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35+ Key Takeaways from SC Judgment on Sec.80-IA deduction & mode of changing depreciation method

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SC resolves the dispute on market value in inter-unit power transfer for the purpose of Section 80-IA deduction in favour of the Assessees; SC holds that for computation of deduction under Section 80-IA involving power supply by Assessee's captive power plants to its industrial units, the market value for electricity supplied shall be the rate charged by the State Electricity Board from the industrial consumers; Observes that open market price is not defined in the Act and thus refers to Black's Law Dictionary and P. Ramanatha Aiyer's Advanced Law Lexicon for construing the meaning of open market and notes, "*prices in an open market are determined by the laws of supply and demand*"; Opines that a contracted price cannot be said to be an exercise between a buyer and a seller in a competitive environment or in the ordinary course of trade and business; SC highlights that market value should not be compared with the rate of power when sold to a supplier i.e., sold by the Assessee to the State Electricity Board as this was not the rate at which an industrial consumer could have purchased power in the open market; Thus, concludes that Assessee rightly ascertained market value for deduction under Section 80-IA at the rate at which the State Electricity Board supplied power to the industrial consumers i.e. Rs.3.72 per unit; In a separate issue, SC holds that Assessee was right in changing the method of depreciation to WDV method by claiming it in ITR before the due date and affirms that the law has not prescribed any mode for changing the method; SC upholds allowability of expenditure of Rs.3.39 Cr. claimed by Reliance Industries Ltd. (connected case) which was disallowed by the Revenue on the basis of recipient's statement that he had not rendered any service so as to receive such payment; SC affirms the finding of fact given by ITAT based on recipient's affidavit; SC leaves the dispute on nature of carbon credit i.e. capital or revenue as the same was not raised before HC after ITAT held it to be a capital receipt.

The judgment was delivered by the Division Bench of the Supreme Court comprising Justice B.V. Nagarathna and Justice Ujjal Bhuyan.

Senior Advocates S. Ganesh, Percy Pardiwala, Gopal Jain, Advocates V. Lakshmikumaran, Rohit Jain, Kavita Jha, S. Vasudevan, Charanya Lakshmikumaran, Nageswar Rao, Aniket D. Agrawal and others appeared for the Assessees while the Revenue was represented by ASG Balbir Singh, Senior Advocate Arijit Prasad along with Advocates Rupesh Kumar, H.R. Rao, V.C. Bharathi and others.

On re-computation of deduction under Section 80-IA

Facts

M/s Jindal Steel & Power Ltd. (Assessee in the lead case) is engaged in the business of generation of electricity, manufacture of sponge iron, MS Ingots etc. For AY 2001-02, electricity supplied by the State Electricity Board was inadequate, thus, the Assessee set up captive power generating power to meet the requirements of its industrial units at the rate of Rs.3.72 per unit whereas surplus power at the rate of Rs.2.32 per unit was supplied by the Assessee to the State Electricity Board. Assessee declared Nil income after claiming deduction of Rs.80 Cr under Section 80IA; Tax @ 7.5 % was paid at book profits of Rs.111 Cr.

Finding of Lower Authorities

Revenue disputed the claim of Section 80-IA deduction observing that the price of Rs.3.72 per unit for power supply to the captive units was inflated and not the real market value, accordingly, the profit attributable to the power generating units could qualify for deduction from the taxable income. Thus, alleged that the profit not the real profit but inflated and a colourable device to reduce taxable income by claiming Section 80IA deduction. Revenue computed excess deduction of Rs.1.40 per unit on captive consumption and worked out excess deduction at Rs.32 Cr. CIT(A) upheld the AO's order. ITAT reversed

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the CIT(A) order. Punjab and Haryana HC affirmed ITAT order against which Revenue preferred instant appeal.

Key Takeaways from SC Judgment

1. Section 80-IA(8) provides that where goods or services held for the purposes of eligible business are transferred to any other business carried on by the Assessee, the price charged for such transfer should correspond to the market value of such goods or services as on the date of transfer.
2. If the price of goods or services transferred is overstated in comparison to the market value, the Revenue shall recompute the profit by substituting the market value of such goods.
3. Explanation (i) to sub-section (8) defines the expression “market value” to mean the price that such goods or services would ordinarily fetch in the open market. However, “open market” is not defined.
4. As per Electricity (Supply) Act, 1948, the Assessee could not supply surplus electricity to any third-party consumer for which the Assessee was paid at the rate of Rs.2.32 per unit. However the board supplied the electricity to the industrial consumers at the rate of Rs. 3.72 per unit. Revenue considered the market value of electricity at the rate of Rs.2.32 instead of Rs.3.72.
5. As per Section 80-IA, if the Revenue rejects the price as not corresponding to the market value of such good, then he has to compute the sale price of the good at the market value as per his determination.
6. The Explanation below the proviso defines market value in relation to any goods to mean the price that such goods would ordinarily fetch on sale in the open market.
7. Open Market is not a defined expression in the Act, and thus, reference is drawn to the Black Law’s dictionary meaning as per which it is a market in which any buyer or seller may trade and in which prices and product availability are determined by free competition.
8. P. Ramanatha Aiyer’s Advanced Law Lexicon has also defined the expression “open market” to mean a market in which goods are available to be bought and sold by anyone who cares to. Prices in an open market are determined by the laws of supply and demand.
9. Thus, ‘market value’ would mean the price of such goods determined in an environment of free trade or competition.
10. Accordingly, market value denotes the price of a good arrived at between a buyer and a seller in the open market i.e., where the transaction takes place in the normal course of trading. Such pricing is unfettered by any control or regulation; rather, it is determined by the economics of demand and supply.
11. Under the electricity regime in force, an industrial consumer could purchase electricity from the State Electricity Board or avail electricity produced by its own captive power generating unit. No other entity could supply electricity to any consumer.
12. Therefore, the surplus electricity had to be compulsorily supplied by the Assessee to the State Electricity Board and in terms of Sections 43 and 43A of the Electricity Act, the tariff at which the said power plant could supply surplus power to the State Electricity Board was also liable to be determined in accordance with the statutory requirement which was fixed at Rs.2.32 per unit.
13. As per Section 43A of the Electricity Act, the determination of tariff at which the power generating unit could supply surplus power to the concerned State Electricity Board was as per the legislative mandate. The State Electricity Board could fix the price to which the Assessee really had little or no scope to either oppose or negotiate. Therefore, this price is a contracted price and cannot be said to be an exercise between a buyer and a seller in a competitive environment or in the ordinary course of trade and business i.e., in the open market.
14. In other way, if the industrial units of the Assessee did not have the option of obtaining power from the captive power plants of the Assessee, then in that case it would have to purchase electricity from the State Electricity Board at the rate at which the Board supplied to the industrial consumers i.e., Rs. 3.72 per unit.
15. Thus, market value of the power supplied by the Assessee to its industrial units should be considered the rate at which the State Electricity Board supplied power to the consumers in the open market.
16. Such market value should not be compared with the rate of power when sold to a supplier i.e., sold by the Assessee to the State Electricity Board as this was not the rate at which an industrial consumer could have purchased power in the open market.
17. Determination of tariff of the surplus electricity between a power generating company and the

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State Electricity Board is determined in an environment where one of the players has the compulsive legislative mandate not only in the realm of enforcing buying but also to set the buying tariff in terms of the extant statutory guideline

18. Such price determination cannot be said to be an exercise between a buyer and a seller under a competitive environment or a transaction carried out in the ordinary course of trade and commerce. This price of Rs.2.32 per unit cannot be equated with the market value as is understood for the purpose of Section 80-IA(8).
19. Thus, market value for deduction under Section 80-IA shall be the rate at which the State Electricity Board supplied power to the industrial consumers i.e. Rs.3.72 per unit.
20. HC was fully justified in affirming ITAT's action of computing the market value of electricity supplied by the captive power plants of the Assessee to its industrial units after comparing it with the rate of power available in the open market i.e., the price charged by the State Electricity Board while supplying electricity to the industrial consumers.
21. Revenue's reliance on Calcutta HC judgment in ITC Ltd is misplaced being distinguishable on facts as there was no surplus electricity to be supplied to the State Electricity Board.
22. Revenue's reliance on definition of 'Market Value' under Section 80A(6) is wrong as it was inserted in the statute with effect from 2009 whereas the instant case is of AY 2001-02. Thus, dismissed Revenue's appeal on this ground.

On Option to adopt WDV for depreciation

Facts

For AY 2001-02, M/s Jindal Steel and Power Ltd (Assessee) adopted Written Down Value (WDV) method in place of the straight line method while computing depreciation on the assets (25 MV turbines purchased in 1998) used for power generation.

Finding of Lower Authorities

Revenue observed that w.e.f. Apr 1, 1997, Assessee was entitled to depreciation on straight line method in respect of assets acquired on or after Apr 1, 1997 as per the specified percentage in terms of Rule 5 (1A) of the Income Tax Rules, 1962. Since Assessee did not exercise the option of claiming depreciation on WDV basis, it was to be allowed depreciation on WDV basis. CIT(A) upheld AO's order which was reversed by ITAT. HC upheld ITAT's order.

Key Takeaways from SC Judgment

1. From a conjoint reading of Rules 5(1) and (1A) with Appendix-1 and Appendix-1A, it is evident that while subrule (1) provides for allowance of depreciation in respect of any block of assets in terms of the second column of the table in Appendix 1, sub-rule (1A) enables an assessee to seek allowance of depreciation of assets acquired on or after the 1st day of April, 1997 as per the percentage specified in the second column of the table in Appendix-1A on actual cost basis.
2. Second proviso to sub-rule (1A) clarifies that an assessee may opt for depreciation under Appendix-1 instead of Appendix-1A but such option has to be exercised before the due date for furnishing the return under Section 139(1).
3. It is undisputed that the Assessee claimed depreciation in accordance with sub-rule (1) read with Appendix-I before the due date of furnishing the return of income.
4. Further, it is not a statutory requirement that the Assessee should opt for one of the two methods.
5. Thus, Revenue mis-appreciated that Assessee had not specifically opted for the WDV method.
6. Relied on SC judgment in GR Govindarajulu observing that law does not mention any specific mode of exercising such an option and the only requirement is that the option has to be exercised before filing of the return.
7. There is no requirement under the second proviso to Rule 5(1A) that any particular mode of computing the claim of depreciation has to be opted for before the due date of filing of the return. All that is required is that the assessee has to opt before filing of the return or at the time of filing the return that it seeks to avail the depreciation provided in Section 32(1) under Rule 5(1) read with Appendix-I instead of the depreciation specified in Appendix-1A in terms of Rule 5(1A) which the Assessee has done.

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On Payment to Shri S.K. Gupta and his group of companies by Reliance Industries Ltd.

Facts

M/s Reliance Industries Ltd. (Assessee) in AY 2006-07 claimed allowance of expenditure of about Rs. 3.39 crores on account of payments made to one Shri SK Gupta and his group of companies for professional services availed by the Assessee.

Finding of Lower Authorities

Revenue disallowed such expenses referring to the statement of Shri S.K. Gupta recorded during the search operations and held that the said person had not rendered any service to the Assessee so as to receive such payments. CIT(A) upheld the AO’s order. ITAT set aside the order as Shri S.K. Gupta had retracted his statement within a short time by filing an affidavit. HC affirmed ITAT’s order.

Key Takeaways from SC Judgment

1. Revenue solely relied upon the statements made by Shri S.K. Gupta during the course of the search, however, overlooked the fact that within a short span of time, Shri S.K. Gupta retracted from the said statements by filing an affidavit.
2. In the latter statements, Shri S.K. Gupta categorically stated that he had rendered services to the Assessee and the Assessee had not obtained any bogus accommodation bills from him.
3. Also, the name of the Assessee was not referred to as one of the beneficiaries of the accommodation bills in his earlier statement.
4. Revenue dis-believed the affidavit as well as the subsequent statement of Shri S.K. Gupta without any justifiable and cogent reason.
5. Revenue ought to have provided an opportunity to the Assessee to cross-examine Shri S.K. Gupta which was denied.
6. Accordingly, there is no admissible material to deny the claim of expenditure made by the Assessee.

On whether Carbon Credit is capital or revenue receipt

This is an additional issue raised by Revenue in case of M/s Godawari Power and Ispat Pvt. Ltd. (Assessee) as to whether receipts on sale of carbon credit is a capital receipt and thus, the Assessee is not liable to pay any tax on it.

Finding of lower authorities

Revenue as well as CIT(A) held that carbon credit had no direct and immediate nexus with the income of the power division and hence did not qualify for deduction under Section 80-IA(4)(iv). ITAT observed that carbon credit is generated under the Kyoto Protocol and because of international commitments and since carbon credits are meant to promote environmentally sound investments which are admittedly capital in nature, thus, carbon credit is a capital receipt.

Key Takeaways from SC Judgment

1. Question of carbon credit being capital receipt or not was not raised before the HC. Thus, Revenue accepted the decision of the ITAT as regards carbon credit and did not challenge the said decision before the High Court.
2. Also, before this Court, both sides agreed that the only question which arose for consideration was as regards interpretation of Section 80-IA.
3. Thus, Revenue is estopped from raising the said issue before this Court at the stage of final hearing.
4. Left the question open to be decided in an appropriate proceeding.

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