Simultaneous claim of deductions u/s 80HHC and 80IA or 80IB on the same Gross Total Income

- **TUSHAR HEMANI**
B.Com., LL.B, A.C.A., Advocate

- **Associated Capsules Private Limited vs. DCIT (Bom)**

  Income Tax Appeal No. 3036 of 2010 dated 10th January, 2011.

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  21. We have carefully considered the rival submissions as also the decisions of two High Courts, wherein similar question has been answered in favour of the Revenue. However, we find it difficult to concur with the views expressed therein for the reasons enumerated herein below.

  22. Chapter VIA of the Act provides for variety of deductions to be made in computing the total income. Chapter VIA is divided in to four parts viz. Part A, B, C & D. Part A (Sections 80A to 80B) deals with general provisions, Part B (Sections 80C to 80GGC) deals with deductions in respect of certain payments, Part C (Sections 80H to 80TT) provides for deductions in respect of certain incomes and Part D (Sections 80U to 80VV) deals with other deductions.

  23. As per Section 80A(2) in part A of Chapter VIA, the aggregate amount of deduction allowed under Chapter VIA shall not exceed the gross total income. Thus, the overall deduction allowed under Chapter VIA cannot exceed the gross total income. However, on noticing that several undertakings were availing deductions under Chapter VIA within the overall limit of gross total income but exceeding the profits of the undertaking, the legislature introduced sub Section 9A in Section 80IA by Finance Act 1998 with effect from 141999. By Finance Act, 1999, Section 80IA(9A) has been renumbered as Section 80IA(9).

  24. The object of amending Section 80IA by Finance Act 1998 as is evident from the memorandum explaining the provisions in the Finance Bill 1998 [231 ITR (ST) 252] is that it was noticed that certain assessees were claiming more than 100% deduction on the profits and gains of the same undertaking, when they were entitled to deductions under more than one section under heading 'C' of Chapter VIA. With a view to prevent the taxpayer taking undue advantage of the existing provisions of the Act, Section 80IA was amended by Finance Act 1998 so that the deductions allowed under Section 80IA and various Sections under heading 'C' of Chapter VIA are restricted to the profits of the business of the undertaking / enterprise.

  25. There is no dispute that in the present case, the assessee is an undertaking

entitled to deduction under Section 80IA at 30% of the profits and gains derived from the business and deduction under Section 80HHC at 50% of the profits of the business. Further, there is no dispute that the deduction under Section 80IA has to be computed on the total profits derived from the business. However, the dispute is in computing the deduction under Section 80HHC in view of the insertion of Section 80IA(9) by the Finance Act, 1998. According to the Revenue, Section 80IA(9) mandates that the deduction under Section 80HHC has to be computed not only on the profits of the business as reduced by the amounts specified in clause (baa) and clause (4B) of Section 80HHC but also by reducing the amount of profits and gains allowed as deduction under Section 80IA(1) of the Act. According to the assessee, even after the introduction of Section 80IA(9), the deduction under Section 80HHC has to be computed in the manner specified under Section 80HHC on the profits of the business computed under the head 'profits & gains of business or profession' as reduced by the amount set out in clause (baa) of Section 80HHC / 80HHC(4B) as the case may be and there is no scope for reducing the profits of business by the amount of profits allowed under Section 80IA(1) of the Act. According to the assessee, Section 80IA(9) merely affects the allowability of the deduction computed under Section 80HHC so that the combined deduction under Section 80IA(1) and 80HHC does not exceed the profits and gains of the undertaking.

26. To illustrate, if the profits and gains of the eligible undertaking is Rs.100/, the deduction allowable under Section 80IA(1) is 30% and the deduction allowable under Section 80HHC is 80%, then according to the Revenue, deduction to be allowed under Section 80IA would be Rs.30/(30% of Rs.100/) and in view of Section 80IA(9), the deduction under Section 80HHC has to be computed not on the profits of the business of Rs. 100/but on Rs.70/being the profits of the business reduced by the amount of profits allowed under Section 80IA(1). According to the assessee, deduction under Section 80HHC has to be computed on the profits of the business of Rs.100/and not on Rs.70/as contended by the Revenue, because, according to the assessee, Section 80IA(9) does not affect the computation of deduction under Section 80HHC but affects the allowance of deduction computed under Section 80HHC, so that the aggregate deduction does not exceed the profits of the business.

27. The question, therefore, to be considered is, whether Section 80IA(9) seeks to disturb the mechanism of computing the deduction provided under Section 80HHC (3) of the Act or Section 80IA(9) comes in to operation only at the stage of allowing the deduction computed under Section 80HHC, so that the combined deduction under Section 80IA and 80HHC does not exceed the total profits of the business of the undertaking.

28. Section 80IA(9) consists of three parts:

First Part where any amount of profits and gains of an undertaking / enterprise is claimed and allowed under Section 80IA(1) for any assessment year, then Second Part deduction to the extent of profits and gains allowed under Section 80IA(1) shall not be allowed under any other provisions under heading 'C' of

Chapter VIA of the Act; and Third Part in no case the deduction allowed shall exceed the profits and gains of the business of the undertaking enterprise.

29. The dispute in the present case is, whether the second part of Section 80IA(9) seeks to disturb the mechanism of computing the deduction provided under Section 80HHC (3) of the Act ? The second part of Section 80IA(9) provided that the deduction to the extent of profits allowed under Section 80IA(1) shall not be allowed under any other provisions. It obviously means that the deductions that is allowable under other provisions under heading 'C' of Chapter VIA would be allowed to the extent of profits as reduced by the profits allowed under Section 80IA(1). The second part of Section 80IA(9) does not even remotely refer to the method of computing deduction under other provisions under heading 'C' of Chapter VIA. Thus, Section 80IA(9) seeks to curtail allowance of deduction and not computability of deduction under any other provisions under heading 'C' of Chapter VIA of the Act.

30. How to compute deduction allowable under Section 80HHC (1) is set out in Section 80HHC (3). In the case of a manufacturer exporter, Section 80HHC (3)(a) provides that the deduction under Section 80HHC (1) has to be computed as per the formula:

$$\text{Profits of the Business} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$$

Clause (baa) in Section 80HHC defines the term 'profits of the business' for the purposes of Section 80HHC to mean the profits of the business as computed under the head 'profits and gains of business or profession' as reduced by the amounts specified therein. Therefore, in the case of a manufacturer exporter, deduction under Section 80HHC (1) is statutorily required to be computed on the profits of the business as reduced by the amounts specified in clause (baa) of Section 80HHC. Unless, it is specifically provided by the statute, the profits of the business for the purpose of Section 80HHC cannot be reduced by any amount save and except the amount specified in clause (baa) of Section 80HHC itself. Section 80IA(9) of the Act does not expressly or impliedly provide that the amount of profits allowed as deduction under Section 80IA(1) should be reduced from the profits of the business for the purpose of computing deduction under Section 80HHC or computing deduction under any other provisions in heading 'C' of Chapter VIA and, therefore, the contention of the Revenue to that effect cannot be accepted.

31. In the case of a trader exporter, Section 80HHC (3)(b) provides that the deduction under Section 80HHC(1) has to be computed on the export turnover reduced by the direst costs and indirect costs attributable to the goods or merchandise exported by the assessee. The argument of the Revenue that under Section 80IA(9) the amount of profits allowed under Section 80IA has to be deducted from the profits of business while computing deduction under Section 80HHC is accepted, then the Section becomes unworkable, because in the case of a trader exporter, the deduction under Section 80HHC is computed on the exporter turnover and not on the profits of the business. The words 'export

turnover' and ' profits of business' are separately defined under Section 80HHC. Therefore, in the case of a trader exporter, Section 80IA(9) can be applied only after the deduction under Section 80HHC(3)(b) is computed. Similarly, in the case of a manufacturer / processor exporter, Section 80IA(9) would be applicable while allowing the deduction computed under Section 80HHC(3)(a) of the Act.

32. If the words used in Section 80IA(9) were 'shall not qualify', then, probably it could be said that the legislature intended to affect the quantum of deductions computable under other provisions under heading 'C' of Chapter VIA, because the amount that qualifies for deduction alone forms the basis for computing the deduction. The word 'qualify' is an expression relatable to the computation of deduction. The word ' allowed' is relatable to allowing the deduction that is computed. The word 'allowed' cannot be equated with the word 'qualify'. Since Section 80IA(9) uses the words 'shall not be allowed', in our opinion, the section seeks to restrict the allowance of deduction and not the computation of deduction under any other sections under heading 'C' of Chapter VIA of the Act.

33. Wherever the legislature intended that the deduction allowed under one section should affect the computation of deduction under other provisions of the Act, the legislature has expressly used words to that effect. It may be noted that Section 80HHD(7) and 80IA(9A) [presently 80IA(9)] were introduced by Finance Act, 1998 with effect from 141999. Section 80HHD (7) provides that the deduction allowed under Section 80HHD(1) shall not qualify to that extent for deduction under any other provisions of Chapter VIA under the heading 'C', whereas, Section 80IA(9A) provides that the deduction allowed under Section 80IA(1) shall not be allowed under any other provisions of Chapter VIA under heading 'C'. Similarly, in Section 80IC(5), the words used are that notwithstanding anything contained in any other provision of the Act, in computing the total income of the assessee, no deduction shall be allowed under any other Section contained in Chapter VIA or Section 10A or Section 10B in relation to the profits and gains of the undertaking. Thus, the legislature has used specific words whenever it intended to affect the computation of deduction. As the words used in Section 80IA(9) relate to allowance and not computation of deduction, it cannot be inferred that Section 80IA(9) is inserted with a view to affect computation of deduction under any other provisions under heading 'C' of Chapter VIA.

34. It is well established in law that the language of the statute must be read as it is, and the statute must not be read by adding or substituting the words unless it is absolutely necessary to do so. Since Section 80IA(9) uses the words 'shall not be allowed', it is not permissible to read Section 80IA(9) by substituting the above words with the words 'shall not qualify' or by adding the words 'shall not be allowed in computing' the deduction under any other provisions under heading 'C' of Chapter VIA of the Act. When the plain and simple meaning of Section 80IA(9) can be ascertained from the words used in the section, it would not be proper to construe the section by substituting or adding words as suggested by the Revenue.

35. In these circumstances, in our opinion, the reasonable construction of Section 80IA(9) would be that where deduction is allowed under Section 80IA(1), then the deduction computed under other provisions under heading 'C' of Chapter VIA has to be restricted to the profits of the business that remains after excluding the profits allowed as deductions under Section 80IA, so that the total deduction allowed under the heading 'C' of Chapter VIA does not exceed the profits of the business.

36. Strong reliance was placed by the Counsel for the Revenue on the Notes on Clauses explaining the reasons for inserting Section 80IA(9A) [presently 80IA(9)], by Finance Act, 1998, wherein it is stated that the profits allowed under Section 80IA(1) shall not qualify for deductions under any other provisions under heading 'C' of Chapter VIA. As noted earlier, the words used in Section 80IA(9) are 'shall not be allowed' and not the words 'shall not qualify' or 'shall not be allowed in computing deduction'..... Therefore, reading the Section 80IA(9) in the light of the words used in the section, we have no hesitation in holding that the restriction therein relates to the allowance of deduction and not computation of deduction.

37. Strong reliance was also placed by the Counsel for the Revenue on the Special Bench decisions of the Tribunal in the case of Rogini Garments (supra) and Hindustan Ming & Agro Products (P) Ltd. (supra), which are affirmed by the Delhi High Court in the case of Great Eastern Exports (supra). Reliance is also placed on decision of the Kerala High Court in the case of Olam Exports (India) Ltd. (supra) which supports the case of the Revenue.

38. We find it difficult to subscribe to the views expressed by the Delhi High Court in interpreting the provisions of Section 80IA(9). In that case, in fact, the Counsel for the Revenue had argued (see para38 of the judgment) that Section 80IA(9) applies at the stage of allowing deduction and not at the stage of computing deduction under other provisions under heading 'C' of Chapter VIA. It was argued that in the matter of grant of deduction, the first stage is computation of deduction and the second stage is the allowance of the deduction. Computation of deduction has to be made as provided in the respective sections and it is only at the stage of allowing deduction under section 80IA(1) and also under other provisions under heading 'C' of Chapter VIA, the provisions of Section 80IA(9) comes into operation. While accepting the arguments advanced by the Counsel for the Revenue, it appears that the Delhi High Court failed to consider the important argument of the Revenue noted in para38 of its judgment. Moreover, without rejecting the argument of the Revenue that Section 80IA(9) applies at the stage of allowing the deduction and not at the stage of computing the deduction, the Delhi High Court could not have held that Section 80IA(9) seeks to disturb the method of computing the deduction provided under other provisions under heading 'C' of Chapter VIA of the Act. In these circumstances, we find it difficult to concur with the views expressed by the Delhi High Court in the case of Great Eastern Exports (supra). For the same reason, we find it difficult to subscribe to the views expressed by the Kerala High Court in the case of

Olam Exports (supra).

39. In the result, we hold that Section 80IA(9) does not affect the computability of deduction under various provisions under heading 'C' of Chapter VIA, but it affects the allowability of deductions computed under various provisions under heading 'C' of Chapter VIA, so that the aggregate deduction under Section 80IA and other provisions under heading 'C' of Chapter VIA do not exceed 100% of the profits of the business of the assessee. Our above view is also supported by the C.B.D.T. Circular No.772 dated 23121998, wherein it is stated that Section 80IA(9) has been introduced with a view to prevent the taxpayers from claiming repeated deductions in respect of the same amount of eligible income and that too in excess of the eligible profits. Thus, the object of Section 80IA(9) being not to curtail the deductions computable under various provisions under heading 'C' of Chapter, it is reasonable to hold that Section 80IA(9) affects allowability of deduction and not computation of deduction. To illustrate, if Rs.100/is the profits of the business of the undertaking, Rs.30/is the profits allowed as deduction under Section 80IA(1) and the deduction computed as per Section 80HHC is Rs.80/, then, in view of Section 80IA(9), the deduction under Section 80HHC would be restricted to Rs.70/, so that the aggregate deduction does not exceed the profits of the business.

40. Accordingly, the appeal is allowed by answering the question raised herein in the negative, that is, in favour of the assessee and against the Revenue. There shall be no order as to costs.

- **ACIT v. Hindustan Mint & Agro Products (P.) Ltd. [2009] 119 ITD 107 (Delhi) (SB)**

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On consideration of provisions of section 80-IA(9), it is found that there are two restrictions in the statutory provision under consideration. These are :—

(a) where an assessee is allowed deduction under this section (i.e., 80-IA or 80-IB), deduction to the extent of such profit and gain shall not be allowed under any other provision of this Chapter (Heading 'C - Deduction in respect of certain incomes'), and

(b) deduction shall in no case exceed the profit and gain of the undertaking or hotel, as the case may be.

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The contention of the assessee was that total deductions under various sections should not exceed profits and gains of an undertaking. It was not possible to accept this contention. It is seen that the CBDT Circular No. 772, dated 23-12-1998 clarified and only dealt with (b) above and did not deem it necessary to make reference to restriction (a). In order to accept the contention of the assessee, one

has to exclude portion of the provision covered by (a) and ignore the restriction placed therein. Why such course should be adopted when words used by the Legislature, 'claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions', are quite clear and unambiguous and are to be given effect to as rightly contended by the revenue. The profits or gains of an industrial undertaking, which has already been allowed as a deduction under section 80-IA, such profit (to the extent) cannot be taken into consideration for allowing deduction under any other provision of this Chapter 'C'. If profit, which has already been allowed as a deduction, is again taken into consideration for computing deduction under any other provision referred to above, then restriction (a) above is disregarded and ignored. It cannot be done without doing violence to the language of the provision. There is no justification for adopting a course prohibited by the Legislature. It is not possible to ignore the restriction placed as (a) nor it is possible to accept that in Circular No. 772, there is a suggestion to ignore restriction (a) mentioned above. As per the settled law, the courts and the Tribunals must see the mandate of the Legislature and give effect to it, as rightly argued by the revenue. Therefore, restriction (a) above has to be respected and followed.

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The statutory provision of section 80AB, no doubt, provides that deduction under each section of Chapter VI-A is to be computed independently. But, not only the total scheme of the statute but scheme of every section is to be read and interpreted and every word is to be given proper meaning. In several sections under Chapter VI-A, it is provided that if deduction is allowed under that section, then no deduction under any other section under Chapter VI-A would be allowed. Thus, where deduction under such specific section has been claimed and allowed, there is no need to compute deduction permissible under other sections of Chapter VI-A. It would be a futile and useless exercise. Therefore, no question of computing deduction in above circumstances would arise and section 80AB would have no application. The said section provides no solution to the problem where deduction is to be computed under more than one section of Chapter VIA. It cannot follow that other sections providing modification or change in manner or mode of computation are to be ignored. There are several sections like sections 80HHA, 80HHA(5), 80HHA(6) providing manner of deductions or preferential treatment to one deduction over another when the assessee is entitled to deduction under more than one section of Chapter VI-A. It is provided that effect shall first be given to a particular section. All the sections are to be read together harmoniously. The fact that section 80AB starts with a non obstante clause does not make any difference, as there is no conflict in various provisions. Restriction placed on double deduction of same eligible profit cannot be read as an absurdity or conflict. Having regard to above provisions, putting ban on allowability of deduction under other sections, computation of deduction under those sections would serve no purpose. It cannot follow from above that restriction of those sections are not to be given effect to as scheme in those sections is different from scheme of section 80AB which starts with a non

obstante clause 'Notwithstanding anything…… '. Arguments of the assessee, if accepted, would lead to complications not envisaged by the Legislature. Therefore, in a case where deduction under section 80-IA has been allowed, then in the light of provisions of sub-section (9), such profits and gains (to the extent) shall not be allowed under any other provision of the relevant Chapter. For example, if total profit of undertaking is Rs. 100 and 20 per cent is allowed as a deduction under section 80-IA or 80-IB, then for purposes of other provisions like section 80HHC, on such 20 per cent of profit, no deduction can be allowed. The deduction under other sections has to be computed after reducing such profit of 20 per cent. In other words, it will be computed with reference to 80 per cent of the profit. Such deduction cannot be governed by section 80AB alone, as it is a case in which deductions under more than one section of Chapter VI-A are to be allowed; adjustment of deductions under various sections is to be made. It is not a case where provision before making any deduction under Chapter VIA is applicable. Therefore, provision of section 80AB is of no assistance in resolving the problem in hand.

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The assessee further contended that where the Legislature intended to deduct the amount of deduction out of some other deduction, a different phraseology was used. By referreing to sub-section (5) of section 80HHB; sub-section (4) of section 80HHBA; and sub-section (4) of section 80-IE, the assessee further submitted that in all these provisions, the Legislature has specifically used 'hon-obstante clause whereas no overriding effect has been given in section 80-IA or 80-IB. The difference in language clearly pointed out that the Legislature did not intend that deduction allowed under above provisions should be deducted from relief permitted by other sections.

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There was no substance in the above argument. It is a settled law that Legislature adopts different ways and means in order to achieve its goal and there is no justification for insistence on identical language. What is required to be seen is the language employed, which, if clear and unambiguous, is to be given effect to.

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It was contended that provision of section 80HHC was a special provision providing an incentive to exporters earning precious foreign exchange for the country whereas section 80-IA or 80-IB covers a totally different field. Therefore, reading of provision of section 80-IA(9) in section 80HHC would only lead to an apparent conflict.

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There was no force in above submissions. Of course all the provisions should be read together and given a harmonious construction. All provisions are inter-related and cannot be read de hors, one and other. The Special Bench in the case of Rogini Garments (supra) has held that the restriction imposed by sub-section (9) on account of section 80-IA is to be read in all the provisions of Chapter VI-A and it is not possible to ignore the restriction that profit and gains claimed and

allowed as exempt under sub-section (9), (to the extent allowed) cannot be allowed under any other provision of Chapter 'C'. Above construction in reading restriction in all relevant provisions under Chapter 'C', is leading to no contradiction or absurdity and is reasonable. It is the legislative policy not to allow repeated deduction of same profit under sections of deductions in Chapter VI-A. Therefore, there is no conflict or contradiction in giving effect to the legislative mandate. Doing otherwise would, no doubt, be doing violence to the clear language. The argument was, accordingly, to be rejected.

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The assessee also laid stress to notes of objects and reasons pertaining to introduction of sub-sections (9) and (13) in sections 80-IA and 80-IB. Attention was also drawn to Circular of the CBDT No. 772, dated 23-12-1998 to emphasise that the legislature only intended to limit deduction under all the provisions to 100 per cent of eligible profit. It was not intended to impose restriction or deduct profit allowed under section 80-IA /80-IB from deduction permissible under section 80HHC.

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The notes on objects and accompanying reasons are only aids to construction. Such aids to construction are needed when literal reading of provision leads to ambiguous results or absurdity. Where language is clear and there is no ambiguity or absurdity, notes on clauses need not be referred to. Therefore, on facts, there was no support for the assessee from notes on clauses of the Finance Act. As regards Circular No. 772, dated 23-12-1998, as already held that the said Circular was dealing with restriction (b) which provided that deduction (under other provision with heading 'C'), 'shall in no case exceed profits and gains of business or hotel, as the case may be'. The above portion of the section is separated from the other portion of the sub-section by word 'and'. It is, therefore, clear that there are two restrictions in the sub-section and circular of the Board is dealing only with the second restriction. It is difficult to accept that circular was issued to do away with first restriction incorporated in the provisions. There is absolutely no justification for allowing repeated deductions on profit and gain on which deduction has been allowed under section 80-IA or 80-IB of the Act.

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The language used in section 80-IA(9)/80-IB(9A) is clear and unambiguous and is required to be given effect to. Deduction of profits and gains allowed under section 80-IA/80-IB is not to be allowed again under any other provision. There is then further restriction on total deduction not exceeding eligible profit of the undertaking.

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Further restriction contained in section 80-IA or 80-IB not to allow repeated deductions are applicable to same profit. This is more than clear from use of words 'such profit' in section 80-IA/ 80-IB. In other words, there has to be identity of profits on which deduction under more than one provision under Chapter VI-A is claimed by the assessee. The provisions are applicable where on

the profit of the undertaking or enterprise, deduction is claimed under section 80-IA or 80-IB and then on the same profit of the undertaking, deduction under other provisions like 80HHC is claimed. In such cases, restriction contained in above provisions would apply. If profits are derived from separate undertakings, restriction contained in above provision would not be applicable.

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The assessee further contended that section 80-IA(9) cannot control the mechanism of computing the deduction under section 80HHC(3). It further submitted that where it was found that provision allowing deduction on assumption is applicable, then those provisions are to be interpreted liberally.

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Said contention could not be accepted as all statutory provisions are inter-related and are parts of one scheme. This cannot be read de hors one and other. Restriction imposed in section 80-IA(9)/80-IB(9A) is to be read in all sections and given effect to. This would only give a harmonious reading.

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Thus, deduction to be allowed under any other provision of Chapter VI-A with the heading 'C', (which includes sections 80H, 80HHC, etc.) is to be reduced by an amount of deduction allowed under section 80-IA/80-IB.

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