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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 17.01.2017
PRONOUNCED ON: 21.04.2017

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+ W.P. (C) 12073/2015

M/S NATH BROTHERS EXIM INTERNATIONAL LTD....PETITIONER
Through: Mr. Ajay Vohra, Sr. Adv. with Ms.
Kavita Jha, Advocate for petitioner.

Versus

UNION OF INDIA & ANR. ...RESPONDENTS
Through: Mr. Ajay Digpaul, CGSC with Mr. S.
Mishra and Ms. Madhuri Dhingra, Advs. for UOI.

Mr. Rahul Chaudhary, Sr. Standing Counsel with
Ms. Laxmi Gurung, Jr. St. Counsel, on behalf of
Revenue.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S.RAVINDRA BHAT, J.

1. The Petitioner challenges the validity of Section 80(5) of the Income Tax Act, 1961 (hereafter "the Act") inserted by Finance Act, 2009 with effect from 01.04.2003 (hereafter "the 2009 amendment") and also, the fourth proviso to S.10B (1) of the Act inserted by the Finance Act, 2006 w.e.f. 01.04.2006, ("the 2006 amendment) as arbitrary, discriminatory, unreasonable, and violative of Article 14 of the Constitution of India.

2. The brief facts of the case are that the petitioner (also hereafter “the assessee”), is an unlisted, deemed, family-owned public limited company engaged in business of manufacture and export of readymade garments, garment made ups and silk fabric. The Petitioner had, during the assessment year 2002-03, set up Export Oriented Unit (EOU) as an independent unit. The profits derived therefrom were eligible for deduction under Section 10B of the Act. No deduction however, was claimed by the petitioner up to AY 2007-08. In the relevant assessment year (AY), the said entity earned profits of ₹2,43,53,757/- which were eligible to tax exemption. The petitioner failed to claim deduction in the belated income tax returns filed by it on 31.12.2008, (which was due on 30.09.2008) and only made claim for deduction under Section 10B in the subsequent revised return filed by him on 26.03.2010. The Petitioner claimed that it was precluded from filing his return of income within the time prescribed under Section 139(1) because: (a) there were some disputes among family members of the directors of the Petitioner company; and (b) due date of filing return by the assessee company was for the first time reduced by Finance Act, 2009 from 31st October following the close of the previous year to 30th September following. Accordingly, for AY 2008-09, the return was due on 30.09.2009 instead of the earlier due date of 31.10.2009, a fact the Petitioner claims it was unaware of.

3. The second respondent, (the Assistant Commissioner of Income Tax “ACIT”), considered the petitioner’s claim of deduction under Section 10B and by order dated 29.12.2010 passed under Section 143(3) of the Act, denied the said deduction. The assessee felt aggrieved by the said order, challenged it before CIT (Appeals), who by order dated 17.08.2012 upheld

the order of the ACIT. An appeal was preferred against that order of the CIT (Appeals) and is presently pending before the ITAT Delhi. Bound by the plain language of Section 80A (5) and fourth proviso to Section 10B (1) of the Act, the Petitioner has preferred the present petition.

Arguments of the Petitioner

4. That Section 80A(5) precludes any deductions made by assesseees who have failed to do so under the provisions of S.10A, S.10AA, S.10B, S.10BA or any other provision of Chapter VI-A (of the Act) under the heading - *Deductions in respect of certain incomes*. The fourth proviso to Section 10B(1) stipulates that no deductions under the section are permitted if not so claimed before the due date specified under sub-section (1) of Section 139. Simply put, claim for deduction under Section 10B of the Act is allowed only when the claim is preferred in the return of income and also, the return is furnished within the time limit under Section 139(1) of the Act. That the Petitioner argues that under Article 265 of the Constitution of India, the State is authorized to collect only legitimate taxes due by an assessee. Any tax recovered in excess of what is legitimately payable by the assessee, would be without authority of law [*CIT v. Shelly Products*, 261 ITR 367].

5. In this context, the petitioner contended that under Section 139(1), assesseees are under an obligation to furnish return of income in prescribed form on or before due date specified in the second Explanation. Section 139 (4) enables an assessee to file belated returns before expiry of one year from the end of relevant assessment year and Section 139 (5) enables revision of return of income filed under Section 139 (1) of the Act. Before insertion of Section 80A (5) and fourth proviso to Section 10B (1), an eligible assessee was not mandatorily required to claim deduction in the return of income. In

other words, the eligible assessee was only required to intimate the assessing officer about its claim for deduction at any time before completion of assessment proceedings.

6. The assessee contended that due to a variety of reasons he failed to file return of income within the stipulated time given under Section 139(1) of the Act e.g., due to non-completion of audit, documents impounded during search and not available in time, records lost due to floods, fire, etc. Again many reasons may preclude an assessee from making a claim of deduction under Section 10B of the Act. It was argued that in certain cases, the claim may subsequently become admissible due to the AO computing positive income of the eligible undertaking after making additions/ disallowances and also computing positive gross total income for the year, which is deemed to be sufficient to absorb the admissible deduction. In support of this, the learned senior counsel, Mr. Ajay Vohra cited Circular No. 14(SL-35) of 1955, which required the officers of the department “*to assist taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs.*” It was submitted that therefore it is incumbent for the revenue to draw the attention of the assessee to any refunds and reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason. Reliance was placed on *Chokshi Metal Refinery vs. CIT*, 107 ITR 63 (Guj) and *CIT v. Mahendra Mills & Ors.* 243 ITR 56 (SC)].

7. The learned senior counsel further urged that even if the assessing officer failed to consider the claim for deduction or the same was not made in the return filed, then the assessee has the option of raising it as an additional ground of appeal for the first time before the CIT (A)/ITAT. In

fact the CIT(A) are duty bound to admit any such additional grounds of appeal preferred by the assessee, provided relevant materials are on record [*Jute Corporation of India Ltd. v. CIT & Anr.* 187 ITR 688 (SC); and *National Thermal Power Co. Ltd. v. CIT* 229 ITR 383 (SC)].

8. The aforementioned sections further provide, as a condition precedent, that the claim must be supported by a report of a chartered accountant, to be filed along with the return of income. The Petitioner in support of its arguments contended that the courts had unanimously held that while filing the report by the CA is mandatory, the further condition that it should be filed with the return of income is directory by relying on *CIT v. Nagpur Hotel Owners' Association* 247 ITR 201 (SC); *CIT v. G.M. Knitting Industries (P.) Ltd.* 376 ITR 456 (SC); *Church's Auxiliary for Social Action v. DGIT(E)* 325 ITR 362 (Del.); *CIT v. Panama Chemical Works* 245 ITR 684 (MP); *CIT v. Berger Paints (India) Limited* 254 ITR 503 (Cal.); *CIT v. Punjab Financial Corporation* 254 ITR 6 (P&H) (FB); *CIT v. Shiva Rice & Dal Mills* 273 ITR 265 (P&H) and *CIT v. Gupta Fabs* 274 ITR 620 (P&H).

9. The Petitioner relied on the rule of 'substantial compliance' which was elucidated by the Supreme Court in the case of *CCE v. Harichand Srigopal* 260 ELT 3 which seeks

“to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.”

The Petitioner contends that there is no *rationale* behind insertion of fourth proviso to Section 10B(1) and Section 80AC as can be gathered from the

Memorandum explaining provisions of the Finance Bill, 2006 which, according to the Petitioner, fail to enumerate any purpose/object for which those provisions were introduced. The said provisions, inserted into the Act were done with the objective to curtail misuse of tax incentives available to assessee. The Petitioner submits that these are already achieved through the existing provisions of the Act.

10. The Petitioner argues that by operation of the impugned provisions, an assessee would be denied the legitimate claim of deduction under Section 10B, which would otherwise be available to it and that the impugned provisions do not take into consideration any *bona fide* lapse in filing the return. It is also argued that the revenue has several remedies under the statute to make amendment for its lapses, e.g., Sections 147, 154, 263, etc. These existing powers are adequate to address abuse or misuse of the exemption or deduction provisions. However, the imposition of conditions which act as rigid barriers and do not subserve the object of granting relief either under Section 80A or under Section 10-B but which impede the genuine claims of an assessee are unreasonable and inequitable and consequently arbitrary, in violation of Article 14.

11. It was contended that the said provisions also discriminate between two sets of assessee; one set of assessee who file return under Section 139(1) but did not claim deduction thereunder and subsequently do so in the revised return filed under Section 139(5), and another set of assessee who for some reason could not file return within due date but claim the same in the original return filed belatedly. In the former case, deduction under Section 10B cannot be denied as the condition precedent to the impugned

provisions is satisfied, i.e., return of income is filed within due date specified in Section 139(1). However, in the latter case, legitimate deduction is denied even if there is a delay of a single day of filing return of income. This, the petitioner argues is discriminatory. It also contends that the provisions deprive assessee of a vested right, which cannot be taken away by way of amendment. To say so, it relies on the judgments reported as *Govind Das v. Income Tax Officer* 103 ITR 123 (SC), *CIT v. Shah Sadiq & Sons* 166 ITR 102 (SC), *Taylor Instrument Co. (India) Ltd.* 198 ITR 1 (Del.) and *CIT v. S.S.C. Shoes Ltd.* 259 ITR 674 (Mad.)

12. The Petitioner also argued that the provisions of a beneficial legislation should be interpreted liberally and since Sections 10A, and 10B, etc. are intended for promoting economic growth, as such they must be construed to advance the objective of the said section(s) and not to frustrate it. *Bajaj Tempo Ltd. v. CIT* (1992) 196 ITR 188 (SC), *P.R. Prabhakar v. CIT* (2006) 284 ITR 548 (SC) were cited in support. Lastly, in conclusion the petitioner states that even if an eligible assessee *bona fide* fails to file return of income within the time stipulated, that fact cannot cause an prejudice to the revenue. *CIT v. Bhiwani Synthetics Ltd.* 318 ITR 177 (Del.) is cited in support.

Respondents' position

13. The Respondents deny the petitioners allegations and averments. The Respondents, challenge the petitioners' claims and delve into the history and background of the impugned provisions to justify their inclusion. The Respondents contend that income tax is a levy borne by assessee, to which end Section 139(1) of the Act casts an obligation upon each assessee to file a

return of income before the due date prescribed. As regards the fourth proviso to Section 10B (1) inserted by the 2006 amendment, which also added Section 80AC to Chapter VI-A, the requirement of furnishing return before due date was extended to persons who are claiming exemptions/deductions on business profits under other provisions of the Act to timely furnish those returns so as to enable the Department to carry out early examinations with respect to their claims. Hence the objective of this provision was to improve tax compliance.

14. Section 80A (5), along with Section 80A (4) was introduced by the 2009 amendment, with the intention of avoiding multiple deductions in respect of the same profits. With this objective in mind, the legislature imposed three conditions for claiming deduction under S.10A, 10AA, 10B, 10BA, or Chapter VI-A:

- (i) If a deduction in respect of any amount was allowed u/s 10A, 10AA or 10B or 10BA or under provisions of Chapter VI-A under the head “C. – Deductions in respect of certain incomes” in any assessment year, then the same deduction in respect of the same profit & gains shall not be allowed under any other provisions of the Act for such assessment year (Section 80A(4));
- (ii) The aggregate deduction under various provisions shall not exceed the profit and gains of undertaking or unit or enterprise or the business profit, as the case may be (Section 80A(4)); and
- (iii) There shall be a claim made in the return of income (Section 80A(5)).

15. These three conditions were introduced to prevent misuse and prevent multiple claims of deduction u/s 10A, 10AA, 10B or 10BA or under any provisions of Chapter VIA under the head “C. – Deductions in respect of certain incomes.” Condition no. (iii) is manifested in provisions of S.80A(5) of the Act and a plain reading of the language of the section makes clear the purpose and intent of the provision i.e., the tax benefit should be claimed in the return filed. The revenue also argued that the impugned provisions are reasonable and do not in any manner restrict or qualitatively hamper the benefits under Section 80A or Section 10-B but constitute an effort at streamlining returns with a view to improving efficiency in disposal of claims. It is argued that if assesseees are given the option of claiming benefits, they would choose to do so, much after the returns are filed, which pressurizes AOs who then are left with little time to apply their minds and complete assessments. If on the other hand a time limit within which such benefits are to be claimed is provided, assesseees would be compelled to make their claims while filing returns. As almost all assesseees would have compiled their audited returns for the given assessment years, it would not be difficult to comply with the conditions imposed by the impugned amendments.

16. It was argued that there is nothing reprehensible or arbitrary in the imposition of time limits for claiming the benefits, given that assesseees are asked to make such claims in a particular time frame. To say that the benefits of deductions would be lost is an overstatement, because the condition for claiming it is restricted to the point in time when a return is filed; the other conditions in the provisions remain where they are. Reliance

is placed on the decision in *State of Uttar Pradesh v. Kamla Palace* AIR 2000 SC 617, with respect to a fiscal statute in relation to Article 14 of the Constitution, where the Supreme Court has stated:

"Article 14 does not prohibit reasonable classification of persons, objects and transactions by the Legislature for the purpose of attaining specific ends. To satisfy the test of permissible classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the Legislature (Special Courts Bill, 1978, Re [1979]1 SCC 380, seven bench; R. K. Garg v. Union of India [1981]4 SCC 675, five judge Bench). It was further held in R. K. Garg's case [1981]4 SCC 67 5 that laws relating to economic activities or those in the field of taxation enjoy greater latitude than laws touching civil right such as freedom of speech, religion, etc. Such legislation may not be struck down merely on account of crudities and inequities inasmuch as such legislations are designed to take care of complex situation and complex problems which do not admit of solutions through any doctrinaire approach or strait-jacket formula."

17. The revenue contends that the intention of the legislature should be kept in mind, to understand the *rationale* behind the impugned provisions. The benefits that are provided to assessee's under Sections 10A, 10AA, 10B, 10BA and Chapter VIA-C, would otherwise form a major source of tax revenue for the Government. Any deductions sought or exemptions claimed are to be properly scrutinized to check for genuineness of the claim. Thus, by insertion of the impugned provisions, an attempt was made to enable the department to carry out early examination of the claims by ensuring the assessee's file the return on time and any deductions so claimed under the sections are done so in the return.

18. It was argued that it is a condition precedent under the impugned provisions to make claim of any deductions in the return of income filed and that the same should be filed within the due date as specified in Section 139(1). It was felt that despite everything, the timeline provided for filing of returns is adequate as the financial year ends on 31st March and the due date of filing returns would have been 31st July, 30th September or 30th November, as per the case. Any concession under the Act has to be within the framework of law and it cannot be allowed to be availed of at any point of time. In this respect, the law is very clear that no deduction is to be allowed unless the return is filed in time and the same is claimed in the return. This goes hand in hand with the legislative intent of ensuring tax compliance.

19. The respondents argue that it is not tenable in law to admit the position that if return is not filed under Section 139(1) of the Act, the claim for that year would be lost forever to the taxpayer. The premise is that ignorance of law is no defence and the position of law in this respect was well within the knowledge of the petitioner. The law, as enacted by the legislature, has to be complied with. Furthermore, the respondents contend that by virtue of Section 119(2), the Board is empowered to relax any requirement, where the failure on the part of the assessee is due to circumstances beyond his control. Thus, suitable and adequate remedy has been provided under the Act itself and the option to seek consideration under Section 119 is available to the assessee. The revenue relies on the decision in *S.K. Dutta, ITO v. Lawrence Singh Ingty* AIR 1968 SC 658. It was held there that:

“It is not in dispute that taxation laws must also pass the test of Article 14. That has been laid down by this Court in Moopil Nair v. State of Kerala, [1961] 3 S.C.R. 77. But as observed by this Court in East India Tobacco Co. v. State of Andhra Pradesh, [1963] 1 S.C.R. 404, 409 in deciding whether the taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some person or objects and not others; it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that would be violative of Article 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.”

The decision in *State of A.P. v. Nallamilli Ramli Reddy*, (2001) 7 SCC 708, was relied on by the revenue to contend that what Article 14 of the Constitution prohibits is “class legislation” and not “classification for the purpose of legislation”. The test of permissible classification is twofold; (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection with the object sought to be achieved. Thus, it is not required under Article 14 to have a classification that is scientifically perfect or logically complete; in other words, a classification would be justified unless it is arbitrary. The case of *Government of Andhra Pradesh v. Laxmi Devi*, (2008) 4 SCC 720 is also pressed into service to say that in fiscal statutes, greater latitude is given to the State in devising ways and means of regulatory measures, and the court should not, unless compelled by the statute or by the Constitution,

encroach into this field or invalidate such law. Lastly, the revenue contends that the petition challenging constitutionality has been preferred by the petitioner after a period of almost 6 years as far as Section 80A(5) is concerned and ten years as far as fourth proviso to Section 10B(1) is concerned without any explanation for delay. Therefore, relying on *Express Publications (Madurai) Ltd. & Anr. v. Union of India & Anr.* (2004) 11 SCC 526 it is argued that the petition should be rejected.

Analysis and Conclusion

20. The impugned provision is as follows:

“Section 80A(5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading “C.—Deductions in respect of certain incomes”, no deduction shall be allowed to him thereunder.]”

21. As is evident from the factual discussion and the submission of parties, the assessee challenges the validity of two provisions of the Income Tax Act i.e., Section 80A (5) (inserted by the 2006 amendment) and the fourth Proviso to Section 10B(1) (inserted by the 2003 amendment), as violative of Article 14 of the Constitution of India. In effect both provisions preclude assesseees from claiming deductions with respect to any profits and gains in an export oriented unit (EOU) if it fails to file a return of income claiming such deductions, within the time stipulated under Section 139(1) of the Act. The petitioner argues that in case of any *bona fide* reason preventing any given assessee from filing return of income within time, there is no recourse given under any provision of the Act by which a deduction can be claimed at a later stage. The revenue contests this and says

that if there is a *bona fide* lapse in filing within the time, an assessee has recourse to Section 119(2) which enables the Board to extend time for filing return under Section 139(1) if it so deems fit. The petitioners' contention is that the Board's power under Section 119(2) is merely discretionary.

22. The next argument of the petitioner is with regard to Circular No. 14(SL-35) of 1955 issued by the CBSE (Central Board of Revenue) which allows filing of a belated claim of depreciation when no claim for such depreciation has been made in the return of income. The court had held, in *Mahendra Mills* (supra) that the circular

“...[I]mposes merely a duty on the officers of the department to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs. The Officer is required no more than to assist the assessee. It does not place any mandatory duty on the officer to allow depreciation if the assessee does not wish to claim that...”

Furthermore, this court notices that the petitioner is silent about Circular No. 29D (XIX – 14) of 1965, which states that

“where the required particulars have not been furnished by the assessee and no claim for depreciation has been made in the return, the Income Tax Officer should estimate the income without allowing depreciation.”

Read cumulatively, both circulars empower an AO to reject any depreciation claim made at a belated date when the same has not been claimed with the return.

23. The petitioner argues that there was no rationale behind insertion of the impugned provisions in the statute as before their insertion an assessee was allowed to claim deduction of profits and gains at any time before

completion of assessment. However, as was argued, with merit, by the revenue, Section 10B(1) of the Act, gives numerous benefits to the assesseees and the fourth proviso does nothing but requires compliance of the time line provided in Section 139(1) of the Act for claiming the benefit of Section 10B(1). It was added so as to ensure timely returns of income being filed and greater tax compliance. As far as Section 80A (5) was concerned, it was added to prevent multiplicity of claims of deductions with respect to the same transactions, under the Act. The insertion of the impugned provisions does not curtail any vested rights that the petitioner or assessee had, but only imposes upon them a duty, an obligation to claim deductions in a timely manner and in the return so filed. The right to claim such deductions still vests in the assesseees who are eligible for it. The other perspective in such cases is that the impugned provisions are interwoven into the mechanism which Parliament found appropriate to create for the purpose of claiming deductions. In such cases, (unlike in cases where no such benefits are sought) the assessee has to necessarily claim the benefit while filing a return within the time, under Section 139 (1). These provisions are rather like limitation periods, which are statutes of repose (*“Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right”* as held by the Supreme Court in *Prem Singh & Ors v Birbal* 2006 (5) SCC 353) that define the status or relationship of the party concerned. Challenges to such provisions which merely enable the channeling of benefits (such as deductions in the present case) as *per se* arbitrary or discriminatory can seldom succeed. In fiscal and economic matters, more than any other field, Parliament has to constantly innovate and experiment, having regard to experience gained in the administration of the law by executive agencies.

Such innovation would lead it to refining legislation to achieve particular ends, the effects of which may be seemingly painful or even discriminatory. Commenting on the Courts' approach to challenges posed by such legislation, especially in the context of a challenge to Article 14, it was held in *Ajoy Kumar Banerjee & Ors. Etc v Union Of India & Ors* AIR 1984 SC 1130 that:

“The legislature however is free to recognise the degree of harm or evil and to make provisions for the same. In making dissimilar provisions for one group of public sector undertakings does not per se make a law discriminatory as such. It is well-settled that courts will not sit as super-legislature and strike down a particular classification on the ground that any under- inclusion namely that some others have been left untouched so long as there is no violation of constitutional restraints.”

24. The Court is also unpersuaded by the petitioner's contention that the impugned provisions fail to pass muster under the classification test, as to be valid under Article 14 of the Constitution of India. This argument overlooks the fact that those claiming benefits of deduction and those who are not, although no doubt both taxpayers, are clearly apart. Thus, it is open to legislate and prescribe different conditions in respect of those who claim benefits, just as the substantive provisions which stipulate the conditions (kind of accounts to be maintained, eligibility criteria, etc). Therefore, provision of special limitation in such cases is justified and has a rational nexus with the object which Parliament wished to achieve, i.e. to segregate the returns of assesseees in such cases, for proper scrutiny. The case of *D.R. Industries v Union of India* (2008) 229 ELT 24 is authority for the

proposition that different periods of limitation can be prescribed by Parliament and as such the question of arbitrariness does not arise.

25. The petitioner invoked the ‘substantial compliance’ doctrine with respect to furnishing the audit report of the chartered accountant, in order to avail benefit of Section 10B. This impugned proviso (fourth proviso) reads as follows:

“Provided also that no deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of Section 139.”

It is to be remembered here that a proviso, as held in the case of *Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer*, AIR 1966 SC 12, “is to except something out of the enactment or to qualify something enacted therein which but for the Proviso would be within the purview of the enactment.” Likewise in *Union of India v. Sanjay Kumar Jain*, the Supreme Court demarcating the normal functions of a proviso held as follows:

“11. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment...

12. A statutory proviso “is something engrafted on a preceding enactment” [R. v. Taunton St. James (Inhabitants) [1829] 109 ER 309.

13. The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances (per Lord Esher in Barker, Re [1890] 25 QBD 285].”

A proviso is therefore meant to limit the scope of the general enactment and thus any proviso which does that cannot be held to be invalid as long as the objective of the general provision is not frustrated. Going by this case, it is safe to say that the fourth proviso to Section 10B (1) is a qualifying proviso

and it only seeks to limit the general provision in Section 10B (1) with a further stipulation or condition. As held in *State of A.P. v. Nallamilli Ramli Reddi*, (2001) 7 SCC 708, Article 14 of the Constitution of India permits reasonable classification on fulfillment of two factors: (a) that the classification must be found on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (b) that differentia must have a reasonable connection with the object sought to be achieved. As discussed earlier, the objective behind insertion of the impugned provisions was to defeat multiple claims of deductions and to ensure better tax compliance. Thus, the impugned provisions (fourth proviso to Section 10B (1) and Section 80A (5)) so inserted acknowledge the existence of persons owning 100% EOUs and seek to limit their time to claim deductions under the Act. The cases of *State of U.P. v. Kamla Palace*, AIR 2000 SC 617 and *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO*, AIR 2007 SC 1984, are authorities which held that the legislature can devise classes for the purposes of taxing or not taxing, exempting or not exempting, granting incentives or prescribing rates of tax, benefits or concessions. Thus, the court would uphold the wide discretion which is enjoyed by the legislature in matters of making policy for taxation.

26. The decision in *Sham Bhar Khandige v. Agricultural I.T.O.*, AIR 1963 SC 591, is authority for the proposition that where there are more than one methods of assessing a tax and the Legislature selects one among such many, the Court will not be justified to invalidate the law on the ground that the Legislature should have adopted another method, which in the opinion of the Court, is more reasonable or appropriate, the exception being where the

court is convinced that the method adopted is capricious and fanciful. Thus with the addition of the fourth proviso to Section 10B(1) of the Act, the manner of claiming deduction is now time barred under the provisions of the Section 139(1) and relief cannot be granted after expiry of the time mentioned in Section 139(1). Thus, Parliament acted within its power to differentiate between a return of income filed under Section 139(1) and a belated return filed under Section 139(4) for the purposes of deductions claimed Section 10B(1).

27. For the foregoing reasons, the order of the CIT (A) has to be and is upheld; the challenge to the provisions has to fail. Resultantly, the writ petition is dismissed. There shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

APRIL 21, 2017