M/S SYNCO INDUSTRIES LTD. A

v.

ASSESSING OFFICER, INCOME TAX, MUMBAI & ANR.

(Civil Appeal No. 4190-4191 of 2002)

MARCH 13, 2008 B

[ASHOK BHAN AND J.M. PANCHAL, JJ.]

Income tax Act, 1961 – Chapter VI-A, ss. 80 HH, 80 I 80 B (5), 71, 72 and 32 (2) – Assessee-company running two units – Both the units earned profit in the relevant assessment years C *– However, one of the units had suffered loss in previous years – Demand of deduction u/ss. 8 HH and 80 I by treating both the units separately – Denial of by authorities/courts below – In appeal, held: Assessee was not entitled to claim the deduction – The gross total income of the assessee has first* D *got to be determined after adjusting losses, and then if the gross total income is 'Nil', assessee not entitled to deduction.*

Practice and Procedure – Interpretation of statutory provisions – Held: Where the predominant majority of the High Courts have taken certain view on interpretation of certain E *provisions, Supreme Court would lean in favour of that view.*

Appellant-assessee was a company, engaged in the business of oil and chemicals. It had two units for its respective business. It earned profit in the assessment years 1990-91 and 1991-92 in both the units. But it had F **suffered losses in its oil division in earlier years. Assessee claimed deductions under s. 80 HH and 80 I of Income tax Act, claiming that each unit should be treated separately and the loss suffered in the oil division should be treated separately and the loss suffered in the oil division in the** G **earlier years should not be adjustable against the profits of the chemical division while considering the question of deduction under the provisions. Assessing Officer as well as appellate authorities/courts, including High Court**

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held that the assessee was not entitled to deductions under Chapter VI-A, opining that the gross total income must be determined by setting off against the income, the business losses of the earlier years, before allowing deduction under Chapter VI-A and if the resultant income is 'Nil', the assessee cannot claim deduction under Chapter VI-A. Hence the present appeal. Other appeals also raise common question.

Dismissing the appeals, the Court

HELD: 1.1 The gross total income of the assessee has first got to be determined after adjusting losses etc., and if the gross total income of the assessee is 'Nil' the assessee would not be entitled to deductions under Chapter VI-A of Income Tax Act. The High Court was justified in holding that gross total income must be determined, by setting off against the income, the business losses of earlier years, before allowing deduction under Chapter VI-A and if the resultant income is 'Nil', then the asessee cannot claim deduction under Chapter VI-A. [Paras 13 and 11] [935-A, 933-B, C]

1.2 If the gross total come of the assessee is determined as 'Nil' then there is no question of any deduction being allowed under Chapter VI-A in computing the total income. The Assessing Officer has to take into account the provisions of Section 71 providing for set off of loss from one head against income from another and Section 72 providing for carry forward and set off of business losses. Section 32(2) makes provisions for carry forward and set off of the unabsorbed depreciation of a particular year. While computing the total income, the losses carried forward and depreciation have to be adjusted and thereafter the Assessing Officer has to work out the gross total income of the assessee. Sub-Section (2) of Section 80A specifically enacts that the aggregate of deductions under Chapter VI-A should not exceed the

gross total income of the assessee. If the gross total income is found to be a net loss on account of the adjustment of losses of the earlier years or 'Nil', no deduction under this Chapter can be allowed. [Para 8] [927-B, C, D, E]

1.3 Clause (5) of Section 80B defines the expression 'gross total income' to mean the total income computed in accordance with the provisions of the Act before making any deductions under Chapter VI-A of the Act. It follows, therefore, that deductions under Chapter VI-A can be given only if the gross total income is positive and not negative. The effect of Clause (5) of Section 80B of the Act is that gross total income will be arrived at after making the computation by (i) making deductions under the appropriate computation provisions; (ii) including the incomes, if any, under Sections 60 to 64 in the total income of the individual; (iii) adjusting intra-head and/or inter-head losses; and (iv) setting off brought forward unabsorbed losses and unabsorbed depreciation, etc. [Paras 7 and 8] [927-A, B, F, G, H; 928-A]

1.4 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 merits. If such interpretation is accepted it would almost render the provisions of Section 80A(2) of the Act nugatory. 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

A **Section 80-I(6) cannot restrict the operation of Sections 80A(2) and 80B(5) which operate in different spheres. 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**
B **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**
C **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. [Para 12] [933-D, 934-C-H]**

D **1.5 Predominant majority of the High Courts have taken the view that while working out gross total income of the assessee the losses suffered have to be adjusted and if the gross total income of the assessee is 'Nil' the assessee will not be entitled to deduction under Chapter**
E **VI-A of the Act. It is well settled that where the predominant majority of the High Courts have taken certain view on the interpretation of certain provisions, the Supreme Court would lean in favour of the predominant view. [Para 11] [933-A, B]**

F *C.I.T. v. Kotagiri Industrial Co-op. Tea Factory* **1997 (224) I.T.R. 604 (S.C.) – relied on.**

Commissioner of Income-Tax, Tamil Nadu-III, Madras v. Madras Motors (P) Ltd. **1984 (150 ITR) 150;** *Commissioner of Income-Tax v. Midda Ram* **1984 Vol.19 Taxman Pg. 23;**
G *Commissioner of Income-Tax, West Bengal-II, Calcutta v. Bengal Assam Steamship Company Ltd.* **1985 (155) ITR 26;** *G.Atherton and Co. v. Commissioner of Income-Tax* **1987 (165) ITR 527;** *Commissioner of Income-Tax, Bombay City-III, Bombay v. Mercantile Bank Ltd.* **1988 (169) ITR 44;**
H *Commissioner of Income-Tax v. Rambal (P.) Ltd.* **1988 (169)**

ITR 50; *Orient Paper Mills Ltd. v. Commissioner of Income Tax* **1986 (158) I.T.R. 695;** *Commissioner of Income Tax v. Sundaravel Match Industries (P) Ltd.* **2000 (245) ITR 605;** *Commissioner of Income-Tax v. Nima Specific Family Trust* **2001 (248) ITR 29;** *Commissioner of Income-Tax v. Atam Ballabh Finance Pvt. Ltd.* **2002 (258) ITR 485;** *IPCA Laboratory Ltd. v. Dy. Commissioner of Income-Tax, Mumbai* **2004 (12) SCC 742;** *Commissioner of Income-Tax v. Lucky Laboratories Ltd.* **2006 (284) ITR 435 (ALL);** *Commissioner of Income Tax and Anr. v. R.P.G. Telecoms Ltd.* **2007 (292) ITR 355 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4190-4191 of 2002.

From the final Judgment and Order dated 23.7.2001 of the High Court of Judicature at Bombay in I.T.A. No. 592/2000.

WITH

Civil Appeal No.4192-4193 of 2002.

Manish Singhvi (for Ashok K. Mahajan) for the Appellant.

Mohan Parasaran, A.S.G., K. Radhakrishnan, Asha G. Nair and K.K. Senthilvelan (for B.V. Balaram Das) for the Respondents.

The Judgment of the Court was delivered by

J.M. PANCHAL, J. 1. These appeals are directed against Judgments dated July 23, 2001 rendered by the Division Bench of the High Court of Judicature at Bombay in Income Tax Appeal No. 591/2001 and 592/2002 whereby the opinion expressed by the Assessing Officer and confirmed by Commissioner of Income Tax (Appeals) Mumbai as well as the Income Tax Appellate Tribunal Mumbai Bench 'B', Mumbai that the gross total income must be determined by setting off against the income, the business losses of the earlier years, before allowing deduction under Chapter VI-A and if the resultant income is "Nil",

A then the assessee cannot claim deduction under Chapter VI-A of the Income Tax Act, 1948 ('The Act' for short), is upheld.

2. Since all the appeals raise common questions of law and fact, this Court proposes to dispose them of by this common Judgment.

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3. The facts emerging from the record of the case are as under:-

The appellant-assessee is a Company incorporated under the provisions of the Indian Companies Act, 1956. It is engaged C in the business of oil and chemicals. It has a unit for oil division at Sirohi District, Rajasthan. It has also a chemical division at Jodhpur. The appellant had earned profit in the assessment year 1990-91 and 1991-92 in both the units. However, the appellant had suffered losses in the oil division in earlier years. The D appellant claimed deductions under Section 80HH and 80-I of the Act, claiming that each unit should be treated separately and the loss suffered by the oil division in earlier years is not adjustable against the profits of the chemical division while considering the question whether deductions under Sections E 80HH and 80-I were allowable. The Assessing Officer noticed that the gross total income of the appellant before deductions under Chapter VI-A was 'Nil'. Therefore, he concluded that the assessee was not entitled to the benefit of deductions under Chapter VI-A. Feeling aggrieved the appellant carried the F matters in appeal before the Commissioner of Income Tax (Appeals) V, Mumbai who confirmed the view of the Assessing Officer by dismissing the same. Therefore, the appellant preferred two appeals before Income Tax Appellate Tribunal Mumbai Bench 'B', Mumbai. The Tribunal held that gross total income of the appellant had got to be computed in accordance G with the Act before allowing deductions under any Section falling under Chapter VI-A and as the gross total income of the appellant after setting off the business losses of the earlier years, was 'Nil', the appellant was not entitled to any deductions either under Section 80HH or 80-I of the Act. In that view of the matter the

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Tribunal dismissed the appeals filed by the appellant. Thereupon, the appellant invoked jurisdiction of the High Court under Section 260-A of the Act by filing these appeals. The High Court has dismissed the same by Judgment dated July 23, 2001 giving rise to the instant appeals.

4. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the appeals.

5. The plea that the appellant had earned profits from the two divisions during the assessment years in question and therefore losses suffered by the oil division in earlier years could not have been adjusted against the profits of the two divisions while considering the question of grant of deduction under Sections 80-I of the Act, cannot be accepted.

6. In order to resolve the controversy raised by the appellant, it would be advantageous to refer to the relevant provisions of the Act:-

> **"Section 80A.** (1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter; the deductions specified in Sections 80C to [80U].
>
> (2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.
>
> [(3) Where, in computing total income of an association of persons or a body of individuals, any deduction is admissible under Section 80G or Section 80GGA [or Section 80GGC] or Section 80HH or Section 80HHA or Section 80HHB or Section 80HHC or Section 80HHD or Section 80-I or Section 80-IA [or Section 80-IB] [*or Section 80-IC*] [*or Section 80-ID or Section 80-IE*] or Section 80J or Section 80JJ, no deduction under the same section shall be made in computing the total income of a member

A or the association of persons or body of individuals in relation to the share of such member in the income of the association of persons or body of individuals.]

Section 80B. (5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter.

Section 80-I (6) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an industrial undertaking or a ship or the business of a hotel [or the business of repairs to ocean-going vessels or other powered craft] to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under sub-section (1) for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such industrial undertaking or ship or the business of the hotel [or the business of repairs to ocean-going vessels or other powered craft] were the only source of income of the assessee during the previous years relevant to the initial assessment year and to every subsequent assessment year up to an including the assessment year for which the determination is to be made."

7. Section 80A, as originally inserted by the Finance Act, 1965 with effect from 1.4.1969 dealt with a different topic altogether *viz.*, deductions in respect of life insurance premia, annuities, contributions and provident fund etc. The present Section came on the statute book by way of substitution of Chapter VI A by the Finance (No. 2) Act, 1967, w.e.f. 1.4.1968. This Section has witnessed several consequential amendments from time to time by way of insertions, substitutions or omissions. Sub-Section (1) of Sections 80A lays down that while computing the total income of an assessee, deductions specified in Sections 80C to 80U shall be allowed from his gross total income.

H This Section has introduced a new concept of 'gross total

income' as distinguished from the 'total income' *i.e.,* the net or taxable income. Clause (5) of Section 80B defines the expression 'gross total income' to mean the total income computed in accordance with the provisions of the Act before making any deductions under Chapter VI-A of the Act. It follows, therefore, that deductions under Chapter VI-A can be given only if the gross total income is positive and not negative.

8. If the gross total income of the assessee is determined as 'Nil' then there is no question of any deduction being allowed under Chapter VI-A in computing the total income. The Assessing Officer has to take into account the provisions of Section 71 providing for set off of loss from one head against income from another and Section 72 providing for carry forward and set off of business losses. Section 32(2) makes provisions for carry forward and set off of the unabsorbed depreciation of a particular year. The effect of the above mentioned provisions is that while computing the total income, the losses carried forward and depreciation have to be adjusted and thereafter the Assessing Officer has to work out the gross total income of the assessee. Sub-Section (2) of Section 80A specifically enacts that the aggregate of deductions under Chapter VI-A should not exceed the gross total income of the assessee. If the gross total income is found to be a net loss on account of the adjustment of losses of the earlier years or 'Nil', no deduction under this Chapter can be allowed. As noticed earlier Clause (5) of Section 80B defines the expression 'gross total income' to mean the total income computed in accordance with the provisions of the Act without making any deductions under Chapter VI-A. The effect of Clause (5) of Section 80B of the Act is that gross total income will be arrived at after making the computation as follows:-

(i) making deductions under the appropriate computation provisions;

(ii) including the incomes, if any, under Sections 60 to 64 in the total income of the individual;

A (iii) adjusting intra-head and/or inter-head losses; and

(iv) setting off brought forward unabsorbed losses and unabsorbed depreciation, etc.

9. In **C.I.T. v. Kotagiri Industrial Co-op. Tea Factory (1997) 224 I.T.R. 604 (S.C.)** the respondent was a co-operative B society. It carried on business in manufacture and sale of tea from bought tea leaves and the purchase and supply of agricultural manure to members. It was also receiving income from dividend from investments with other co-operative C societies. In the previous year relevant to the assessment year 1972-73, the assessee had earned a total income of Rs. 85,150/-. The losses of the earlier year which had been carried forward to the said assessment year were Rs. 1,82,744/-. The assessee claimed a deduction of Rs. 53, 386/- under Section 80-P(2) from the income of Rs. 85, 150/-. The I.T.O. first set off D the losses of previous years that had been carried forward against the income and since the losses were in excess of the income, he held that no deduction was permissible u/s. 80-P. The said view, was not accepted by the Appellate Authority. The decision of the Appellate Authority was affirmed by the Income E Tax Appellate Tribunal and High Court. While reversing the decision of the High Court, the Supreme Court has held that in view of the express provision defining the expression "gross total income" in Clause (5) of Section 80B, for the purpose of Chapter VI-A, the gross total income must be determined by F setting off, against the income, the business losses of the earlier years as required by Section 72, before allowing deduction u/s. 80-P. The contention raised on behalf of the appellant that the deduction must first be allowed under Section 80-I and then only the gross total income as computed under the provisions of the G Act before allowing deductions under Chapter VI-A should be worked out, cannot be accepted. As noticed earlier Section 80A provides that the deductions shall be allowed out of the gross total income, whereas Sub-Section (2) restricts the deductions of the gross total income. It is, therefore, clear that the gross H total income of the assessee has got to be computed in

accordance with the Act after adjusting losses etc. and if the gross total income so determined is positive then the question of allowing deductions under Chapter VI-A arises, but not otherwise. A

10. This Court further notices that predominant majority of the High Courts have taken the view that deductions under Chapter VI-A of the Act would be available only if the computation of gross total income as per the provisions of the Act after setting off carried forward loss and unabsorbed depreciation of earlier years is not 'Nil'. In **Commissioner of Income-Tax, Tamil Nadu-III, Madras v. Madras Motors (P) Ltd. (1984) 150 ITR 150,** after noticing the definition of 'gross total income' the Madras High Court has held that the intention of the Parliament, that the deduction under Chapter VI-A is contemplated only after the total income is computed after setting off of the unabsorbed depreciation as per Section 72 is evident and therefore Section 72 has to be applied before the total income of an assessee is determined *i.e.,* before the deductions under Chapter VI-A are allowed. In **Commissioner of Income-Tax v. Midda Ram (1984) Vol.19 Taxman Pg. 23** again the Madras High Court has taken the view that having regard to the provisions of Section 80A and 80B, before making any deduction under Chapter VI-A the total income of the assessee is to be computed in accordance with the provisions of the Act and such total income will have to be taken as gross total income from which the deduction under Chapter VI-A has to be allowed. In the said case the gross total income so computed after set off of unabsorbed depreciation was 'Nil'. It was, therefore, held that there was no positive figure from which the deduction under Chapter VI-A could be allowed. In **Commissioner of Income-Tax, West Bengal-II, Calcutta v. Bengal Assam Steamship Company Ltd. (1985) 155 ITR 26** the Calcutta High Court has held that deduction under Section 80L and 80M of the Act are to be allowed after setting off of losses under Section 71 and 72 because Section 80A(2) limits the aggregate of the deduction allowable to the amount of B C D E F G H

A the gross total income of the assessee which means that the deduction allowable cannot result in a negative figure of loss. What is held in the said decision is that where the gross total income is found to be a net loss there is no question of any further deductions under Section 80L and 80M. In **G.Atherton**
B **& Co. v. Commissioner of Income-Tax (1987) 165 ITR 527** it is held that the gross total income and also the dividend income of the assessee had to be computed in accordance with the provisions of the Act without making any deduction under Section 80M contained in Chapter VI-A of the Act and as the
C gross total income was computed to be a loss, no relief was available to the assessee under Section 80M. In **Commissioner of Income-Tax, Bombay City-III, Bombay v. Mercantile Bank Ltd. (1988) 169 ITR 44** after examining the scheme envisaged by Sub-Section 1 of Section 80A, Sub-Section 2 of Section 80A and Sub-Section 5 of Section 80B
D the Calcutta High Court has held that the gross total income defined by Section 80B(5) is the total income computed under the provisions of the Act, but before making any deductions under Chapter VI-A and if the total income computed under the Act before making the deductions under Chapter VI-A is found
E to be a positive figure, can the deductions permissible under Chapter VI-A be given. In **Commissioner of Income-Tax v. Rambal (P.) Ltd. (1988) 169 ITR 50** the Madras High Court has taken the view that the relief under Section 80-I would not be available if net taxable income determined is 'Nil' after
F computation of gross total income as per the provisions of the Act, after setting off carried forward loss and unabsorbed depreciation of earlier years. In **Orient Paper Mills Ltd. V. Commissioner of Income Tax (1986) 158 I.T.R. 695** the Calcutta High Court has taken the view that deductions under
G Section 80-I cannot exceed gross total income and if gross total income found is 'Nil' or a net loss the assessee is not entitled to deduction under Section 80-I of the Act. The principle of law enunciated in the said decision is that Section 80A of the Act lays down certain general principles for the purpose of
H deductions to be allowed in computing the total income under

Section 80C to 80U and such deductions are to be allowed from the gross total income of the assessee in computing the total income. After noticing the definition of the term gross total income as given in Clause 5 of Section 80B it is held in the said decision that in the case of a company, total income computed is in accordance with the provisions of the Act before making any deduction under Chapter VI-A: what is laid down as principle is that Section 80A(2) limits the aggregate of the deductions allowable to the amount of the gross total income of the assessee and therefore deductions allowance cannot result in any negative figure or loss and therefore where the gross total income is 'Nil' or net loss in the relevant year the assessee will not be entitled to any relief under Section 80-I. In **Commissioner of Income Tax v. Sundaravel Match Industries (P) Ltd. (2000) 245 ITR 605** the Madras High Court has held that losses should be set off against the profits of the industrial undertaking before granting the deduction under Section 80HH of the Income-Tax Act, 1961, in view of the specific provisions found in Section 80AB. In **Commissioner of Income-Tax v. Nima Specific Family Trust (2001) 248 ITR 29** the Bombay High Court has taken the view that the legislature has introduced Section 80A(2) and Section 80A(5) in order to put a ceiling on the claim for deduction which indicates that if the deductions under Chapter VI-A are to be claimed then the gross total income should be sufficient to absorb such deductions *i.e.* if the gross total income is 'Nil' then deduction under Section 80HH and 80I cannot be claimed because it would mean that aggregate amount of the deduction would exceed the gross total income of the assessee. In **Commissioner of Income-Tax v. Atam Ballabh Finance Pvt. Ltd. (2002) 258 ITR 485** after noticing the definition of gross total income as given under Section 80B(5) the Delhi High Court has held that while computing the income, all provisions are required to be applied and only thereafter the deductions have to be allowed. In **IPCA Laboratory Ltd. V. Dy. Commissioner of Income-Tax, Mumbai (2004) 12 SCC 742** the appellant was a holder of an Export House certificate. It exported self-manufactured goods as well as goods

A manufactured by supporting manufacturers. It had earned a profit from the export of self-manufactured goods and had suffered loss from the export of trading goods. In its return for assessment year 1996-97, it claimed deduction under Section 80HHC contending that profits from the two types of export should be B considered separately and the profit in respect of one could not be negated or set off against the loss from the other. Dismissing the appeal the Supreme Court ruled that although Section 80HHC has been incorporated with a view to provide incentive to export houses, if there is a loss then no deduction would be C available under Section 80HHC(1) or (3). What is held is that in arriving at the figure of positive profit both the profits and loss will have to be considered and if the net figure is the positive profit then the assessee will be entitled to a deduction but if the net figure is a loss then the assessee will not be entitled to a D deduction. In **Commissioner of Income-Tax v. Lucky Laboratories Ltd. (2006) 284 ITR 435 (ALL)** it is held that Section 80A (1) of the Act says that in computing the total income of an assessee it shall be allowed from the gross total income in accordance with and subject to the provisions of this Section the deductions specified in Section 80C to 80U whereas sub-E section 2 of Section 80A says that the aggregate amount of the deductions under this Chapter shall not be in any case exceed the gross total income of the assessee and therefore the total deduction under Sections 80HH and 80I should not exceed the gross total income of the assessee. In **Commissioner of** F **Income Tax and Another v. R.P.G. Telecoms Ltd. (2007) 292 ITR 355** the Karnataka High Court has held that Section 80AB of the Income-Tax Act, 1961, would override all other Sections for the purpose of deduction under Chapter VI-A of the Act and while calculating the gross total income of the company, one G has to adjust the losses from one priority unit against the profits of the other priority unit and if the resultant gross total income is 'Nil' then the assessee cannot claim deduction under Chapter VI-A.

11. The above discussion makes it very evident that H

predominant majority of the High Courts have taken the view that while working out gross total income of the assessee the losses suffered have to be adjusted and if the gross total income of the assessee is 'Nil' the assessee will not be entitled to deduction under Chapter VI-A of the Act. It is well settled that where the predominant majority of the High Courts have taken certain view on the interpretation of certain provisions, the Supreme Court would lean in favour of the predominant view. Therefore, this Court is of the opinion that the High Court was justified in holding that gross total income must be determined, by setting off against the income, the business losses of earlier years, before allowing deduction under Chapter VI-A and if the resultant income is 'Nil', then the asessee cannot claim deduction under Chapter VI-A.

12. 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 merits. 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% 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%. 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

A 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 deduction under Chapter VI-A. However, this B 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 80I(1) is required to be computed in the manner provided under the Act which presupposes that the C 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 D 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 E 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 F 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 G 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 H Chapter VI-A which includes Section 80-I also.

13. The proposition of law, emerging from the above discussion is that the gross total income of the assessee has first got to be determined after adjusting losses etc., and if the gross total income of the assessee is 'Nil' the assessee would not be entitled to deductions under Chapter VI-A of the Act. A

14. The appeals therefore filed by the appellant have no substance and deserve to be dismissed. Accordingly, all the appeals fail and are dismissed. There shall be no order as to cost. B

K.K.T. Appeals dismissed. C