

2012-TIOL-69-SC-IT

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 1679 OF 2004

COMMISSIONER OF INCOME TAX, GUWAHATI

Vs

BONGAIGAON REFINERY AND PETROCHEMICAL LTD

S H Kapadia, CJI And Madan B Lokur, J

Dated: September 5, 2012

Appellant Rep. by : Mr. Rajiv Dutta, Sr.Adv. Mr. Rahul Kaushik, Adv. Mr. Vikas Malhotra,
Adv. Mr. B.V. Balaram Das, Adv.

Respondent Rep. by : Mr. Ajit Pudussery, Adv. Mr. Dinesh Khurana, Adv. Ms. Joanne
Pudussery, Adv. Mr. K. Vijayan, Adv.

Income tax - Sections 80HH(5), 80I(7), 143(3), 263 - Whether when the assessee has three industrial undertakings eligible for Ss 80HH & 80I benefits, it is obligatory for the assessee to maintain unit-wise books for claiming the benefits.

Assessee, Bongaigaon Refinery and Petrochemical Limited (BRPL), has since merged into IOC. Permission to carry out formal amendment within two weeks was accordingly granted. BRPL was a PSU engaged in refinery, petrochemical and polyester staple fibre business. Three different and separate units were set up by BRPL in the financial years 1979-80, 1985-86 and 1988-89 respectively. The three units were engaged in production of separate and distinct types of products. They were three different Industrial Undertakings. It was not in dispute that BRPL was entitled to claim deduction under Sections 80HH and 80I of the I.T. Act, 1961 during the relevant assessment year 1992-93. BRPL could not claim such deduction till assessment year 1992-93 as its net taxable income for earlier assessment years was Nil. It was only in assessment year 1992-93 when the gross total income became positive that BRPL claimed relief for its Petrochemical Unit under Section 80HH and under Section 80I of the I.T. Act, 1961. However, BRPL could not claim such deduction for its Refinery Unit as the period for which such relief could be claimed had expired. Further, it could not claim such deduction for its Polyester Staple Fibre Unit as it had negative income during the accounting year ending 31.3.1992 corresponding to assessment year 1992-93.

The AO while framing assessment, under Section 143(3) allowed deduction after examining and being satisfied with the unit-wise profit & loss statement filed by BRPL. Subsequently, CIT, Shillong issued a show cause notice under Section 263 saying that the AO had allowed excess deduction under Sections 80HH and 80I. According to him, the net profit revealed in the audited Profit & Loss Account for the assessment year 1992- 93 was not supported by bifurcation of the profits amongst the said three units. That, the basis of allocation of profits amongst the three units by BRPL, as shown in the Computation of Income, was not explained. That, when separate accounts for each of the three units were not prepared, the only method which BRPL could have adopted to work out their net profits (unit-wise) had to be on the basis of proportion of turnover of each of the three units.

In reply to the said show cause notice, the assessee submitted all relevant details relating to bifurcation of net profits (unit-wise) which was placed before the AO who had examined the material placed before him and after detailed investigation had passed the order of assessment and, therefore, show cause notice under section 263 was not maintainable. These arguments of the assessee were rejected by the CIT. To put it briefly, the controversy under Section 263 proceedings was whether the assessee was statutorily obliged to maintain its accounts unit-wise for claiming deduction under Sections 80HH and 80I. That, BRPL had maintained Consolidated Accounts whereas according to CIT, BRPL should have had maintained Segregated Accounts for each of the three units if BRPL wanted benefit of sections 80HH and 80I. Against the order of CIT the matter came by way of appeal to the ITAT which came to the conclusion that there was no statutory requirement under Section 80HH(5)/80I(7) of the I.T. Act, 1961 (as it then stood) to maintain unit-wise accounts. However, the Tribunal observed that "considering the totality of facts and circumstances of the case and to put an end to litigation, BRPL should submit unit-wise audited accounts and claim deduction under Sections 80HH and 80I". Against the said decision the assessee BRPL went in appeal. By the impugned judgment the order of the Tribunal was set aside by the High Court, hence this civil appeal is filed by the Department.

Having heard the parties, the SC held that,

++ at the outset, it may be stated that the impugned order of the High Court is cryptic. Ordinarily, we would have remitted the case to the High Court for de novo consideration. The High Court has relied upon its earlier judgment, which, in our view, is not applicable on all fours to the facts of the present case. However, to put an end to the litigation, we are of the view, that though neither Section 80HH nor Section 80I (as it then stood) statutorily obliged BRPL to maintain its accounts unit-wise and that it was open to BRPL to maintain its accounts in a consolidated form in order to put an end to the litigation between the Tax Department and the PSU we remit the case to the case to the AO to ascertain whether the assessee had correctly calculated its net profits for assessment year 1992-93 in respect of its petrochemical unit for the purposes of claiming deduction under Sections 80HH and 80I of the I.T. Act, 1961. In the present case, BRPL has prepared its Financial Statements on Consolidated Basis from which it has worked out unit-wise net profits. If not done, it could be done by the Auditors even today from the Consolidated Books of Accounts. Once such working is certified by the Auditors the net profit computation (unit-wise) could be placed before the AO who can find out whether such profit(s) is properly worked out and on that basis compute deduction under Section 80HH/80I.

Case remanded

JUDGEMENT

This civil appeal filed by the Department relates to the assessment year 1992-93. By this civil appeal the Department seeks to challenge the decision of the Gauhati High Court dated 6.6.2002 in ITR No. 4 of 2001.

At the outset, it is pointed out by learned counsel for the original assessee that Bongaigaon Refinery and Petrochemical Limited (for short "BRPL") has since merged into IOC. Permission to carry out formal amendment within two weeks is accordingly granted. BRPL was a PSU engaged in refinery, petrochemical and polyester staple fibre business. Three different and separate units were set up by BRPL in the financial years 1979-80, 1985-86 and 1988-89 respectively. The three units were engaged in production of separate and distinct types of products. They were three different Industrial Undertakings. It is not in dispute that BRPL was entitled to claim deduction under Sections 80HH and 80I of the I.T. Act, 1961 during the relevant assessment year 1992-93. BRPL could not claim such deduction till assessment year 1992-93 as its net taxable income for earlier assessment years was Nil. It was only in assessment year 1992-93 when the gross total income became positive that BRPL claimed relief for its Petrochemical Unit under Section 80HH and under Section 80I of the I.T. Act, 1961. However, BRPL could not claim such deduction for its Refinery Unit as the period for which such relief could be claimed had expired. Further, it could not claim such deduction for its Polyester Staple Fibre Unit as it had negative income during the accounting year ending 31.3.1992 corresponding to assessment year 1992-93.

As far as the present assessment proceedings are concerned, suffice it to state, that the AO while framing assessment, under Section 143(3) allowed deduction after examining and being satisfied with the unit-wise profit & loss statement filed by BRPL. Subsequently, CIT, Shillong issued a show cause notice under Section 263 saying that the AO had allowed excess deduction under Sections 80HH and 80I. According to him, the net profit revealed in the audited Profit & Loss Account for the assessment year 1992- 93 was not supported by bifurcation of the profits amongst the said three units. That, the basis of allocation of profits amongst the three units by BRPL, as shown in the Computation of Income, was not explained. That, when separate accounts for each of the three units are not prepared, the only method which BRPL could have adopted to work out their net profits (unit-wise) had to be on the basis of proportion of turnover of each of the three units. In reply to the said show cause notice, the assessee submitted all relevant details relating to bifurcation of net profits (unit-wise) was placed before the AO who had examined the material placed before him and after detailed investigation had passed the order of assessment and, therefore, show cause notice under section 263 was not maintainable. These arguments of the assessee were rejected by the CIT. To put it briefly, the controversy under Section 263 proceedings was whether the assessee was statutorily obliged to maintain its accounts unit-wise for claiming deduction under Sections 80HH and 80I. That, BRPL had maintained Consolidated Accounts whereas according to CIT, BRPL should have had maintained Segregated Accounts for each of the three units if BRPL wanted benefit of sections 80HH and 80I. Against the order of CIT the matter came by way of appeal to the ITAT which came to the conclusion that there was no statutory requirement under Section 80HH(5)/80I(7) of the I.T. Act, 1961 (as it then stood) to

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In the light of the above directions, this civil appeal stands disposed of with no order as to costs.