

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.291 of 2004
Date of decision: 24.9.2015**

Commissioner of Income Tax, Hisar

.....Appellant

M/s Parkash Industries Limited, Hisar

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Tajender K.Joshi, Advocate for the appellant-revenue.

Mr. Anand Chhibbar, Sr. Advocate with Ms. Riya Bansal,
Advocate for the respondent-assessee.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 8.3.2002, Annexure A.III passed by the income Tax Appellate Tribunal, Delhi Bench 'B' in ITA No.7370/Del./95 for the assessment year 1992-93. This appeal was admitted on 9.8.2007 to consider following substantial questions of law:-

“i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the decision of CIT(A) who directed the AO to allow depreciation at the prescribed rates on plant and machinery and Cylinders in

respect of Picture and Tube Division at Pitampura (MP) as against 50% of prescribed rates of depreciation, restricted by the AO by invoking the third proviso to Section 32(1) (ii) of the Income Tax Act, 1961?

ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in upholding the decision of CIT (A) directing the ITO to allow deductions under Section 80HH and 80I of the Income Tax Act, 1961 without adjusting the losses of other loss making industrial undertakings of the same assessee with the profit of eligible profit making units?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee company claimed deduction under section 80HH and 80I of the Act at ₹ 12097161/- and ₹1,40,34,259/- respectively. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee company had six industrial units and deduction under sections 80HH and 80I of the Act was claimed on the profits of eligible profit earning units without adjustment of the losses incurred in the other units. The Assessing Officer rejected the claim and allowed deduction after making adjustment of the losses incurred by the loss making units which were also industrial undertaking, vide order dated 12.12.1994, Annexure A.1. It was also noticed that the assessee had claimed 100% depreciation on plant and machinery and cylinders in respect of Picture Tubes Division, Pitampura (MP) as against 50% prescribed rates of depreciation as the plant was used for less than 180 days. Accordingly, the Assessing Officer allowed the depreciation at the rate of 50% of the normal depreciation. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 20.7.1995, Annexure A.II the CIT(A)

partly allowed the appeal. The revenue went in appeal before the Tribunal. Vide order dated 8.3.2002, Annexure A.III the Tribunal dismissed the appeal. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. Learned counsel for the revenue relied upon judgment of this Court in ***Bajaj Motors P.Limited vs. Commissioner of Income Tax***, (2012) 347 ITR 472 to submit that the issue contained in question No.(ii) stands concluded in favour of the revenue and against the assessee. In ***Bajaj Motors P. Limited's*** case (supra), identical issue was considered by this Court. In the said case, the assessee manufactured automobile parts at Gurgaon. It was entitled to deduction under section 80-I of the Act. The Assessing Officer took into account loss of the assessee in another manufacturing unit. It was held that the benefit under section 80I of the Act was referable to total income which was required to be worked out after taking into account the loss, if any. This view was upheld by the CIT(A) as well as the Tribunal. This Court while dismissing the appeal of the assessee held that in computing the quantum of deduction under section 80I of the Act, out of the profits and gains of unit No.1, the loss incurred in another independent unit No.2 should be set off against the profits of unit No.1. It was recorded as under:-

“5. Learned counsel for the assessee submits that for computing the benefit admissible under Section 80-I, loss in another unit could not be taken into account. Reliance has been placed on judgment of Hon'ble Supreme Court in ***CIT Vs. Canara Workshops Pvt. Ltd. (1986) 161 ITR 320 (SC)*** which has been followed in ***CIT Vs. Siddaganga Oil Extractions Pvt. Ltd. (1993) 201 ITR 968 (Karnataka)*** and ***CIT Vs. Visakha***

Industries Ltd. (2001) 251 ITR 471 (Andhra Pradesh).

Learned counsel for the assessee also relies upon ***CIT Vs. Devidayal Rolling Refineries Pvt. Ltd. (1984)40 CTR 191 (Bombay).***

6. Learned counsel for the revenue, however, submits that component of benefit under Section 80-I has to be worked out with reference to total income after excluding the loss therefrom as provided under Section 80AB read with Sections 80A(2) and 80B(5). Reliance has been placed upon the following judgments:-

(i) ***Distributors (Baroda) P. Ltd. Vs. Union of India (1985) 155 ITR 120 (SC)***;(ii) ***H.H.Sir Rama Varma Vs. Commission of Income-Tax (1994) 205 ITR 433 (SC)***;(iii) ***Commissioner of Income-Tax Vs. Macmillan Co.of India Ltd. (2000) 243 ITR 403(Madras)***;(iv) ***Commissioner of Income-Tax Vs. Chemical and Metallurgical Design Co. Ltd. (2001) 247 ITR 749 (Delhi)***;

(v) ***Commissioner of Income -Tax Vs. Nima Specific Family Trust (2001) 248 ITR 29(Bombay)***; and (vi) ***Synco Industries Ltd. Vs. Assessing Officer of Income-Tax and others (2002) 254 ITR 608 (Bombay).***

7. In order to appreciate the controversy, it would be appropriate to refer to the following provisions:-

“80A(1) xx xx xx”

“80A(2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.”

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“80AB Where any deduction is required to be made or allowed under any section included in this Chapter under the heading “*C-Deductions in respect of certain incomes*” in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for

the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.”

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“80B(5) “gross total income” means the total income computed in accordance with the provisions of this Act, before making any deduction under this chapter.”

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“80-I (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words “twenty per cent”, the words “twenty five per cent” had been substituted.”

8. It is clear from the above provisions that component on which deduction is permissible under Section 80-I is gross total income which is defined in Section 80B(5) and is also referred to in Sections 80A(2) and 80AB. In *Distributors (Baroda)* the said provisions were so interpreted, which was also followed in *H.H.Sir Rama Varma*. Judgment in *Canara Workshops* does not refer to Section 80AB. As observed by Madras High Court in *Macmillan Co.of India Ltd.* if component of deduction

under Section 80-I is to refer total income without excluding the loss therefrom, it will be against the statutory provisions. It will be appropriate to make a reference to the following observations in the said judgment:-

“Learned counsel for the assessee, however, contended that the law to be applied is that laid down in the case of *CIT V. Canara Workshops P. Ltd. (1986) 161 ITR 320 (SC)*. It was held in that case that for computing the profits for the purpose of deductions under section 80E of the Income-Tax Act, 1961, the loss incurred by the assessee in the manufacture of alloy Steels (a priority industry) could not be set off against the profits of the manufacture of another product. The assessment year considered in that case was the year 1966-67. The Court, in the course of its judgment did not refer to Section 80AB of the Act and did not consider the effect of that provision as to whether it was declaratory or not, while the question was specifically considered by the Supreme Court in the case of *H.H.Sir Rama Varma V, CIT (1994) 205 ITR 433*. We are bound by the latter decision and the law declared therein is the law which we are required to apply for determining the extent to which deductions are to be permitted under several sections in Chapter VIA excluding section 80M. Learned counsel also referred to certain other decisions which it is unnecessary to refer to, having regard to the law laid down in the case of *H.H.Sir Rama Varma V CIT (1994) 205 ITR 433(SC)*. We may also notice here the judgment of the Constitution Bench of the Apex Court in the case of *Distributors (Baroda) P. Ltd. Vs. Union of India (1985)155 ITR 120* in which the Court while upholding the constitutional validity of section 80AA also in Chapter VIA of the Income-tax Act, held that section 80AA is merely declaratory of the law as it always was since April 1, 1968. Section 80AB similarly must be held to be declaratory of the law as it always was since April 1, 1981.

It has been so held by the Apex Court in the case of *H.H.Sir Rama Varma (1994) 205 ITR 433.*”

9. We are, thus, in agreement with the view taken by Madras High Court in *Macmillan Co. of India Ltd.* and Bombay High Court in *Nima Specific Family Trust and Synco Industries Ltd.* The provisions of Section 80A(2), 80B(5) and 80AB of the Act were not considered before the Apex Court in *Canara Workshops'* case (supra). It may further be observed that the said judgment has been followed by Andhra Pradesh High Court in *Visakha Industries Ltd's* case (supra). We are unable to subscribe to the view taken by Andhra Pradesh High Court in the aforesaid decision. The provisions of Section 80AB having not been noticed in the judgments relied upon on behalf of the assessee except in *Distributors (Baroda) P.Ltd.*, the same are distinguishable. The question raised is decided against the assessee and in favour of the revenue.”

5. Learned counsel for the respondent assessee was unable to distinguish the above said judgment. Consequently, question No.(ii) is answered in favour of the revenue and against the assessee.

6. With regard to question No.(i), the Assessing Officer held that the assessee was entitled to 50% of the depreciation only admissible on the plant and machinery in the Picture Tube Division at Pitampur (MP). The Picture Tube Division was completed in the previous year 1990-91 relevant for the assessment year 1991-92. In that year, the appellant acquired plant and machinery worth ₹ 4,55,62,870/- but as the same was not put into use in that year, its cost was brought forward in the books of account for the previous year 1991-92 relating to assessment year 1992-93. In the previous year 1991-92, this unit worked for less than 180 days. The appellant claimed full depreciation at the rate applicable to such plant and machinery.

The Assessing officer did not accept the explanation of the assessee and curtailed the depreciation to 50% on the ground that the plant and machinery was used for a period less than 180 days during the previous year in question. The CIT(A) reversed the finding recorded by the Assessing Officer on this question. The relevant findings recorded by the CIT(A) read thus:-

“4.1 On behalf of the appellant it was submitted that the Assessing Officer erred in restricting the depreciation to 50% of the amount calculated at the percentage prescribed in the case of block of assets comprising such assets. The appellant's submission in this regard was to the following effect:

“Finance (No.2) Act, 1991 inserted a proviso (numbered as proviso No.3) the salient features of which are:

- i) That the asset should be acquired in the previous year and put to use for the purposes of business or profession in that previous year.
- ii) That the period of use should be for a period of less than one hundred and eighty days in the previous year.
- iii) That if (i) and (ii) apply then the depreciation in respect of such asset shall be restricted to fifty percent of the amount calculated at the percentage prescribed in the case of block of assets comprising such assets.
- iv) That the aforesaid amendment will take effect from 1st April 1992 and will accordingly apply in relation to assessment year 1992-93 and subsequent year.

A bare reading of the aforesaid proviso shows that all the four conditions are cumulative for the said proviso to apply. To put it differently the curtailment of the depreciation to 50% is to be made if the asset is acquired in the previous year and is also put to use in that previous year itself for a period of less than 180 days. It is well accepted proposition that if the words of a statute are unambiguous and not capable of any other meaning

then the provision should be so construed as to avoid redundancy or surplusage. Legislature is deemed not to waste its words or to say anything in vain. Every part of a statute should be given as far as possible its full meaning and effect and no word should be rejected as superfluous. It cannot be assumed that the legislature used the language without any purpose. It must be presumed that the legislature has used the words in their known and ordinary signification.

A further submission was filed on 14.7.1995 to the following effect:

“We have already referred to the relevant facts as also our submission on law to the effect that the learned Assessing Officer was not justified in curtailing the depreciation to 50% of the prescribed rate of depreciation by invoking third proviso to section 32(1)(ii). In this connection, we would like to elaborate our submission by referring to certain settled maxims on the interpretation of fiscal statutes.

It has been held by the Hon'ble Apex court that in interpreting a taxing statute equitable considerations are entirely out of place (Reference CIT vs. MP Jatia AIR 1977 SC 420, Sir Hukum Chand and Manaalal Co. vs. CIT 60 ITR page 99 (SC). In the later case their lordships observed that page 103 of the report that equity has no place in constructing the income tax Act that they have come to the conclusion on a fair reading of the relevant provisions of the Act and the Rules made thereunder and were not introducing any equitable consideration in the matter of construction. In Smt.Tarulata Shayam vs. ITO, 108 ITR 345 (SC) it was held that taxing statute cannot be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed it cannot imply anything which is not expressed, it cannot import provisions in the statute so as to supply any assumed deficiency. Reference was invited to the repeated

observations of Rowaltte J. In *Cape Brandy Syndicate vs. Inland Revenue Commissioners* (1921) 1 KB 64 (KB) at page 71:

“.....in a taxing Act one has to look merely as what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in nothing is to be implied. One can only look fairly at the language used”

Their lordships observed that there is no scope for importing into statute words which are not there. Such importation would be not to construe but to amend the statute. Even if there be a *casus omissus* the defect can be removed only by legislation and not by judicial interpretation. There is no justification, held their lordships, to depart from the normal rule on construction according to which the intention of the legislature is primarily to be gathered from the words used in the statutes.

The maxim is that taxing Act must be construed strictly. The scope of a fiscal provision cannot be enlarged by creating a fiction. As held by the Hon'ble Supreme Court in *CED vs. A Kupu Swamy* 108 ITR 439 (SC) and *Yashwant Rao vs. CWT* 61 ITR 444 (SC) in construing a taxing Act the court is not justified in straining the language in order to hold a subject liable to tax.

It is submitted that it is not necessary to burden the submission by multiplying the authorities as the aforesaid propositions are settled in law. Since in the present case the twin conditions i.e. asset should have been acquired in the financial year 1991-92 and also was used in the same financial year for less than 180 days did not co-exist, the Assessing Officer was justified in curtailing the depreciation to 50% by invoking the third proviso to section 32(1)(ii).

Since the assets were acquired in the financial year 1990-91 (in which year they were not put into use) it was submitted that the third proviso to section 32(1)(ii) does not apply even though in the financial year 1991-92 they were used for less than 180 days.

Xx xx xx xx x xxx

4.5. The third proviso uses the expression 'acquired by the assessee during the previous year. The words previous year are not preceded by the word 'any'. Since the proviso is applicable with effect from assessment year 1992-93, it is evident that it applies to the assets acquired during the previous year 1991-92, relevant to the assessment year 1992-93. It cannot apply to any asset acquired earlier than previous year i.e. 1991-92. As the language of the third proviso is explicit and unambiguous, the only interpretation is that if the asset was acquired in the previous year 1991-92 and was used for less than 180 days in that previous year, then only the depreciation admissible could be curtailed. As in this case, the assets were acquired in the previous year i.e. 1990-91, learned Assessing Officer was not justified in curtailing the depreciation to 50%. Considering the above facts, I am of the opinion that the appellant is entitled to depreciation as admissible at the prescribed rates without curtailing it to 50%. Accordingly, learned AO is directed to allow depreciation without curtailing it to 50% and quantify the relief.”

7. The Tribunal while upholding the findings recorded by the CIT

(A) on question No.(i) recorded thus:-

“Ground 5 and 7 are taken up together and both the parties argued at length on the effect of the third proviso to section 32 (1)(ii). It was the stand of the assessee that aforesaid proviso would apply only if the purchase of the plant and machinery as also its use for a period less than 180 days figures in the same previous year whereas the stand of the department was that it is the use for less than 180 days, which is relevant. After hearing both the parties and considering the relevant provisions of law, we are afraid that we are not in a position to agree with the stand taken on behalf of the revenue. In the present appeal, admittedly the machinery has been purchased in an earlier assessment year

but during the previous year under consideration, it has been used for a period less than 180 days. In our opinion, the proviso in question would apply only if the purchase and the use is in the same previous year but not when the purchase in earlier assessment year but the use in any other previous year is less than a period of 180 days. In this view of the matter, we uphold the action of the CIT(A) rejecting ground Nos. 5 and 7.”

Learned counsel for the revenue has not been able to point out any illegality or perversity in the approach of the CIT(A) and the Tribunal on this issue warranting interference by this Court.

8. In view of the above, Question No.(i) is answered in favour of the assessee and question No.(ii) is answered in favour of the revenue. The appeal is partly allowed.

(Ajay Kumar Mittal)
Judge

September 24, 2015
'gs'

(Ramendra Jain)
Judge