



Tax alert: Section 80-IA(9) does not affect computation of deduction

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The Supreme Court has held that the provisions of section 80-IA(9) of the Income-tax Act, 1961 (ITA) do not affect the computation of deduction, but merely restrict the allowability of deductions computed under any other provisions under heading 'C' of Chapter-VI-A, to the extent of profits and gains of the business.

In a nutshell



Section 80-IA(9) does not provide that when a deduction is allowed under section 80-IA, while considering the claim for deduction under any of the provision under heading 'C' [section 80HHC in this case], the deduction allowed under section 80-IA should be deducted from the gross total income.



Section 80-IA(9) does not affect the computability of deduction under various provisions under heading C of Chapter VI-A, but affects the allowability of deductions computed under various provisions under heading C of Chapter VI-A, so that the aggregate deduction under section 80-IA and other provisions under heading C of Chapter VI-A do not exceed 100 percent of the profits of the business of the taxpayer.



The formula prescribed in section 80HHC(3) is a complete code for the purpose of computation of eligible profits and gains of business from export of merchandise and goods. In case the gross total income is reduced or modified taking into account the deduction allowed under section 80-IA, it would render the formula under section 80HHC(3) ineffective and unworkable.



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Background:

- The appeal before the larger bench of the Supreme Court (SC) in the case under consideration¹ came in view of difference of opinion amongst members of division bench of the SC in earlier ruling² on the issue whether, while considering the deductions under section 80-IA³ or / and 80-IB⁴ of the Income-tax Act, 1961 (ITA), the taxpayer is also entitled to the deduction in respect of the profits and gains under the provisions of section 80HHC⁵ of the ITA or whether the taxpayer is entitled to deductions under all the three sections in respect of the same profits.
- The issue arose specifically in view of introduction of section 80-IA(9) of the ITA w.e.f. 1 April 1999, which states that:

“(9) Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is 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 of this Chapter under the heading “C.—Deductions in respect of certain incomes” and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.”

- The contention of the Revenue was that if a taxpayer claims any deduction under the provisions of section 80-IA/ 80-IB he cannot claim any deduction to the extent of such profits and gains which had been claimed and allowed under section 80HHC of the ITA.
 - Section 80-IA(9) of the ITA mandates that deduction under any other provisions of Chapter VI-A under the heading ‘C’ [section 80HHC in this case] must be computed by reducing the amount of profit and gains allowed as deduction under section 80-IA of the ITA. That is, the gross total income eligible for deduction under section 80HHC would be less or reduced by the deduction already allowed under section 80-IA of the ITA.
- On the other hand, the taxpayer contended that there are 33 different provisions under the heading ‘C’ of Chapter VI-A of the ITA which includes 80HHC, 80-IA, 80-IB, etc. The legislature allows each eligible taxpayer to claim deductions through the said 33 provisions. The real issue was the extent of deduction allowable separately under section 80-IA and section 80HHC of the ITA and the extent of deduction allowable through each provision and overall deduction allowable by adding them up.
 - The gross total income would not undergo a change or reduction for the purpose of section 80HHC of the ITA. The two deductions were to be computed separately, without the deduction allowed under section 80-IA being reduced from the gross total income for computing the deduction under section 80HHC. The reason being that section 80-IA(9) does not affect computation of deduction under section 80HHC, but postulates that the deduction computed under section 80HHC so aggregated with the deduction under section 80-IA, does not exceed the profits of the business.

¹ Shital Fibers Limited v. CIT [Civil Appeal No. 14318 of 2015] (SC)

² Assistant Commissioner of Income Tax v. Micro Labs Limited [2015] 64 taxmann.com 199 (SC)

³ Section 80-IA of the ITA relating to deduction in respect of profits & gains from industrial undertakings or enterprises engaged in infrastructure development.

⁴ Section 80-IB of the ITA relating to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

⁵ Section 80HHC of the ITA relating to deduction in respect of profits retained for export business.

Decision of the SC:

The SC noted /observed the following:

Interpretation of section 80-IA(9) of the ITA

- As per section 80-IA(9) of the ITA, if a deduction of profits and gains under section 80-IA is claimed and allowed under section 80-IA of the ITA, then, the deduction to the extent of such profits and gains in any other provision under the heading 'C' is not allowed. Further, the deduction allowed under any other provision of Chapter VI-A under the heading 'C' shall not exceed profits and gains of such eligible business of undertaking / enterprises.
- Therefore, deduction to the extent allowed under section 80-IA cannot be allowed under any other provision under heading C of Chapter VI-A of the ITA. If a deduction to the extent of 'X' is claimed and allowed out of gross total income of 'Y' under section 80-IA and the taxpayer wants to claim deduction under any other provision under the heading 'C', though he may be entitled to deduction 'Y' under the said provision, he will get deduction under the other provisions to the extent of (Y-X) and in no case total deductions under heading 'C' can exceed the profits and gains of such eligible business of undertaking or enterprise.
- Section 80-IA(9) of the ITA does not provide that when a deduction is allowed under section 80-IA of the ITA, while considering the claim for deduction under any of the provision under heading 'C', the deduction allowed under section 80-IA should be deducted from the gross total income. The restriction under section 80-IA(9) of the ITA is not on computing the total gross income. It restricts deduction under any other provision under heading 'C' to the extent of the deduction claimed under section 80-IA.

Past judicial precedents

- The Bombay High Court (HC) in an earlier ruling⁶ had observed the following:
 - Section 80-IA(9) does not affect the computability of deduction under various provisions under heading C of Chapter VI-A, but affects the allowability of deductions computed under various provisions under heading C of Chapter VI-A, so that the aggregate deduction under section 80-IA and other provisions under heading C of Chapter VI-A do not exceed 100 percent of the profits of the business of the taxpayer.
 - The above view is supported by the CBDT Circular⁷ which states that section 80-IA(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 80-IA(9) being not to curtail the deductions computable under various provisions under heading C of Chapter VI-A, it is reasonable to hold that section 80-IA(9) affects allowability of deduction and not computation of deduction.
- The aforesaid view taken by the Bombay HC was approved by the member of division Bench of the SC⁸ who observed the following:
 - There is a difference between allowing a deduction and computation of deduction. The two have separate and distinct meanings. Computation of deduction is a stage prior and helps in quantifying the amount, which is eligible for deduction.
 - Section 80-IA(9) of the ITA does not bar or prohibit the deduction allowed under section 80-IA from being included in the gross total income when deduction under section 80HHC(3) of the ITA is

⁶ Associated Capsules (P) Ltd. v. Deputy Commissioner of Income Tax [2011] 9 taxmann.com 63 (Bombay HC)

⁷ Central Board of Direct Taxes (CBDT) Circular No. 772 dated 23 December 1998

⁸ Assistant Commissioner of Income Tax v. Micro Labs Limited [2015] 64 taxmann.com 199 (SC)

computed.

- While computing deduction under section 80HHC of the ITA, the gross total income would mean the gross total income before allowing any deduction under section 80-IA or other sections of Part C of Chapter VI-A of the ITA. But once the deduction under section 80HHC has been calculated, it will be allowed ensuring that the deduction under sections 80HHC and 80-IA when aggregated do not exceed profits and gains of such eligible business of undertaking and enterprise.
- The formula prescribed in section 80HHC(3) is a complete code for the purpose of computation of eligible profits and gains of business from export of merchandise and goods. It has reference to total turnover, turnover from exports in proportion to profits and gains from business. In case the gross total income is reduced or modified taking into account the deduction allowed under section 80-IA, it would render the formula under section 80HHC(3) ineffective and unworkable.

In view of the above, the SC upheld the interpretation made by the Bombay HC.

Comments:

The taxpayer may be eligible to claim multiple deductions under the ITA. In such a case, issue may arise with respect to the amount of eligible deduction under each section especially in case of profit linked deductions such as section 80-IA, section 80-IB, section 80HHC etc., which are computed based on certain percentage of profits.

In this regard, section 80-IA(9) of the ITA specifically provides that if a deduction of profits and gains under section 80-IA is claimed and allowed, the deduction to the extent of such profits and gains in any other provision under the heading 'C' is not allowed.

This ruling, while interpreting the provisions of section 80-IA(9) of the ITA, has held / upheld the following:

- Section 80-IA(9) does not provide that when a deduction is allowed under section 80-IA, while considering the claim for deduction under any of the provision under heading 'C', the deduction allowed under section 80-IA should be deducted from the gross total income.
- Section 80-IA(9) does not affect the computability of deduction under various provisions under heading C of Chapter VI-A, but affects the allowability of deductions computed under various provisions under heading C of Chapter VI-A, so that the aggregate deduction under section 80-IA and other provisions under heading C of Chapter VI-A do not exceed 100 per cent of the profits of the business of the taxpayer.
- The formula prescribed in section 80HHC(3) is a complete code for the purpose of computation of eligible profits and gains of business from export of merchandise and goods. In case the gross total income is reduced or modified taking into account the deduction allowed under section 80-IA, it would render the formula under section 80HHC(3) ineffective and unworkable.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.



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