IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1753 OF 2022

Pidilite Industries Limited ….Petitioner

V/s.

The Union of India and Ors. ….Respondents

Mr. Prakash Shah a/w. Mr. Jas Sanghavi i/b. PDS Legal for petitioner.
Mr. Akhileshwar Sharma a/w. Ms. Mamta Omle for respondents – Revenue.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 22nd APRIL 2022

P.C.:

1 Petitioner is engaged *inter alia* in the manufacture and sale of various specialty chemicals and adhesive products under brand name Fevicol, FeviKwik, M Seal etc. Petitioner has six industrial undertakings in the state of Himachal Pradesh for manufacturing of adhesives. Out of the six undertakings, one is situated in District Sirmaur (hereinafter referred to as K-1 Unit) and another at District Solan (hereinafter referred to as Baddi 3 Unit or B-3 Unit).

2 It is petitioner's case that in terms of Section 80-IC(8)(ix) of the Income Tax Act, 1961 (the Act) petitioner was entitled to claim 100% deduction of its profit derived from the said K-1 Unit for five assessment years from Assessment Year 2012-2013. For B-3 Unit as well, it is petitioner's case that they were entitled to the same 100% deduction of its profits.

3 Petitioner filed its return of income for Assessment Year 2014-2015 and an assessment order under Section 143(3) read with Section 144C of the Act was passed on 22nd February 2018 determining petitioner's income of Rs.407.59 Crores as against the returned loss of Rs.377.81 Crores.

4 Petitioner received a notice dated 31st March 2021 under Section 148 of the Act in which it was alleged that there were reasons to believe that petitioner's income chargeable to tax for Assessment Year 2014-2015 has escaped assessment within the meaning of Section 147 of the Act. Reasons for forming such a belief was also provided to petitioner. It is petitioner's case that the reasons clearly indicate change of opinion which is not permissible. It is petitioner's case that since the reopening is proposed after the expiry of four years from the end of the relevant assessment year and assessment under Section 143(3) of the Act has been completed, proviso to Section 147 of the Act would apply and respondent has to show that there was failure on the part of petitioner to fully and truly disclosed material facts. It is petitioner's case that the reasons recorded clearly indicate that all facts were provided and in any case, does not indicate what was the material fact that was not truly and fully disclosed.

5 Mr. Shah, counsel for petitioner submitted that even the judgment of the Supreme Court that is relied in the reasons for reopening has been overruled by another judgment of the Apex Court in ***Principal***

Commissioner of Income Tax, Shimla V/s. Aarham Softronics[1]. Mr. Shah submitted that the said judgment has been delivered by the Apex Court on 20th February 2019, whereas the approval under Section 151 of the Act has been granted only on 26th March 2021. Therefore, the Assessing Officer ought not to have relied upon the judgment referred to in the reasons. Mr. Shah further submitted that this was even brought to the notice of the Assessing Officer in the objections filed by petitioner and in the order disposing the objections, the Assessing Officer has conveniently ignored to deal with the said objection. Mr. Shah submitted that in the affidavit in reply, though it is not denied that the judgment has been overruled, respondents have conveniently stated that the Officer cannot be expected to know all the judgments.

6 Mr. Sharma, counsel for respondents submitted that when the reopening was proposed, the Assessing Officer has opined that the deduction of 100% given in the assessment order is not correct and it should have been restricted to 30% and therefore, it is a mistake which can be corrected in the reopening. Mr. Sharma submitted that in the return of income originally filed, petitioner had claimed only 30% but thereafter, revised it to 100% and therefore, the Assessing Officer was justified in reopening the assessment. As regards the judgment, Mr. Sharma submitted in fairness that the law speaks for itself.

1. 2019 (102) taxmann.com 343 (SC)

7 We have considered the petition with the documents annexed, reply, rejoinder and also having heard the counsels, in our view, petitioner's grievance raised in the petition seems to be justified.

8 In the reasons recorded, it is clearly stated that petitioner should have been allowed deduction of 30% and not 100%. Therefore, it is a clear case of change of opinion which is not permissible in law to reopen the assessment.

9 As regards the judgment relied upon by the Assessing Officer, certainly that has been overruled as submitted by Mr. Shah and, therefore, that also could not have been the basis for form a belief that there has been escapement of income. Mr. Shah also submitted and rightly so that the allegation in the reasons that there has been escapement of income due to failure on the part of the assessee to disclose truly and fully all material facts is also a bald allegation to escape the restrictions imposed by the proviso to Section 147 of the Act. Infact in our view, there has been no failure whatsoever on the issue of Section 80-IC (3) of the Act. The deductions have been first of all explained in the documents filed alongwith the return of income. Moreover, during the assessment proceedings, a notice dated 6th June 2016 under Section 142(1) of the Act was issued to petitioner calling upon petitioner to furnish reasons for revising the income if the return has been revised. In its reply dated 30th June 2016, petitioner has given the reason for revising its income and has expressly stated that the

deduction that it claimed under Section 80-IC for the two eligible units was inadvertently claimed at 30% when it was entitled to claim 100%. Petitioner had received another notice dated 8th November 2017 under Section 142(1) of the Act calling upon petitioner to justify the claim of the deduction under Section 80-IC in respect of two units wherein the claim of deduction has been revised to 100% with supporting evidences. Petitioner has provided those details. In the assessment order, Mr. Sharma submitted that, there is no specific discussion regarding the 100% deduction claimed for the two units. In our view, that would not help Mr. Sharma because it is settled law that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If the Assessing Officer has considered the objection raised in the grounds for issuing notice under Section 148 of the Act during the original assessment proceedings but has not rejected those objections, the Assessing Officer is deemed to have accepted the objection.

10 Moreover, in the assessment order dated 22nd February 2018, the Assessing Officer has discussed on the unit wise details of income and expenses claimed under various heads as 80-IC units and non 80-IC units and has also disallowed certain interest. Therefore, it is quite clear that the

issue of deductions claimed by petitioner under Section 80-IC of the Act was under active consideration of the Assessing Officer during the assessment proceedings. The fact that queries were raised and answers were given also indicate that there is no failure on the part of petitioner to truly and fully disclose material facts.

11 In the circumstances, we have to allow the petition in terms of prayer clause – (a), which we hereby do. Prayer clause – (a) reads as under :

> *(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned notice and passing of the impugned order and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned notice dated 31.03.2021 (Exhibit A) and impugned order dated 16.02.2022 (Exhibit B).*

12 Petition accordingly disposed.

(N.R. BORKAR, J.) **(K.R. SHRIRAM, J.)**