

HIGH COURT OF CHHATTISGARH, BILASPUR**Tax Case (Income Tax Appeal) No. 30 of 2015**

Assistant Commissioner Of Income Tax-1(2) S/o , Aayakar Bhawan, Civil Lines, Raipur, Chhattisgarh

---- Appellant

Versus

M/s. Indra Power Gen. Pvt. Ltd., Midtown Bldg, Link Road, M. G. Road, Raipur, Chhattisgarh

---- Respondent

And

Tax Case (Income Tax Appeal) No. 39 of 2013

Assistant Commissioner Of Income Tax 1 (2), Aayakar Bhawan, Civil Lines, Raipur (Chhattisgarh)

---- Appellant

Versus

M/s Indra Power Gen. Pvt. Ltd, Hotel Midtown Bldg, Link Road, M.G. Road, Raipur (Chhattisgarh)

---- Respondent

For Appellant : Ms. Naushina Afrin Ali, Advocate.

For Respondent : Shri Siddharth Dubey, Advoacte.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Order on Board

Per Deepak Gupta, Chief Justice

22/12/2016

1. The appeal was admitted on the following question of law formulated on 8.11.2016:-

“Whether or not the retrospective insertion of explanation below Section 80IA(13) of the Income Tax Act, 1961 could not be treated as a tangible material for initiating reassessment proceedings?”

2. The Learned Tribunal decided the case in favour of the assessee and held that the Revenue could not treat the explanation below Section

81A(13) of the Income Tax Act, 1961 as tangible material for the purpose of initiating reassessment proceedings.

3. The Gujarat High Court has considered this matter in detail in *Parixit Industries Pvt. Ltd. v. Assistant Commissioner of Income Tax* {(2013) 352 ITR 349 (Guj)} on 12.3.2012 and held as follows:-

“From the above reason disclosed by the officer concerned it appears that it is not the case of the Revenue that the assessee had suppressed any material at the time of regular assessment and that any new document has come from which the above opinion was formed. It would appear from the documents supplied by the assessee at the time of original assessment that the fact that the assessee was engaged in manufacturing of irrigation projects i.e. Drip irrigation, Sprinkler irrigation, Microsprinkler, Gravity fed family drip system etc. and that the same irrigation products have been supplied to various Companies and in some cases the assessee has worked as contractor could have been arrived at. In spite of existence of those materials on record, the Assessing Officer gave the relief under Section 80 IA of the Act. Now the concerned officer has changed his views from the selfsame materials on record. Thus, the Assessing Officer at the time of original assessment from the materials on record could arrive at a conclusion, which now he has reached.

The reason disclosed, therefore, does not come within the purview of Section 147 of the Act, as it is a case of second thought on the same materials. Mr. Bhatt at this stage tried to convince us that at the time of original assessment, the Assessing Officer could not apply the provision contained in Explanation added to sub-section (13) of Section 80-IA of the Act, which was substituted in the year 2009 with effect from April 1, 2000. Mr. Bhatt submits that the Explanation 3 to Section 147 of the Act authorizes him to take such point before us notwithstanding the fact that such point was not taken by the Assessing Officer in the reason assigned in support of the notice.

We find that the Explanation to sub-section (13) of Section 80IA of the Act in vogue at the time of original assessment was inserted by the Finance Act, 2007 with effect from April 1, 2000 and at that time, the same was as follows: "Explanation- For the removal of doubts, it is hereby declared that nothing contained in this section shall apply to a person who executes a work contract entered into with the undertaking or enterprise, as the case may be." Subsequently, by way of further amendment of Finance Act, 2009 with effect from April 1, 2000 the above Explanation was substituted by the following one: "Explanation- For the removal of doubts, it is hereby declared that nothing contained in this section shall apply in relation to a business referred to in the sub-section (4) which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by the undertaking or enterprise referred to in sub-section (1).

It is now a settled law that if an explanation is added to a section of a statute for the removal of doubts, the implication is that the law was the same from the very beginning and the same is further explained by way of addition of the Explanation. Thus, it is not a

case of introduction of new provision of law by retrospective operation. We have found that the petitioner had disclosed all the materials regarding its activities and there was no suppression of materials. In spite of such disclosure, the Assessing Officer gave benefit of the provision by considering the then Explanation which was substantially the same and thus, it could not be said that any income escaped assessment in accordance with the then law. We have already pointed out that the Assessing Officer has now given a second thought over the same materials and according to him, as the assessee is a contractor or supplier of irrigation products, it cannot be called a developer of any new infrastructural facility.

From the materials placed before him by the petitioner, the Assessing Officer earlier did not arrive at such conclusion and thus, the amended Explanation subsequently added cannot be of any help to him in arriving at the second opinion based on the alleged new law. Moreover, in the reason assigned in support of initiation of reopening proceedings, such reason has not been disclosed. We, thus, find that the condition precedent for issue of notice impugned in this Special Civil Application has not been established from the materials on record and consequently, the notice is liable to be quashed on that ground.”

4. We are in complete agreement with the judgment delivered by the Gujarat High Court in *Parixit Industries* (supra). It would be pertinent to mention that the judgment dated 12.3.2012 passed in *Parixit Industries* (supra) has been upheld by the Supreme Court in SLP (CC) No. 15455 of 2012 whereby the SLP filed by the Revenue was dismissed.

5. In view of the above discussion, it is apparent that the present appeals are squarely covered by the aforesaid judgment and therefore, the appeals are dismissed.

Sd/-

(Deepak Gupta)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge