# | आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"B" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT**
**&**
**SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

## I.T.A. No. 1387 to 1390/Mum/2009
## Assessment Years: 2002-03 to 2005-06

| | | |
|---|---|---|
| **Medley Pharmaceuticals Ltd.**<br>Medley House<br>D-2, MIDC Area<br>16th Road, Andheri (East)<br>Mumbai - 400093<br>**[PAN: AAACM2764J]** | Vs | **DCIT, Central Circle-44, Mumbai** |
| **अपीलार्थी/** (Appellant) | | **प्रत्यर्थी/** (Respondent) |

| | |
|---|---|
| Assessee by : | Shri Ravi Sawana, Adv., Ms. Neha Sharma & Shri Apurva Chudhry, A/R |
| Revenue by : | Shri Kailash C. Kanojiya, CIT, D/R |

सुनवाई की तारीख/**Date of Hearing : 05/12/2024**
घोषणा की तारीख /**Date of Pronouncement: 09/12/2024**

**आदेश/O R D E R**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 1387 to 1390/Mum/2009**,** are four separate appeals by the assessee preferred against the four separate orders of the ld. CIT(A)-Central II, Mumbai, dated 17/12/2008, pertaining to AYs 2002-03 to 2005-06.

2. All these appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. The captioned appeals were decided by the Tribunal vide order dated 19/10/2016. Subsequently, the assessee filed miscellaneous application and the Tribunal in *M.A. No. 10 to 13/Mum/2017,* vide its order dated 14/07/2017, considered the following issues and decided as under:-

> *"2. It was pointed out by the ld. AR that following grounds remained to be decided while disposing the above appeals.*

*3. Ground No. 3 in A.Y. 2002-03 and ground nos. 3(a) and 3(b) in the A.Ys. 2003-04 to 2005-06.*

*4. We have gone through the orders of the Tribunal and found that the above grounds remained to be decided, which is a mistake apparent from the record. Accordingly, we recall the order only for deciding ground no. 3 in A.Y. 2002-03 and ground nos. 3(a) and 3(b) in A.Ys 2003-04 to 2005-06. We direct accordingly."*

4. Following the aforementioned directions of the Co-ordinate Bench, the captioned appeals were heard on the ground of enhancement of income done by the ld. CIT(A) on the ground that loss should have been adjusted from exempt income of the Daman Units.

5. Representatives of both the sides were heard at length. Case records carefully perused.

6. The entire quarrel revolves around the following observations of the ld. CIT(A):-

*"4.0. During the course of appellate proceedings, it was noticed that the appellant had incurred a loss of Rs. 15.89 lakhs in the Asstt.Year 2002-03 from Daman Unit-I. Such business loss of Rs. 15.89 lakhs derived from Daman Unit-I was not set-off against the profits of Rs. 98.74 lakhs derived from Daman Unit-II and profits of Rs. 167.47 lakhs derived from Daman Unit-III. Such action of the appellant in not setting-off the said business loss of Rs. 15.89 lakhs derived from Daman Unit-I against the exempt profits derived from Daman Unit-II and Daman Unit-III led me to believe, prima facie, that income chargeable to tax has been under-disclosed and also under-assessed by the said amount of Rs. 15.89 lakhs. Had the appellant adjusted the said business loss of Rs. 15.89 lakhs against the profits derived from Daman Unit-II and III, the deduction U/s. 80IB would have been lower by sum of Rs. 15.89 lakhs and consequently the taxable income should have been higher by the said sum of Rs. 15.89 lakhs. This fact of not setting-off the business loss has been further confirmed by appellant's letter dated 23" May, 2008 and also by letter dated 27*h August, 2009 which are discussed separately in the succeeding paragraphs. The appellant was requested to show-cause as to why such losses of Daman Unit-I were not adjusted and set-off against the profits derived from other Units at Daman. The appellant was also asked to explain as to why the deduction U/s. 80IB should not be reduced in view of the* ***Hon'ble Bombay High Court judgment in the case of Synco Industries Ltd. Vs. Assessing Officer & Another (2002) - 254 - ITR - 608 (Bom.) and Hon'ble Supreme Court judgment reported in (2008) 299 - ITR - 444 (S.C.)*** *delivered in the case of M/s Synco Industries Ltd. The specific show-cause notice was served upon the appellant on 1/12/2008 and the appellant as well as its Ld. Counsel were also requested to explain the matter at the time of hearing held on 1/12/2008. The matter was discussed with the appellant and its Ld. Counsel as well as with Sr. General Manager (Finance) of the appellant company on 1/12/08, 5/12/08 and*

*17/12/08 and a logical conclusion leading to enhancement of assessed income has been arrived at….."*

7. The entire quarrel can be understood from the following chart:-

| Assessment Year | Profit / Loss | | | | | | Gross Total Income | Units claiming deductions | Quantum of Deduction |
|---|---|---|---|---|---|---|---|---|---|
| | Daman Unit-I | Daman Unit-II | Daman Unit-III | Daman Unit-IV | Profits from non-eligible unit(s) | Net Profit | | | |
| 2002-03 | (15,89,078) | 98,74,283 | 1,67,46,919 | NIL | 2,32,68,402 | 4,83,00,526 | 4,02,88,865 | II and III | 2,10,80,951 |
| 2003-04 | 21,77,922 | (1,62,01,629) | 2,29,14,060 | 42,74,263 | 1,87,32,746 | 3,18,97,362 | 1,67,92,202 | I, III & IV | 1,39,47,833 |
| 2004-05 | 16,51,268 | (1,00,64,669) | 1,73,74,637 | (1,52,74,215) | 3,98,65,214 | 3,35,52,235 | 2,56,98,020 | I and III | 1,33,75,868 |
| 2005-06 | 13,50,575 | (90,28,389) | 1,58,32,256 | (2,22,25,754) | 4,94,79,306 | 3,54,07,994 | 2,67,67,831 | III | 1,16,42,521 |

7.1. The bone of contention is the loss incurred by the Daman Unit -I in AY 2002-03.

8. The ld. CIT(A) was of the firm belief that such loss from priority undertaking should have been set off against the profits from other priority undertaking at Daman Unit-II or III. The stand of the assessee was that it was not necessary that loss of one industrial undertaking should necessarily be adjusted against the profit of another eligible industrial undertaking. In support, strong reliance was placed on the decisions of the Hon'ble Delhi High Court in the case of *CIT vs. Dewan Kraft System (P.) Ltd.* in *297 ITR 305 (Delhi).* The ld. CIT(A) was of the opinion that the decision of the Hon'ble Supreme Court in the case of *Synco Industries Limited vs. AO, Income tax, Mumbai (2008) 299 ITR 444 (SC)*, squarely applies on the facts of the case in hand wherein the Hon'ble Supreme Court has emphatically ruled that the assessee's contention that the profits derived from one industrial undertaking cannot be set off against the loss suffered from another industrial undertaking in view of Section 80-I(6) has no merits. The ld. CIT(A) observed that the Hon'ble Supreme Court upheld that loss from the oil

division of the assessee was required to be adjusted against the profits of the chemical division. The ld. CIT(A) further observed that the principle decided in the case of *Dewan Kraft System (P.) Ltd. (supra)*, was considered and not approved by the Hon'ble Supreme Court in the case of *Synco Industries Ltd. (supra)*. Drawing support from the decision of the Hon'ble Supreme Court *(supra)*, the ld. CIT(A) was of the firm belief that the assessee was bound to set off the loss from one priority undertaking at Daman against profit from another priority undertaking at Daman. The ld. CIT(A) finally concluded as under:-

> *"4.5. I have carefully and dispassionately considered the facts of the case, the show-cause notice issued for enhancement dated 1/12/2008 and the reply of the appellant filed vide letter dated 4th December, 2008. I have also carefully listened to the arguments made by the Ld. AR. It is understood that the deduction U/s. 80IA has to be granted not with reference to the gross amount of Profits and Gains derived only from profit making eligible Industrial Undertakings but also with reference to the net income derived from all Units of eligible Undertaking and forming part of the assessee's total income. The impact of the provision of Section 80AB, 80A (3) and 80B (5) has to be considered while granting deduction U/s. 80IA / 80IB of the Act. It may be understood here that Hon'ble Jurisdictional Bombay High Court has taken a consistent stand that in view of Section 80A(2) where the gross total income of the assessee computed as per the Section 80B(5) is NIL or is negative figure, no deduction is allowable U/s. 80J/ 80I / 80IA / 80IB. A catena of decisions have been promulgated by the Hon'ble Bombay High Court and also by Hon'ble Supreme Court concluding that the deduction under Chapter VIA is allowed as per definition of total income in Section 80B(5), even unabsorbed depreciation or issue of set-off and carry forward of loss or investment allowance has to be considered before allowing deduction under Chapter VIA."*

9. Before proceeding further, let us first understand the decision of the Hon'ble Supreme Court in the case of *Synco Industries Ltd. (supra)*. The facts considered by the Hon'ble Supreme Court are as under:-

> *"The appellant-assessee is a Company incorporated under the provisions of the Indian Companies Act, 1956. It is engaged 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 years 1990-91 and 1991-92 in both the units. However, the appellant had suffered losses in the oil division in earlier years. The appellant claimed deductions under sections 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 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 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 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 Tribunal dismissed the appeals filed by the appellant."*

9.1. The relevant observations/findings of the Hon'ble Supreme Court read as under:-

*"**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;*
*(iii) adjusting intra-head and/or inter-head losses; and*
*(iv) setting off brought forward unabsorbed losses and unabsorbed depreciation, etc.*

***9.** In CIT v. Kotagiri Industrial Co-operative Tea Factory Ltd. [1997] 224 ITR 604 (SC), the respondent was a co-operative 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 cooperative 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 80P(2) from the income of Rs. 85,150. The ITO first set off 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 under section 80P. The said view was not accepted by the Appellate Authority. The decision of the Appellate Authority was affirmed by the Income-tax Appellate Tribunal and the 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 setting off, against the income, the business losses of the earlier years as required by section 72, before allowing deduction under section 80P. 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 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 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.*

***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 CIT 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 CIT v. Midda Ram [1984] 19 Taxman 23 again the Madras High Court has taken the view that having regard to the provisions of sections 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 CIT v. Bengal Assam Steamship Co. Ltd. [1985] ITR 26, the Calcutta High Court has held that deduction under sections 80L and 80M of the Act are to be allowed after setting off of losses under sections 71 and 72 because section 80A(2) limits the aggregate of the deduction allowable to the amount of 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 sections 80L and 80M. In G. Atherton & Co. v. CIT [1987] 165 ITR 527 (Cal.), 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 gross total income was computed to be a loss, no relief was available to the assessee under section 80M. In CIT v. Mercantile Bank Ltd. [1988] 169 ITR 44 (Bom.) 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, 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 to be a positive figure, can the deductions permissible under Chapter VI-A be given. In CIT 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 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. CIT [1986] 158 ITR 695 the Calcutta High Court has taken the view that deductions under 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 deductions to be allowed in computing the total income under sections 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 CIT 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 CITv.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 sections 80HH and 80-I cannot be claimed because it would mean that aggregate amount of the deduction would exceed the gross total income of the assessee. In CIT v. Atam Ballabh Finance (P.) 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. CIT [2004] 12 SCC 742 the appellant was a holder of an Export House Certificate. It exported self-manufactured goods as well as goods 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 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 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 deduction. In CIT 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 sections 80C to 80U whereas sub-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 80-I should not exceed the gross total income of the assessee. In CIT 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 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 pre-dominant 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 pre-dominant majority of the High Courts have taken certain view on the interpretation of certain provisions, the Supreme Court would lean in favour of the pre-dominant 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 assessee 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 per cent 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 per cent. 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 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 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 80-I(1) is required to be computed in the manner provided under the Act which presupposes that the 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 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 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 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 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 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."*

10. In our understanding, the Hon'ble Supreme Court was seized with the question, whether a person is eligible for deduction under Chapter-VIA, when the gross total income of the assessee is determined as Nil. The Hon'ble Supreme Court was of the opinion that if the gross total income of the assessee is Nil, there is no question of any deduction being allowed under Chapter VIA in computing the total income. This

view has been followed by the Hon'ble High Court wherein the High Court has also taken the view that deduction under Chapter VIA would be available only if the computation of gross total income as per the provisions of the Act, after setting off carried forward and unabsorbed depreciation of earlier years, is not Nil.

11. The chart exhibited elsewhere clearly shows that in all the captioned assessment years under consideration, the assessee had positive gross total income from which it claimed deduction under Chapter VIA u/s 80I of the Act, in respect of eligible profits of Daman Units. In our considered opinion, the facts are totally distinguishable from the facts considered by the Hon'ble Supreme Court in the case of *Synco Industries Ltd. (supra).*

12. The Hon'ble High Court of Delhi in the case of *ITO vs. Sona Koyo Steering Systems Ltd. (2010) 321 ITR 463 (Delhi)* has considered the decision of the Hon'ble Supreme Court in the case of *Synco Industries Ltd. (supra)* at length. It would be apt to consider the facts considered by the Hon'ble Delhi High Court and the findings given thereon:-

> *"**2.** The assessee has two units, namely, a steering unit and an axle unit. In all these years, the assessee was incurring losses in one of the two units and profits in the other unit. The assessee claimed deduction under section 80-I of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'). The Assessing Officer, while computing the deduction allowable to the assessee, set off the losses of one unit against the profits of the other unit and, thereafter, sought to compute the deduction. The Commissioner of Income-tax (Appeals) also took the same stand as that of the Assessing Officer. The plea of the assessee before the Income-tax Appellate Tribunal was that the two units are independent units and only the profit making unit should be considered eligible for the purposes of computing the deduction under section 80-I read with the provisions of section 80-I(6). The Tribunal accepted the plea of the assessee and by the said order dated 28-9-2007, pertaining to the assessment years 1992-93, 1993-94 held as under :—*
>
> > *"6. We have carefully considered the relevant facts. Learned CIT (Appeals) has not addressed the issued in its proper perspective. Whether two businesses are one and same business is not relevant to arrive at a finding as to whether the two units are independent units. While computing the income*

*under the head profits and gains of business under section 28 of the Act. Even though the profits of business may contain certain receipts so long as such receipt is not "profit derived from industrial undertaking". Deduction under section 80-I is not available. The profit of such industrial undertaking is to be computed as if it is a separate assessee by itself. Thus, the test laid down as to whether two businesses are same business cannot be applied industrial undertaking or are extension of one of another. Even, in a situation, where the assessee was carrying on a business of a particular product and another distinct industrial unit is set up to manufacture the very same product, though it can be held that the new units is for carrying on the same business yet it is a distinct industrial undertaking for the two units were capable of functioning autonomously without relying on another unit. The two units are functioning distinctly inasmuch as they manufacture different products using different technology and located in separate premises although in the same compound. In the instant case, the products manufactured, technology used, premises utilized, establishment, managerial personnel and input are all different and can be said to be functioning as two separate units even separate sales-tax numbers are allotted and sale-tax benefit scheme was also granted separately. Having common management in the form of Board of Directors or incurring common expenses for two units will not be decisive factors to hold that the two units are distinct and separate business or one. Thus, it is to be held that steering unit and axle unit are two different units for the purpose of computing deduction under section 80-I. The Assessing Officer shall grant deduction without set-off of loss of one unit against the profit of another subject to the availability of gross profits as per section 80B(5) of the Act."*

*The same view has been followed by the Income-tax Appellate Tribunal in respect of the other years which have been dealt with by its order dated 6-6-2008.*

***3.*** *After hearing the counsel for the parties, we feel that the following substantial question of law arises for our consideration :*

*"Whether, in the facts and circumstances of the case, the Income-tax Appellate Tribunal erred in law in holding that the loss of one unit could not be set off against the other unit in view of the provisions of sections 80-I(1)(6) and 80-B(5) of the Income-tax Act, 1961 ?"*

***4.*** *Since the issue involved is purely legal, the counsel for the parties agreed that the matter may be disposed of at this stage itself without the requirement of filing any paper book. We have, therefore, heard the counsel for the parties at length on the aforesaid question.*

***5.*** *The learned counsel for the appellant submitted that the question of adjustment/setting off of the loss of one unit as against the profit of the other unit stands covered by the decision of the Supreme Court in the case of Synco Industries Ltd. v. Assessing Officer, Income-tax[2008] 299 ITR 444. The learned counsel for the appellant, however, fairly submitted that there is a decision of a Division Bench of this Court in the case of CIT v. Dewan Kraft Systems (P.) Ltd.[2008] 297 ITR 305 which has considered the pari materia provisions of section 80-IA(7) of the said Act and has held against the revenue. The learned counsel submits that though the decision of the Delhi High Court is against him, the latter decision of the Supreme Court in the case of Synco Industries Ltd. (supra) is clearly in his favour and,*

*therefore, the question ought to be answered in favour of the revenue and against the assessee.*

***6.*** *On the other hand, the learned counsel appearing on behalf of the assessee, submitted that the decision of this Court in Dewan Kraft Systems (P.) Ltd.'s case (supra) is clearly in favour of the assessee and there is nothing in the Supreme Court decision in Synco Industries Ltd.'s case (supra) which would enable us to detract from that position. Consequently, he submitted that the question be answered in favour of the assessee and against the revenue.*

***7.*** *Section 80-I(1) reads as under:—*

*"80-I. Deduction in respect of profits and gains from industrial undertakings after a certain date, etc.—(1) Where the gross total income of an assessee includes any profits and gains derived from 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 this section applies, 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 from such profits and gains of an amount equal to twenty per cent thereof :*

***Provided*** *that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words 'twenty per cent', the words 'twenty-five per cent' had been substituted."*

*Section 80-I(6) reads as under:—*

*"(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 and including the assessment year for which the determination is to be made."*

*Section 80B(5), which defines gross total income, is as follows:—*

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

*A plain reading of the said provisions makes it clear that gross total income referred to in section 80-I has to be computed in accordance with the provisions of the said Act before making any deduction under Chapter VI-A. It is, therefore, clear that while computing gross total income, the deductions referred to in Chapter VI-A, which includes section 80-I, are not to be considered. The gross total income of the assessee has to be computed after making all other adjustments of losses and carry forward losses ignoring the deductions available under Chapter VI-A. There is no dispute with this proposition.*

***8.*** *It is further clear from a plain reading of the aforesaid provisions that the deduction under section 80-I is to be made in case the gross total income includes any profits and gains derived from an industrial undertaking, etc., in case such profits and gains are included in the gross total income of the assessee. The deduction in the case of a*

*company, in view of the proviso to section 80-I(1), is to be given to the extent of 25 per cent of such profits and gains of such an industrial undertaking. It is also clear that in view of section 80-I(6), which begins with a non obstante clause, the quantum of deduction is to be computed as if the industrial undertaking were the only source of income of the assessee during the relevant years. In other words, each industrial undertaking or unit is to be treated separately and independently. It is only those industrial undertakings, which have a profit or gain, which would be considered for computing the deduction. The loss making industrial undertaking would not come into the picture at all. The plain reading of the provision suggests that the loss of one such industrial undertaking cannot be set off against the profit of another such industrial undertaking to arrive at a computation of the quantum of deduction that is to be allowed to the assessee under section 80-I(1) of the said Act.*

***9.*** *In this regard, we may refer to the decision of this Court in the case of Dewan Kraft Systems (P.) Ltd. (supra), which considered the pari materia provisions of section 80-IA(7) of the said Act. In that case, the question arose with respect to computation of the deduction in relation to three units - the Kalamb Unit, the Delhi Unit and the Noida Unit. This court held that while computing the deduction under section 80-IA of the said Act, the profits and gains of the Kalamb unit for the purposes of determining the quantum of deduction under section 80-IA(5) was to be computed as if such eligible business of the said unit was the only source of income of the assessee. This court observed that the Assessing Officer had erroneously mixed the profits of the Delhi and Noida units and had thereby restricted the deduction to the extent of business income and that such an exercise was in total disregard of the provisions of sub-section (7) of section 80-IA of the said Act. It was held that the Kalamb unit, being the only unit of the assessee eligible for deduction under section 80-IA of the said Act, was to be treated as an independent unit and the same was to be treated as the only source of income of the assessee for the purposes of computing deduction under section 80-IA.*

***10.*** *We now came to the decision of the Supreme Court in the case of Synco Industries Ltd. ( supra) which was strongly relied upon by the learned counsel for the appellant. On going through the entire decision, we find that the Supreme Court was primarily concerned with the question as to whether any deduction could be allowed under Chapter VI-A if the gross total income was 'Nil'. It is in that context that the Supreme Court considered the concept of gross total income and came to the conclusion, following its earlier decision in CIT v. Kotagiri Industrial Co-operative Tea Factory Ltd.[1997] 224 ITR 604, that the gross total income has to be computed in accordance with the Act after adjusting the losses, etc. and that, if the gross total income so determined is positive, then the question of allowing deductions under Chapter VI-A would arise, but not otherwise. While doing so, the Supreme Court further made it clear that the gross total income must be determined by setting off business losses of earlier years before allowing deduction under Chapter VI-A and that if the resultant income is 'Nil', then the assessee cannot claim any deduction under Chapter VI-A. While coming to the aforesaid conclusion, the Supreme Court was also confronted with an argument which had been raised on the basis of the provisions of section 80-I(6) that the profits of one industrial undertaking cannot be set off against the losses suffered by the other industrial undertaking. The Supreme Court was of the view that the provisions of section 80-I(6) were only for the purposes of computing the quantum of deduction, whereas the gross total income was to be*

*computed in terms of the Act as provided in section 80B(5). It is apparent that the Supreme Court distinguished the provisions of section 80-I(6) which was for the purposes of computing the quantum of deduction from the provisions of section 80-I(1) and section 80B(5) which deal with the manner in which the gross total income is to be considered. The Supreme Court observed as under:–*

*"13. . . . 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 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 80-I(1) is required to be computed in the manner provided under the Act which presupposes that the 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 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 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 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 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 Chapter VI-A which includes section 80-I also.*

*14. 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." [Emphasis supplied]*

***11.*** *From the above extract, it is apparent that the Supreme Court did not at all hold that while computing the deduction under section 80-I(6), the loss of one eligible industrial undertaking is to be set off against the profit of another eligible industrial undertaking. All that the Supreme Court said was that in computing the gross total income of the assessee, the same has to be determined after adjusting the losses and that, if the gross total income of the assessee so determined turns out to be 'Nil', then the assessee would not be entitled to deduction under Chapter VI-A of the said Act.*

***12.*** *We agree with the submissions made by the learned counsel for the assessee that there is nothing in the decision in the case of Synco Industries Ltd. (supra) which would enable us to detract from the position indicated by this court in Dewan Kraft Systems (P.) Ltd.'s case (supra) and, as indicated by us above. In fact, the Supreme*

*Court clearly held that 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 of the assessee in order to arrive at a deduction under Chapter VI-A. The Supreme Court also held that under section 80-I(6), for the purposes of calculating the deduction, the loss sustained in one of the units is not to 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.*

***13.*** *The above discussion makes it absolutely clear that the Supreme Court decision sought to be relied upon by the learned counsel for the appellant/revenue, rather than deciding the issue in favour of the revenue, clinches the matter in favour of the assessee. In view of the foregoing discussion, the substantial question of law, referred to above, is decided in favour of the assessee and against the revenue."*

13. Considering the factual matrix of the claim of deduction, in light of the judicial decision discussed hereinabove, we are of the considered view that enhancement done by the ld. CIT(A) is not correct and deserves to be set aside. The AO is directed to delete the impugned additions.

14. In the result, the captioned appeals filed by the assessee are allowed.

**Order pronounced in the Court on 9th December, 2024 at Mumbai.**

| | |
|---|---|
| ***Sd/-*** | ***Sd/-*** |
| **(SAKTIJIT DEY)** | **(NARENDRA KUMAR BILLAIYA)** |
| **VICE PRESIDENT** | **ACCOUNTANT MEMBER** |

Mumbai, Dated 09/12/2024
*SC SA

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,**आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER,**
**TRUE COPY**

**Assistant Registrar**
आयकर अपीलीय अधिकरण
**ITAT, Mumbai**