dhruva

Direct Tax Alert

May 5, 2021

Supreme Court rules that the deduction under section 80-IA of profits from power generation business need not be restricted to the extent of 'business income'

In a recent decision[1], the Supreme Court held that the deduction under Part-C of Chapter VI-A of the Income-tax Act, 1961 (dealing with various profit linked deductions in relation to business of power generation, infrastructure development, housing projects, etc.) is allowable to the extent of Gross Total Income of the taxpayer and need not be restricted to the extent of income under the head 'profits and gains of business or profession'.

Facts of the case

- Reliance Energy Limited ('the Assessee' or 'the taxpayer'), engaged in the business of generation and distribution of power, was eligible to claim profit linked deduction under section 80-IA of the Income-tax Act, 1961 ('the Act') in respect of the profits of its eligible power-generating unit ('eligible business'). The Assessee was also eligible to claim profit linked deduction under section 80-IB of the Act.

- The gross total income of the Assessee consisted of the income under the head 'profits and gains of business or profession' ('PGBP' or 'business income') and 'income from other sources'. The profits from the eligible business was greater than the income under the head of PGBP (this may be on

[1] Commissioner of Income Tax-I v. M/s Reliance Energy Ltd. (Civil Appeal No. 1327 of 2021) / [2021] 127 taxmann.com 69 (SC)

account of losses in non-eligible business or set-off of brought forward business loss / unabsorbed depreciation) and also greater than the gross total income of the Assessee. The Assessee claimed deduction under section 80-IA of an amount exceeding the *business income,* however restricted it to the amount of gross total income in accordance with provisions of the Act[2].

- In effect, the Assessee claimed the said deduction against *business income* as well as *income from other sources*.

- The Assessing Officer accepted the amount of profits from the eligible business. However, he restricted the claim of deduction only to the extent of *business income* of the Assessee relying on the provision of section 80AB of the Act.

- The Assessee contended that there is no provision under the Act which restricts the claim of profit linked deduction to the extent of *business income*.

- The first Appellate Authority accepted the claim of the Assessee and held that the deduction should be allowed to the extent of the gross total income of the Assessee. This was further affirmed by the Tribunal (Mumbai Bench) and the High Court of Bombay.

Arguments by the tax department

- The tax department before the Supreme Court contended that as per section 80AB of the Act, the profit linked deduction from eligible business can be allowed against income of the *same nature alone*, i.e., can be allowed as deduction only against *income from business* and not against *income from other sources*.

- It further submitted that as per the provisions of section 80-IA(5) of the Act, deduction is to be computed as if the income from the eligible business is the only source of income of the Assessee, which according to the tax department indicates that deduction should be allowed only against *business income*.

Arguments by the Assessee

- The Assessee, on the other hand, contended that section 80AB of the Act was inserted to provide that the profit linked deductions should be calculated with reference to the net income from the eligible business, that is, after allowing all expenses / deductions as per the provisions of the Act.

- The Assessee further submitted that section 80-IA(5) of the Act is concerned with determination of the amount of profits derived from eligible business by treating the eligible business as the only source of income and is a stage prior to allowing deduction thereof from the gross total income.

- None of the above section provides that the deduction is to be restricted to the extent of *business income*. Hence, the Assessee claimed that the deduction should be allowed to the extent of gross total income i.e. even against income assessable under other heads of income included in the gross total income.

[2] Section 80A(2) of the Act provides that aggregate deductions under Chapter VI-A of the Act shall not exceed the gross total income of the assessee

Ruling of the Supreme Court

- The Supreme Court, relying on a CBDT Circular[3], accepted the contention of the Assessee that the legislative intent behind the introduction of section 80AB of the Act was to stipulate that the profit linked deduction should be computed on the basis of the *net income* from the eligible business. The Supreme Court also observed that the net income so determined shall be deemed to be included in the gross total income of the Assessee.

- With regard to section 80-IA(5) of the Act, the Supreme Court held that the scope of said section is limited only to the determination of quantum of profits from the eligible business. The Supreme Court, relying on its past ruling[4], affirmed the position that in computing the profits from eligible business the losses from other business / units need not be taken into account.

- On the basis of the above, the Supreme Court held that scope of sections 80AB and 80-IA(5) of the Act is limited to determination of profit from eligible business and does not restrict the claim of deduction to the extent of *business income*. Thus, allowed the claim of Assessee.

Dhruva Comments

This is a welcome decision of the Supreme Court settling the long-standing issue on the allowability of deduction under Chapter VI-A of the/ Act in excess of the income under the head PGBP.

The Supreme Court has further settled the issue related to the interpretation of the provisions of sections 80AB and 80-IA(5) of the Act by holding that the said sections are intended merely to compute the amount of profits from eligible business and do not restrict the claim of deduction to the extent of *business income*. This provides taxpayers with an opportunity to evaluate the position adopted so far and even explore the possibility of claiming enhanced deduction in excess of *business income*. In our view, it may even be possible to claim deduction in cases where net result under the head PGBP is loss but there is positive gross total income.

Furthermore, it has been recently observed in many cases that the Centralised Processing Center ('CPC'), Bangalore has been processing returns under section 143(1) of the Act by restricting the claim of deduction under Chapter VI-A to the extent of the income under the head PGBP instead of gross total income. This is despite the fact that the return of income in Form ITR-6 which is designed, approved and regulated by the CBDT and wherein final deduction under Chapter VI-A is computed automatically, itself allows deduction in excess of the income under the head PGBP subject to the overall ceiling limit of the gross total income.

Pursuant to the order of the Supreme Court, the Assessees should now consider filing a rectification application with appropriate authorities in all the cases where deduction has been restricted to the extent of the business income.

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For any queries in relation to this tax alert, please feel free to reach out.

[3] Circular No. 281 dated 22.09.1980

[4] Synco Industries Ltd. v. AO [2008] 299 ITR 444 (SC)

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