य **एवं** श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI I. P. BANSAL, JM AND SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 1899/Mum/2011
(**निर्धारण वर्ष /** Assessment Year: 2007-08)

Deepi Arora 16, Golf Link, Arora House, Union Park, Khar (W), Mumbai-400 018	**बनाम**/ Vs.	ITO-19(1)(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAIPA 1690 A		
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Appellant by**	:	Shri Prakash Jotwani
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri Love Kumar

सुनवाई की तारीख / **Date of Hearing**	:	18.12.2014
घोषणा की तारीख / **Date of Pronouncement**	:	18.02.2015

आदेश / O R D E R

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-30, Mumbai ('CIT(A)' for short) dated 31.01.2011, dismissing the assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2007-08 vide order dated 29.12.2009.

2. The only issue arising in this appeal, raised per Grounds # 1 and 2, is the quantum of deduction u/s.80-IA in respect of the profit of the assessee's eligible undertaking/s. While the assessee claims it at Rs.37,80,034/-, the same stands restricted by the Revenue to Rs.2,83,720/-. It would be relevant, in order to highlight the controversy involved in the instant case as well as its elements, to reproduce the assessee's computation of income, forming part of her return of income for the relevant year (PB 1):

Table 1

(Amount in Rs.)

Statement of total income for the year ended 31.03.2007		
Income from business		
Profit from Tex International	3,903,043	
Profit from Royal Energy Company Unit-1	36,333	
Profit from Royal Energy Company Unit-2	3,151,954	
Profit from Royal Energy Company Unit-3	699,551	7,790,882
Income from property (Personal a/c.)		
(A) Rent from Tata A/G	2,334,420	
Less: 30% Repairs	700,326	
	1,634,094	
(B) Rent from Rap Media	600,000	
Less: 30% Repairs	180,000	2,054,094
	420,000	
Income from other sources (Personal a/c.)		
Interest received from Rap Media Ltd.	3,879,654	
Interest paid to the Bank on loan taken	(2,437,434)	1,442,220
Gross total income		11,287,196
Less set off against carry forward depreciation		7,507,162
Net taxable income		3,780,034
Less: Deduction under Chapter VI-A		

Section	Type	Amount	Max allowed	
80-IA	Tex International	3,903,043	3,780,034	
80-IA	Royal Unit 1	36,333	0	3,780,034
Net income				Nil

The Assessee's case

3. The assessee claims that no part of the brought forward unabsorbed depreciation of Rs.75.07 lacs pertains to the any of the two eligible undertakings, i.e., Tex International (TI) and Royal Energy Company Unit-1, the profit from which is admittedly at Rs.39.03 lacs and Rs. 0.36 lacs respectively. The same exceeding its' Gross Total Income (GTI) for the year, i.e., Rs.37.80 lacs, the deduction u/s.80-IA would stand restricted thereto. No other consideration would apply. Reliance stands placed on the decision in the case of *Hercules Hoists Ltd. vs. Asst. CIT* (in ITA Nos. 7943, 7944,7946 and 2255/Mum/2011 dated 13.02.2013/copy on record – since reported at [2013] 22 ITR (Trib) 527 (Mum)), upholding the 'stand alone principle', enshrined in section 80-IA(5), which would govern the quantum of deduction u/s.80-IA(1). Reliance stood also placed before us on the order by the Tribunal in the case of *Netscribes (India) Pvt. Ltd. v. ITO* (in ITA No.424/Mum/2011 dated 14.11.2014/copy on record), upholding the set off of unabsorbed deprecation against the income assessable under any head of income other than the head 'profits and gains of business or profession', i.e., assessable u/s.28.

On being inquired during hearing that there was nothing on record to suggest that the entire brought forward unabsorbed depreciation u/s. 32(2) pertains to the non-eligible undertakings, being the Royal Energy Units 2 & 3, the ld. Authorized Representative (AR), the assessee's counsel, would concede to it being so, being neither apparent from the assessee's return of income nor the orders of the Revenue authorities, though would state that this aspect of the matter can be verified by the Assessing Officer (A.O.) while giving effect to our appellate order. He would further concede to the net taxable income (NTI) in the assessee's computation of income (Table 1) being the GTI (defined u/s. 80B(5)) and, further, of the net income as per the said computation being the net taxable or the total income under the Act. On being further enquired about any decision by any hon'ble high court or supreme court that would cover the assessee's case, he answered that the afore-cited decisions are the only two decisions to his notice, and on which therefore he places reliance.

The Revenue's case

4. In the view of the Revenue, the income of the eligible undertakings, being the TI unit and Royal Energy Unit No.1, as included in the GTI, cannot exceed Rs.2,83,720/-, i.e., the amount assessable u/s.28 (Rs.77,90,882 - Rs.75,07,162). Further, this would be irrespective of whether the brought forward unabsorbed depreciation of Rs. 75.07 lacs is in respect of the eligible or the non-eligible undertakings. The assessee, by claiming the deduction at Rs.37.80 lacs, is in fact claiming deduction u/s.80-IA on the 'income from house property' (Rs. 20.54 lacs) and 'income from other sources' (Rs. 14.42 lacs), and which surely cannot be. This sums up the Revenue's case.

Discussion and findings

5. We have heard the parties, and perused the material on record.

5.1 We shall begin by delineating the precise issue at hand. The Revenue does not dispute the 'stand alone' principle, sought to be canvassed before us by the ld. AR with reference to the decision by the tribunal in the case of *Hercules Hoists Ltd.* (supra). The said principle, legislatively mandated per section 80-IA(5), and further discussed at length by the tribunal in the said case, is not in dispute. The second principle, i.e., the set off of the brought forward unabsorbed depreciation u/s. 32(2), in-as-much as it forms part of the current years' depreciation, against the income assessable under other heads of income, i.e., in the absence of income u/s.28, canvassed with reference to the decision by the tribunal in *Netscribes (India) Pvt. Ltd.* (supra), is again well settled (refer: *CIT vs. Virmani Industries Pvt. Ltd.* [1995] 216 ITR 607 (SC); *CIT vs. Jaipuria China Clay Mines (P.) Ltd.* [1966] 59 ITR 555 (SC); and *Rajapalayam Mills Ltd. vs. CIT* [1978] 115 ITR 777 (SC)). In fact, the tribunal in the latter case itself follows the decision in the case of *CIT vs. SPEL Semi Conductor Ltd.* [2013] 212 Taxman 506 (Mad). Again, neither do we observe any dispute in principle nor has the Revenue raised any before us. The GTI of Rs.37.80 lacs stands worked out only after reducing the brought forward unabsorbed deprecation. *The sole and the only issue, therefore, as we discern, is as to how the extent of any income included in the GTI is to be computed or arrived at*? Simply put, how is

the GTI to be broken into its' constituents. The reason is simple. The deduction u/s.80-IA, is only on the profits of the eligible undertaking as included in the GTI. Reference for the purpose is made to section 80-IA(1), which reads as under:

> '**Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.**
> **80-IA.** (1) Where the *gross total income* of an assessee *includes* any profits and gains *derived by an undertaking* or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), 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 of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.' [emphasis, ours]

Further, as explained in *Synco Industries Ltd. vs. Assessing Officer* [2002] 254 ITR 608 (Bom), followed in and applied by the tribunal in *Hercules Hoists Ltd.* (supra), section 80-IA(3) & (4) (i.e., the corresponding provisions of s. 80I) only describes the qualifying conditions to be fulfilled for the applicability of the provision and, thus, deduction u/s. 80-IA(1), under which only the deduction is to be allowed. This leads us to GTI, defined in s. 80-B(5), reading as under:

> '***Chapter VIA***
>
> **DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME**
>
> **A- General**
>
> **Definitions.**
> **80B.** In this Chapter—
> (*1*) ……
> (*5*) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter;'

5.2 To compute GTI, 'income' is therefore to be worked out in accordance with the provisions of the Act. Firstly, income from any source is to be computed following and applying the computational provisions of the relevant head of income. It is then

aggregated for the different sources falling under the relevant head of income, which are again aggregated, i.e., across different heads of income. The aggregation is to be in terms of Chapter VI. This sequence is integral and has to be observed. The same, in the facts of the present case, adopting the figures specified in the computation of the income, which we find to be in agreement with that assessed, is as under: (Amount in Rs.)

Table 2

Statement of total income for the year ended 31.03.2007			**Remarks**
Income from house property (A)			
(A) Rent from Tata A/G	23,34,420		
Less: 30% Repairs	7,00,326		
	16,34,094		
(B) Rent from Rap Media	6,00,000		
Less: 30% Repairs	1,80,000	20,54,094	
	4,20,000		
Profits or gains of business (B)			
Profit from Tex International (Unit A) (*)	39,03,043		
Profit from Royal Energy Company Unit-1 (Unit B-1) (*)	36,333		
Profit from Royal Energy Company Unit-2 (Unit B-2)	31,51,954		
Profit from Royal Energy Company Unit-3 (Unit B-3)	6,99,551		
Less: set off against carry forward depreciation	7,507,162	2,83,720	
Income from other sources (C)			
Interest received from Rap Media Ltd.	38,79,654		
Interest paid to the Bank on loan taken	(24,37,434)	14,42,220	
Gross Total Income		37,80,034	
Net taxable income		3,780,034	

The assessee's manner of computing GTI (Table 1), though mathematically leading to the same result, i.e., in terms of net taxable income, is incorrect and not in conformity with either the terms of the provisions or the scheme of the Act. There is, in fact, no scope for any vacillation; the same being basic to the scheme of the Act, with the apex court in *Synco Industries Ltd.* (reported at [2008] 299 ITR 444 (SC)), in fact affirming the decision by the hon'ble jurisdictional high court explaining the manner in

which the GTI is to be computed, so that independent of the provision of s. 80-I(6) (or s. 80-IA(5)), all other applicable provisions, including ss. 32(2) & s. 72, would apply in computing such income. Rather, we observe a complete unanimity of judicial view, and toward which we may refer to some of the decisions by the apex court referred to in *Hercules Hoists Ltd.* (supra), viz. *Synco Industries Ltd.* (supra); *CIT vs. Kotagiri Industrial Co-operative Tea Factory Ltd.* [1997] 224 ITR 604 (SC); *H.H. Sir Rama Varma vs. CIT* [1994] 205 ITR 433 (SC); *Distributors Baroda (P.) Ltd. vs. Union of India* [1985] 155 ITR 120 (SC). Also, without doubt, the income from Unit A, representing a separate source of income, is Rs.39.03 lacs (assuming no part of unabsorbed depreciation as relating to that Unit). *The question is how much of this income is to be considered as included in GTI of Rs.37.80 lacs*. While the assessee claims the entire GTI (Rs.37.80 lacs) to be compromised of the profit of Unit-A, an eligible undertaking u/s.80-IA and, thus, deductible u/s. 80-IA(1), the Revenue claims it to be at Rs.2.84 lacs only, limiting the deduction there-under to that amount. The assessee's contention in this regard only needs to be stated to be rejected. The GTI has to be computed following the provisions (ss. 66 to 80) of Chapter VI, which provides for the rules of the aggregation. Income falling under each head of income, i.e., Chapter IV-A to IV-F, would thus stand to be determined prior to being aggregated u/c. VI. Section 70 provides for an adjustment of income from one source of income against another falling under the same head of income. Section 71 provides for set off a loss under one head against income from another, i.e., for the same year. Sections 71B to 80 relate to the carry forward and set off of loss under different heads of income. In-as-much as therefore the assessee's income under each of the three heads of income where-under her income for the year is assessable, is positive, section 71 to 80 have no application in the instant case, as do sections 67 to 69D, while s.66 only speaks of the elements of total income. The constituents of GTI can be determined, working backwards, following the same course as adopted in computing the same. The business income u/s.28 falling under Chapter IV-E comprised in GTI is Rs.2,83,720/-. The entire of it can be ascribed to Unit-A, or save Rs.36,333/- to Unit B-1 (the second eligible unit), which though would be of no

consequence, i.e., assuming, as contended by the assessee, that no part of the brought forward unabsorbed depreciation of Rs. 75.07 lacs relates to these units. In-as-much as the income under the said head, included in GTI, is Rs.2.84 lacs, the income of the assessee's eligible undertakings/business cannot exceed the said sum. The balance GTI consists of 'income from house property' and 'income from other sources', at Rs.20.54 lacs and Rs.14.42 lacs respectively. We are unable to see as to how could there at all be any different view in the matter. Even though otherwise apparent from the various computing and aggregating provisions of the Act, section 80AB specifically provides for the same, causing to remove any ambiguity or doubt in the matter. It unequivocally provides that only the income of a particular nature as specified in a particular deduction provision, computed in accordance with the provisions of the Act, i.e., prior to allowing any deduction under Chapter VI-A, shall alone be deemed to be the income of that nature derived or received by the assessee which is included in the GTI. In fact, the apex court has time and again, as in *IPCA Laboratory Ltd. v. CIT* [2004] 266 ITR 521 (SC), emphasized the primacy of sections 80A, 80AB and 80B(5) in computing the deductions under Chapter VI-A of the Act.

5.3 Going by the assessee's claim, the GTI would consist of the following:

Table 3

Head A: Income from house property	Rs. Nil
Head B: Business income (Unit A)	Rs.37,80,034/-
Head C: Income from other sources	Rs. Nil
	Rs.37,80,034/-

What is the basis there-for? If not ridiculous or a travesty of the clear provisions of law, what is it? True, if the unabsorbed depreciation exceeds the business income of Rs.77.91 lacs, the same would stand to be set off against the income assessable u/s.22 and/or section 56 in-as-much as the same, per the deeming of section 32(2), forms part of the current years' depreciation, and is to be given effect to, save for a precedence to the

provision of sections 72(2) & 73(3), which are inapplicable in the present case in-as-much as there is no brought forward business loss. There is no occasion or need for the set off of unabsorbed deprecation against income assessable under other heads of income, i.e., under Chapters IV-C and IV-F, as the assessee claims or does. How, for instance, s. 70 come into play without first determining the income assessable u/s. 28, and which would only be after giving effect to the provision of s. 32. The charge of depreciation u/s.32, it must be appreciated, is one, single charge, i.e., irrespective of the different sources of income where-under it may arise and, accordingly, would, in terms of section 32(1) r/w s. 32(2), allowable under the income assessable u/s.28, which per section 29 is to be computed in accordance with the provisions contained in sections 30 to 43D.

The other manner in which the assessee's claim can be interpreted or understood is to retain the figure of income for each source of income falling under any head of income at the same figure at which it stands computed following the computation provision of for that head of income, viz. Chapters IV-A to IV-F. The same would be graphically represented as:

Table 4

Income from house property (Head A)		
Property 1	Rs.16,34,094/-	
Property 2	Rs.4,20,000/-	Rs.20,54,094/-
Profits and gains of business (Head B (*)		
Unit A	Rs.39,03,043/-	
Unit B-1	Rs.36,333/-	
Unit B-2 (#)	(Rs.28,81,548/-)	
Unit B-3 (#)	(Rs.7,74,110/-)	Rs.2,83,720/-
Income from other sources (Head C)		
Source 1	Rs.14,42,220/-	Rs.14,42,220/-
	GTI	Rs.37,80,034/-

(*) As per the break-up of the brought forward depreciation u/s.32(2) of Rs.75,07,162/-, supplied by the assessee, subject to the A.O.'s verification.

(#) figures in bracket represents negative figures.

In this manner, it would be possible to contend that the income of Unit-A, as included in the GTI, is Rs.39.03 lacs, which being higher than the GTI (Rs.37.80 lacs), the deduction *qua* the profit of that unit be limited to the latter sum. The same has no basis in law. The provision of section 32(2) itself does not admit of such a course in-as-much as the brought forward depreciation claim merges with the current year's depreciation, so that it is a single charge, to be allowed to the extent of the available profit. The profit of Units B-2 and B-3, therefore, cannot be, on account of unabsorbed depreciation, negative, but at best at nil. The said depreciation, in view of the available income from the other units (being Units A & B1), and in-as-much as it forms part of the current years' depreciation allowance, has to be set off there-against. The representation at Table 2 is the only correct representation of the income arising to the assessee under different heads of income, stated source-wise. The only difference, though to no effect, would be that adjusting depreciation amongst the income from different units, would yield the income from Units B-1, B-2 and B-3, at nil, so that the entire income assessable u/s.28, as afore-stated, arises from Unit A. The GTI u/s.80-B(5) is to be computed only as per the provisions of the Act, so that effect has to be given to all the provisions, excluding Chapter VI-A, i.e., up to Chapter VI. Two, the said representation (Table 4) is in contradiction of section 80-AB. Deduction can only be out of a positive sum. *A positive GTI can, therefore, only be comprised of positive elements, signifying again to the validity of Table 2*.

5.4 Finally, and if only for the sake of completeness of our order, besides being of no less significance, is that the apart from the 'stand alone' principle, the second principle on which the decision in the case of *Hercules Hoists Ltd.* (supra) – whereat the tribunal was called upon to interpret the provision of section 80-IA(5), rested is that the 'tax shelter' is to extend only to the eligible profit. The manner in which the assessee draws the break-up of its income, however, apart from being in clear contravention of the provisions and scheme of the Act, also violates this principle inasmuch as deduction u/s. 80-IA(1) stands claimed against income assessable u/ss. 22 and 56.

Decision

6. For the various reasons discussed hereinabove, we find the assessee's case as wholly without merit; rather, against the well settled law on the computation of income under the Act, for which reference may be made to the various decisions by the apex court referred to in this order. The decision in the case of *Hercules Hoists Ltd.* (supra), extensively relied upon by the assessee, holistically read, is conclusively against the assessee's case, for which reference may be made to paras 5.3 & 5.4 of the said order. We decide accordingly.

7. In the result, the assessee's appeal is dismissed.

परिणामतः निर्धारिती की अपील खारिज की जाती है ।

Order pronounced in the open court on February 18, 2015

Sd/-	Sd/-
(I. P. Bansal)	(Sanjay Arora)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 18.02.2015

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**