

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
TAXC No. 65 of 2019

The Commissioner Of Income Tax Raipur, Chhattisgarh.

---- Appellant

Versus

Manilal Dayalji and Company Gola Bidi Works, Sadar Bazar, Dhamtari, Chhattisgarh.

---- Respondent

For Appellant : Shri Amit Chaudhari and Ms. Naushina Ali, Advocates

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

P.R. Ramachandra Menon, Chief Justice

20.01.2020

1. The present appeal preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') raises challenge against the verdict dated 09.03.2018 passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur in ITA No.32/RPR/2014, contending that it involves substantial questions of law.
2. The facts and events show that the assessment was finalized in terms of Section 143(3) of the Act, but later, the audit party raised an objection as to the deduction claimed by the Assessee in terms of Section 80IB of the Act without furnishing necessary certificate for claiming the benefit as a 'Small Scale Industry'. With reference to the audit objection, the Assessing Officer sought to pursue appropriate action in terms of Section 263 of the Act and based on the directions given by the competent authority, fresh

assessment was effected after hearing the Assessee. The Assessing Officer disallowed the claim for want of necessary certificate as envisaged under the relevant provisions of the law, which was taken up by the Assessee before the Tribunal. The matter was analysed by the Tribunal and after appreciating the facts and figures, Annexure A/1 verdict was rendered, virtually allowing the appeal, which is sought to be interdicted in this appeal preferred by the Revenue.

3. When the matter is taken up for consideration, the learned standing counsel for the Revenue submits that the issue is squarely covered by the verdict passed by the Apex Court in **Deputy Commissioner of Income Tax, Circle 11(1), Bangalore v. Ace Multi Axes Systems Limited** reported in **(2018) 2 SCC 158**, pointing out that the production of certificate was essential to have the benefit granted. Paragraphs-13, 14 and 16 are reproduced below for ready reference :

“13. On examination of the scheme of the provision, there is no manner of doubt that incentive meant for small scale industrial undertakings cannot be availed by industrial undertakings which do not continue as small scale industrial undertakings during the relevant period. Needless to say, each assessment year is a different assessment year, except for block assessment.

14. The observations in the impugned order are that the object of legislature is to encourage industrial expansion which implies that incentive should remain applicable even where on account of industrial expansion small scale industrial undertakings ceases to be small scale industrial undertakings. We are unable to appreciate the logic for these observations.

Incentive is given to a particular category of industry for a specified purpose. An incentive meant for small scale industrial undertaking cannot be availed by an assessee which is not such an undertaking. It does not, in any manner, mean that the object of permitting industrial expansion is defeated, if benefit is not allowed to other undertakings. On this logic, incentive must be given irrespective of any condition as the incentive certainly helps further expansion by reducing the tax burden. The concept of vertical equity is well known under which all the assesseees need not be uniformly taxed. Progressive taxation is a well known element of tax policy. Higher slabs of tax or higher tax burden on an assessee having higher income or higher capacity cannot in any manner, be considered unreasonable.

16. The principle of law considered in *Bajaj Tempo* (supra) is certainly a valid principle of interpretation where there is ambiguity or absurdity or where conditions of eligibility are substantially complied. In the present case, the scheme of the statute is clear that the incentive is applicable to a small scale industrial undertaking. The intention of legislature is in no manner defeated by not allowing the said incentive if the assessee ceases to be the class of industrial undertaking for which the incentive is provided even if it was eligible in the initial year. Each assessment year is a separate unit.”

In the instant case, no such certificate in the proper form was stated as produced by the Assessee and that the certificate produced by the Assessee, much later, was not acceptable, not being in conformity with the prescription.

4. After hearing the learned standing counsel for the Department, we are of the view that the said submission, that is, with reference to the nature of the certificate, adequacy of proof and the relevant aspects are more related to 'question of fact' and not any question of law. The verdict passed by the Apex Court does not come to the rescue of the Appellant insofar as this matter is concerned, i.e. to consider whether it is a matter to be considered in terms of Section 260A of the Act, as involving any substantial question of law.
5. The decision rendered by the Tribunal being one on the basis of facts, this Court finds it difficult to entertain the appeal. It is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge