

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

INCOME TAX APPEAL NO.2432 OF 2009

The Commissioner of Income Tax, Central-I. ...Appellant.
V/s.
M/s.Tridos Laboratories Ltd. ...Respondent.

.....
Ms.Padma Divakar for the Appellant.
Mr.Atul K.Jasani for the Respondent.

.....
CORAM : DR.D.Y.CHANDRACHUD &
J.P.DEVADHAR, JJ.
26th March, 2010.

P.C. :

Called for Speaking to the Minutes of the order dated 4th February 2010. In paragraph 6 of the order, citation of the judgment of the Supreme Court in **Synco Industries Ltd. vs. Assessing Officer of Income Tax** has been wrongly referred to as (2002) 254 ITR 608 (Bom). The correct citation is (2008) 299 ITR 445 (SC). The order passed by this Court on 4th February 2010 shall stand corrected accordingly. The Registry is directed to carry out necessary correction.

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

(J.P.Devadhar, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

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The Commissioner of Income Tax

..Appellant.

V/s.

M/s. Tridoss Laboratories Ltd.

..Respondent.

Smt. Padma Divakar for appellant.

Mr. A.K. Jasani for respondent.

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

DATED : 4TH FEBRUARY, 2010

P.C. :-

1. The following questions of law have been raised by the revenue in an appeal under section 260A of the Income Tax Act, 1961 :-

- a) Whether on the facts and in the circumstances of the case, the ITAT was justified in law in holding that the profit of the Daman Unit which is eligible unit, has been computed at Rs.98.43 lac and if the assessee had income equivalent to or more than Rs.98.43 lac deduction would be permissible to the assessee u/s.80IA to the extent of entire profit ?
- b) Whether on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the gross total income of the assessee after setting off the loss from all sources of income is Rs. 14.57 lac, therefore, the assessee is entitled to deduction u/s.80IA to the extent of gross total income which is far less than the income of eligible unit ?

2. The appeal arises out of the order of the ITAT dated 30th October, 2008 pertaining to assessment year 1996-97.

3. In the present case, the assessing officer has computed the gross total income of the assessee under section 80IA. The profit of the unit at Daman was computed at Rs.98.43 lacs. The Assessing Officer computed

the gross total income of the assessee at Rs.14,57,200/-. The Tribunal directed the Assessing Officer to restrict the deduction to the extent of the gross total income, since the gross total income of the assessee is less than the eligible profit of the Daman unit.

4. The contention of counsel appearing on behalf of the revenue is that in computing the total income of the assessee, only the income which has been realised from the eligible business should be taken into consideration. In the present case, it is urged that as a major portion of the income of the assessee comprises income from other sources and this income is not derived from the eligible business, the assessee is not entitled to a deduction under section 80IA to the extent of the taxable income of Rs. 14.57 lacs.

5. Section 80IA provides that 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) ('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. The section contemplates a deduction of an amount representing hundred per cent of the profits and gains derived from the eligible business in computing the total income of the assessee. The expression 'gross total income' is defined by section 80B(5), for the purposes of Chapter VIA., to mean the total income computed in accordance with the provisions of the Act

before making any deduction under the Chapter. The expression total income has been defined in section 2(45) to mean that total amount of income referred to in Section (5), computed in the manner laid down in the Act. Section 5(1) enunciates that subject to the provisions of the Act, the total income of any previous year of a person who is a resident, includes all income from whatever source derived. In computing the total income of the assessee, there is no basis in the provisions of section 80IA to restrict the expression to total income derived from an eligible business. Having regard to the provisions noted above, the submission which has been urged on behalf of the revenue cannot be accepted.

6. In **Synco Industries Ltd. V/s. Assessing Officer of Income Tax & Ors. [(2002) 254 ITR 608 (Bom)]**, the Supreme Court held that gross total income must be determined by setting off against the income, the business loss of earlier years before allowing a deduction under Chapter VIA and if the resultant income is Nil, then the assessee cannot claim a deduction under Chapter VIA. In the present case, the Tribunal has noted that the gross total income of the assessee, after setting off the losses from all other sources of income is Rs.14,57,200/-, while the profit of the eligible unit was computed at Rs.98.43 lacs. The Tribunal has restricted the deduction to the extent of the gross total income, namely, Rs.14,57,200/-. The decision of the Tribunal is in accordance with the provisions of the Act. In the circumstances, the appeal does not raise any substantial question of law and is accordingly, dismissed.

(J.P.DEVADHAR, J.)

(DR. D.Y.CHANDRACHUD, J.)