



W.A.Nos. 1520, 1521 & 1522 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2025

PRONOUNCED ON: 25.04.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.Nos. 1520, 1521 & 1522 of 2012
And
M.P.Nos. 1,2 & 2 of 2012

1.The Assistant Commissioner of Income Tax,
Company Circle – VI (4), Chennai
7th Floor, New Block,
121, M.G.Road,
Chennai – 600 034.

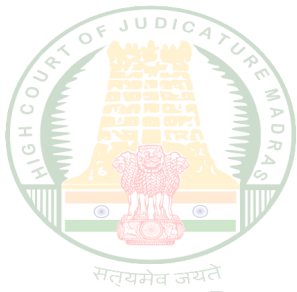
2.The Commissioner of Income Tax III,
121 M.G.Road,
Chennai – 600 034.

.. Appellants
In all WAs

VS

M/s.Sterlite Industries (India) Limited,
Rep. By its General Manager,
(Finance & Accounts) Mr.A.Satish
No1, Sai Flats, no.55, Pillayarkoil Street,
Kangam, Tharamani,
Chennai – 600 113.

..Respondent
In all WAs



W.A.Nos. 1520, 1521 & 1522 of 2012

Prayer in W.A.No.1520 of 2012: Appeal filed under Clause 15 of Letters Patent against order dated 19.12.2011 made in W.P.No.24476 of 2009.

Prayer in W.A.No.1521 of 2012: Appeal filed under Clause 15 of Letters Patent against order dated 19.12.2011 made in W.P.No.24477 of 2009.

Prayer in W.A.No.1522 of 2012: Appeal filed under Clause 15 of Letters Patent against order dated 19.12.2011 made in W.P.No.24478 of 2009.

For Appellants : Mr.V.Mahalingam
Senior Standing Counsel
(in all appeals)

For Respondent : Mr.R.V.Easwar, Senior Counsel
For Mr.T.Vasudevan
(in all appeals)

COMMON JUDGMENT
(Delivered by Dr.ANITA SUMANTH.,J)

These three appeals relate to an order passed by the Writ Court on 19.12.2011. In that order, the challenge by the respondent in Writ Appeals (assessee/writ petitioner) was to notices issued under Section 148 of the Income Tax Act, 1961 (in short, Act) for assessment years (in short, AY) 2002-03, 2003-04 and 2004-05 (in short, captioned Assessment Years).

2. The submissions in brief of Mr.V.Mahalingam, learned Senior Standing Counsel for the appellants are to the effect that the learned Judge ought not to have allowed the Writ Petitions insofar as the proceedings for



W.A.Nos. 1520, 1521 & 1522 of 2012

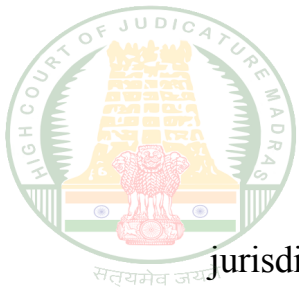
re-assessment have been validly initiated in respect of the subject Assessment Years. The necessity for re-assessment arose from the fact that there had been excess deduction claimed by the assessee under Section 80IB of the Act, as well as other issues.

3. The Writ Petitions had been grossly pre-mature insofar as what had been assailed were only notices under Section 148 relating to re-assessment and hence, such a challenge ought not to have been entertained. Though the Assessee had preferred to challenge only the Notices, the re-assessments had, in fact, been completed at the time when the writ petitions had been filed.

4. The procedure for re-assessment under the Income Tax Act, has been elucidated by the Supreme Court in the case of *GKN Driveshafts (India) Ltd v Income Tax Officer*¹ to state that upon receipt of a notice, return of income must be filed. The assessee may also seek the reasons based on which the re-assessment had been initiated.

5. Upon receipt of the reasons, which the assessing officer is bound to disclose to the assessee, objections may be filed by the assessee assailing the assumption of jurisdiction for re-opening. It is incumbent upon the assessing officer to dispose the objections on assumption of

¹ (2002) 125 Taxman 963 (SC)



W.A.Nos. 1520, 1521 & 1522 of 2012

WEB COPY

jurisdiction first before proceeding to hear the matter on merits, if the assessing officer is unconvinced by the objections in the context of jurisdiction.

6. In the present case, the above procedure has been followed. Reasons have been sought and furnished and objections were filed by the Assessee. Those objections were rejected on 13.10.2009 and re-assessments were finalised after issuance of notice to the Assessee. Hence, the appropriate course of action would have been for the assessee to file statutory appeals challenging the assessment orders instead of which the notices (that had culminated into assessment orders) had been challenged before the Writ Court.

7. It is hence not proper for the Writ Court to have proceeded on the merits of the matter as the various issues raised involved appreciation of facts which ought not to have been done under Article 226 of the Constitution of India. This is on the aspect of maintainability of the Writ Petitions itself in which context, learned Senior Standing Counsel relies on the judgments in *GKN Driveshafts (India) Ltd*² and *Assistant Commissioner of Income Tax v Rajesh Jhaveri Stock Brokers (P) Ltd*³.

² Foot Note Supra (1)

³ 291 ITR 500



WEB COPY

8. On the merits of the matter, the submissions of the learned Senior Standing Counsel are that deductions under Section 80IB of the Act are not available to the assessee for the assessment years in question. For this purpose, he would draw attention to the certificates of commencement of business, the certificate of the Auditor as well as other documents that will be adverted to in the course of the discussion in the paragraphs to follow.

9. He relies on the following decisions in support of his arguments:

1. *Pandian Chemicals Ltd v Commissioner of Income Tax*⁴
2. *Liberty India v Commissioner of Income Tax*⁵
3. *Saraf Exports v Commissioner of Income Tax*⁶
4. *Commissioner of Income-Tax, Delhi v Kelvinator of India Ltd*⁷
5. *Mangalam Publications v Commissioner of Income Tax*⁸
6. *Commissioner of Income Tax v Premier Automobiles Ltd*⁹
7. *Principal Commissioner of Income Tax v ITC Ltd*¹⁰
8. *T.K.Salim v Union of India*¹¹

10. The submissions of Mr.Eashwar, learned Senior Counsel appearing for Mr.T.Vasudevan, learned counsel on record for the respondent are to the effect that the impugned proceedings for re-assessment are bad in law as being barred by limitation and an attempt to

4 (2003) 129 Taxman 539 (SC)

5 (2009) 183 Taxman 349(SC)

6 (2023) 149 taxmann.com 145 (SC)

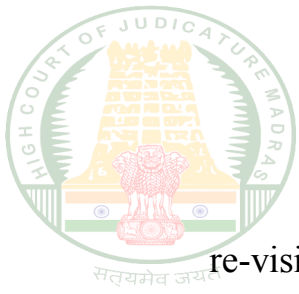
7 (2010) 187 taxman 312 (SC)

8 (2024) 158 taxmann.com 564(SC)

9 (1993) 70 Taxman 495 (Bombay)

10 (2024) 163 taxmann.com 294 (Calcutta)

11 (2024) 163 taxmann.com 385 (Kerala)



W.A.Nos. 1520, 1521 & 1522 of 2012

re-visit and review the decisions taken under scrutiny.

WEB COPY

11. He relies on the following decisions in support of the assessee.

1. *Calcutta Discount Co., Ltd v Income Tax Officer and another*¹²
2. *Income Tax Officer v Lakhmani Mewal Das*¹³
3. *Commissioner of Income Tax v Kelvinator of India Ltd*¹⁴
4. *Commissioner of Income Tax v Kelvinator of India Ltd*¹⁵
5. *Commissioner of Income Tax v M/s. Hyundai Motor India Ltd*¹⁶
6. *Principal Commissioner of Income Tax, 6 Chennai v Vatsala Santosh Kamat*¹⁷
7. *Commissioner of Income Tax v Elgi Finance Ltd*¹⁸
8. *Berger Paints India Ltd v Assistant Commissioner of Income Tax*¹⁹
9. *Tao Publishing (P) Ltd v DCIT, Pune*²⁰
10. *Micro Links (P) Ltd v Assistant Commissioner of Income Tax*²¹
11. *Assistant Commissioner of Income Tax v Southern Structurals Ltd*²²
12. *Commissioner of Income Tax v Nestor Pharmaceuticals Ltd*²³
13. *PVP Ventures Limited v ACIT and another*²⁴

12. Both learned counsel have taken us through the facts in detail outlining the nature of the activity carried on by the assessee, relevant dates and events and the applicable legal provisions. They have also referred to several cases as adumbrated above, to buttress their submissions.

-
- 12 41 ITR 191 (SC)
 - 13 103 ITR 437 (SC)
 - 14 320 ITR 561 (SC)
 - 15 256 ITR 1 (Delhi FB)
 - 16 Tax Case (Appeal) No.1441 of 2010 dated 06.09.2019 (MHC)
 - 17 2018 (4) TMI 1532
 - 18 286 ITR 675 (Mad)
 - 19 322 ITR 369 (Cal.HC)
 - 20 370 ITR 134 (Bom.HC)
 - 21 393 ITR 366 (Guj.HC)
 - 22 110 ITR 165 (Mad.HC)
 - 23 322 ITR 631 (Del.HC)
 - 24 W.A.No.1171 of 2015 dated 27.10.2015



WEB COPY

13. Having heard their detailed submissions, our decision is as follows. The genesis of these Writ Petitions were notices for re-assessment in respect of the captioned assessment years. Though the reasons for re-assessment in each case vary from one year to another, the crux revolves around the grant of relief under Section 80 IB of the Act.

14. Based on the submissions made, the relevant dates and events to be captured to set the context for an adjudication of the legal issue are set out way of two tabulations below. Table I will contain the details of the dates and events and Table II will contain the relevant dates and events touching upon the issue on merits as revealed from the reasons for re-assessment for each year.

TABLE I

Contents	Assessment Years		
	2002-03	2003-04	2004-05
Date of filing of return	30.10.2002	28.11.2003	31.10.2004
Date of completion of assessment u/s.143(3)	28.02.2005	30.03.2006	28.12.2006
Whether requisite forms had been annexed to the returns of income in respect of claim u/s. 80 IB	Yes	Yes	Yes
Whether claim of deduction identified	Yes	Yes	Yes

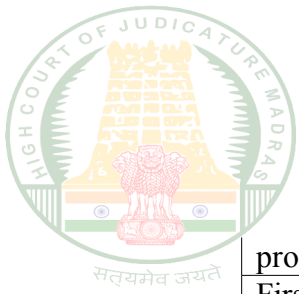


WEB COPY

in scrutiny assessment for verification by the officer			
Whether claim u/s.80IB considered in scrutiny	Yes	Yes	Yes
Result of the claim in scrutiny assessment	Accepted	Accepted	Accepted
Year of claim in each Unit	Rakholi – 3 rd year Chinchpada – 4 th year	Rakholi – 4 th year Chinchpada – 5 th year	Rakholi – 5 th year
Date of notice u/s. 148	19.03.2009	19.03.2009	19.03.2009
Whether reasons supplied	Yes (Extracted at paragraph No.15)	Yes (Extracted at paragraph No.15)	Yes (Extracted at paragraph No.15)
Date of filing of objections	16.07.2009	16.07.2009	31.08.2009
Date of rejection of objection	13.10.2009	13.10.2009	13.10.2009
Date of re-assessment order	13.10.2009	13.10.2009	13.10.2009

TABLE II

Contents	Name of the Unit	
	Rakholi	Chinchpada, (CCR Refinery), Silvasa, Union Territory of Dadra Nagar Haveli
Nature of business	Manufacturers of Non-ferrous metals	Manufacturers of Non-ferrous metals
Nature of relief sought	Deduction u/s. 80 IB of the Income Tax Act, 1961	Deduction u/s. 80 IB of the Income Tax Act, 1961
Date of grant of Licence	18.03.1998	07.06.1996
Commencement of	22.02.1999	01.04.1998



W.A.Nos. 1520, 1521 & 1522 of 2012

production		
First year of claim	2000-01	1999-00

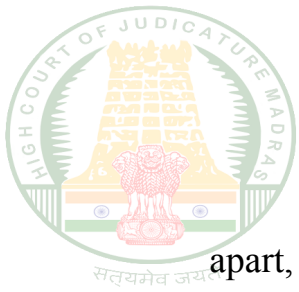
WEB COPY

15. As far as the question of maintainability is concerned, useful reference may be had to the procedure for re-assessment in the case of *GKN Driveshafts (India) Ltd*²⁵, extracted below:

We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.

16. In the present case, the orders of re-assessment have been passed on 13.10.2009 which is the same date as the order of rejection of the objections. No notice of hearing under Section 143(2) has been issued prior to finalisation of the re-assessment. It is incumbent upon the officer to have issued the statutory notice to the assessee prior to taking the matter up for assessment for finalization. Insofar as there is no violation of the principles of natural justice, the Writ Petitions are maintainable. That

²⁵ Foot Note Supra (1)



apart, there are no disputed facts at play. We hence do not find any necessity to relegate the assessee to statutory appeal. In any case, these are Writ Petitions of the year 2009 relating to assessment years 2002-03, 2003-04 and 2004-05. Also for this reason, we do not find any merit in relegating the assessee to statutory appeal.

17. We now advert to the merits. The reasons for re-assessment read as under for the years in question:

AY 2002-03:

As requested vide letter cited under reference the reasons for reopening the assessment u/s.148 are as under:

Assessee has claimed 100% deduction of Rs.310,96,28,749/- in respect of Chinchipada unit whereas the assessee is eligible for 30% deduction of Rs.92,30,89,377/- only since as per 10CCB filed for AYs 2003-04 and 2004-05, date of commencement of operation was 07.06.1996 (PY 1996-97) and hence initial year being 1997-98, the year of claim is the 6th year. Hence, the assessee is eligible for 30% deduction only. Excess deduction allowed is Rs.2,18,65,39,372/-.

Other income credited to the tune of Rs.3,26,64,158/- in the separate Profit and Loss account for Chinchipada unit is not eligible for 80IB since it is not derived from manufacturing activity. Thus excess deduction allowed is Rs.3,26,64,158/-.

AY 2003-04:

As requested vide letter cited under reference the reasons for reopening the assessment u/s: 148 are as under:

i. Assessee has claimed 100% deduction in respect of Rakholi unit of Rs.13.22 crores and Chinchipada unit of Rs.404.42 crores and was also allowed whereas the assessee is eligible for 30% deduction only since as per 10CCB filed for AYs 2003-04 in respect of Rakholi Unit, date of commencement of operation is 18.03.1998 (PY 1997-98 and initial year 1998-99 and hence current being 6th year). Similarly, in respect of



Chinchipada unit, date of commencement of operation was 07.06.1996 (PY 1996-97 & initial year being 1997-98 and hence current being 7th year). Hence, the assessee is eligible for 30% deduction only. Excess deduction allowed to be brought to tax.

ii. In the P & L account for Chinchpada Unit, assessee has credited interest income of Rs.7,01,50,976/- and miscellaneous income of Rs.26,43,366/-. Assessee has netted a sum of Rs. 9,34,01,802/- being interest received. Since these incomes do not form part of income from manufacturing unit, these are not eligible for deduction u/s.80IB.

iii. In the P&L account of Rakholi unit assessee has credited interest income of Rs.6,067/- and miscellaneous income of Rs, 67,87,792/-. Since these incomes do not form part of income from manufacturing unit, these are not eligible for deduction u/s.80IB.

iv. Provision for Bad debts of Rs.67,17,311/-, provision for diminishing value of Investments of Rs. 1,17,362/- and income tax of Rs. 11,59,66,487/- debited to Profit and Loss account and added to the total income under normal computation was omitted to be added to the net profit u/s.115JB as unascertained liability.

v. Wrong claim of 80HHC under section 115JB as no deduction is allowable under section 80HHC as per section 80IA(9).

vi. Under normal computation:

a. Share issue expenses written off of Rs.40,74,600/- and FRN issue expenses written off of Rs. 54,61,569/- debited to Profit and Loss account as per column 17(a) of Form 3CD to be disallowed being capital in nature.

b. Wealth tax of Rs.10,89,940/- debited in Profit and Loss account as per clause 17(f) of Form 3CD to be disallowed.

a. Mistake in deduction u/s.80IB in Chinchpada and ACSR Rakhali unit i.e., by wrongly allowing deduction u/s. 80IB in relation to the interest and miscellaneous income allowed as eligible for deduction u/s. 80IB.

AY 2004-05 :

As requested vide letter cited under reference the reasons for reopening the assessment u/s: 148 are as under:

i. Assessee has claimed 100% deduction of Rs. 16.06 crores and in respect of Rakholi unit whereas the assessee is eligible for 30%



deduction only being Rs. 4,81,77,076/- since as per 10CCB filed for AYs 2003-04 in respect of Rakholi Unit, date of commencement of operation is 18.03.1998 (PY 1997-98 & initial year 98-99 and hence current being 7th year)

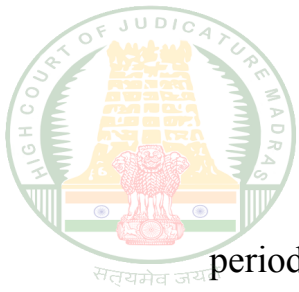
ii. In the P & L account for Chinchpada Unit, assessee has credited interest income of Rs. 9,71,22,776/- which was netted against interest and finance charges. Since this income does not form part of income from manufacturing activity, deduction u/s. 80IB on this count should be disallowed.

iii. In the P & L account of Chinchpada Unit, assessee has credited Rs.14,37,401/- as miscellaneous income. Likewise, in the Profit and Loss account of Rakholi unit, Rs.4,93,931/- was credited as other Income. Since this income does not form part of income from manufacturing activity, deduction u/s.80IB on this count should be disallowed."

18. The core issue to be considered is as to whether the date of claim of deduction under Section 80IA/IB would be proper or whether the assessments for the periods 2002-03, 2003-04 and 2004-05 required to be re-visited under Section 148 of the Act.

19. It is relevant to note the difference in law as far as assessment years 2002-03 and 2003-04 on the one hand, and 2004-05 on the other is concerned. As far as the first two assessment years are concerned, re-assessment proceedings have been initiated beyond the period of four years from the end of the relevant assessment year, thus attracting the application of proviso to Section 147 of the Act which we will presently advert to.

20. For assessment year 2004-05, the re-opening is within the



WEB COPY

period of 4 years from the end of the relevant assessment year. Hence, as far as assessment years 2002-03 and 2003-04 are concerned, an additional condition that is cast upon the revenue is as set out under the proviso to Section 147 requiring that the Department should establish that the assessee has not made a full and true disclosure of all material aspects in its returns of income at the initial stage. It is only upon this burden being discharged that the Department would be in a position to avail the extended period of limitation from 4 to 6 years.

21. In the interests of clarity, we extract below the relevant portions of Section 147 including the proviso as it stood for the years in question.

Income escaping assessment.

147. If the Assessing Officer has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to



WEB COPY



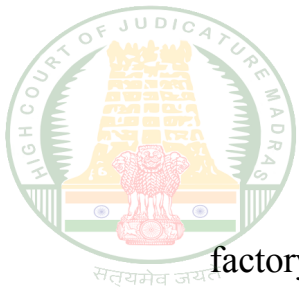
W.A.Nos. 1520, 1521 & 1522 of 2012

tax has escaped assessment for such assessment year by reason of the failures on the part of the assessee to make a return under section 139 or in response to a notice issued under subsection (1) of section 142 or section 148 or to disclose fully and truly all material acts necessary for his assessment, for that assessment year.

22. The assessee has drawn attention to the fact that the returns of income filed for all three years were complete and supported by necessary Forms as well as Certifications from the Chartered Accountant in regard to the claim.

23. This aspect is not disputed by the Income Tax Department. The income tax returns are full and complete, in that there is no omission of the material particulars in regard to deduction under Section 80IA/IB. In fact, the very trigger for these proceedings is a Certificate issued by the Chartered Accountant in respect of the years in question where the Chartered Accountant has, in column 8 in Form 10 CCB stated that the commencement of production of business was on 18.03.1998. In column 9 of Form 10 CCB annexed to the return, the initial year of claim is shown to be 2000-01.

24. The assessee has explained that the date of commencement of production ought not to have been 18.03.1998, as that was the date on which the Licence to Work had been granted to operate the Rakholi

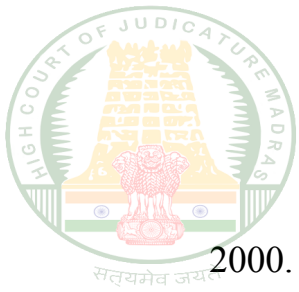


WEB COPY

factory. We find merit in the contention that it is only when the Licence to Work had been granted, would the assessee proceed to install machinery and thereafter commence manufacture. Hence the date of grant of Licence can never normally be the date of commencement of business. Hence, there is a clear error in the date set out in column 8 of Form 10 CCB where the date of commencement of production has been shown to be the date on which the Licence to Work had been granted.

25. It is nobody's case that the date stipulated in error was motivated. In fact, had it been the intention of the assessee to suppress information or to obtain a benefit that it was not eligible for, it would have ensured that there was no mismatch between the particulars in columns 8 and 9 of Form 10 CCB as the very next column, i.e., column 9 reveals the initial year of claim as 2000-01. Hence it is evident that the date 18.03.1998 in column 8 was only an error and nothing more.

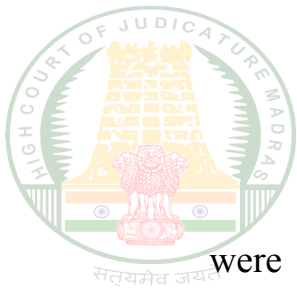
26. The same error repeats itself as far as the Chinchpada unit is concerned, except that in column 8 in Form 10 CCB relating to Chinchpada unit, the date of commencement of production is shown as 07.06.1996 which is the date on which the Licence to Work had been granted. Column 9 for that unit reveals the initial year of claim as 1999-



2000. The same explanation as set out for the Rakholi unit has been furnished for the Chinchpada unit as well and the conclusions of the Court *supra* would apply equally as far as this unit too is concerned.

27. As pointed out by learned Senior Counsel, the use of the word '*true*' in the proviso to Section 147 is a charge upon the assessee to have intended to provide false information at the first instance. Hence the use of the word '*true*', as understood in common parlance would carry with it the requirement that the department must establish animus or the intention to suppress material, to the assessee's advantage. The Court agrees that there is no intention to suppress information to obtain a benefit to which it was disentitled. On the other hand, the information supplied has been erroneous, to its disadvantage. At best, it may be said that the assessee has been remiss. However, this, by itself, would not establish falsity of the material particulars provided at the initial stage.

28. The parties have also circulated copies of assessment orders passed in respect of the initial years, i.e., 2000-01 and 2001-02. Those orders have been made under scrutiny, under Section 143(3) of the Act. There is no dispute on the position that prior to framing of those assessments, returns of income filed by the assessee, which in those cases,



W.A.Nos. 1520, 1521 & 1522 of 2012

were also annexed with all requisite material particulars, were examined and questionnaires under Section 142(1) were issued, as were notices under Section 143(2).

29. A perusal of the orders indicates detailed reference to the discussions that were had qua the officer and the assessee. In conclusion, the officer has carefully and consciously recorded that as far as deduction under Chapter VI A is concerned, in the order of assessment for assessment year 2000-01, the year of claim for Rakholi unit was the first year and for the Chinchpada unit was the second year.

30. The relevant narration in the assessment order is set out below to aid appreciation of the fact that the grant of claim by the Assessing Officer in each year has not been a mechanical act.

Less Deduction under Chapter VI A

<i>Unit</i>	<i>Year</i>	<i>Section</i>	<i>Deduction</i>
<i>CCR Silvasa</i>	<i>2nd</i>	<i>80 IA</i>	<i>170,70,33,942</i>
<i>ACSR Rakohli</i>	<i>1st</i>	<i>80IA</i>	<u><i>2,84,13,745</i></u>
			<i>173,54,47,687</i> <u><i>151,62,40,203</i></u>

(The deductions under Chapter VI A is restricted to the extent of profits available)

NIL

31. The law requires the assessing officer to specifically record in each assessment year, the year for which the claim of the assessee under Section 80IA/IB was being considered. It is in compliance of this, that the



W.A.Nos. 1520, 1521 & 1522 of 2012

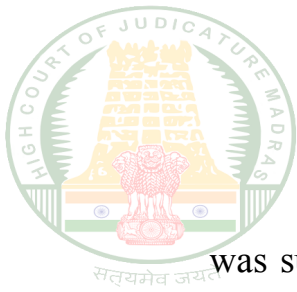
assessing officer has been careful and conscious enough to set out the year of claim in the assessment order itself.

32. It is also relevant that those assessment orders, for the previous years, i.e., 2000-01 and 2001-02, remain undisturbed even at this point of time. We, hence, find that the action of the Assessing Officer to have cherry-picked the assessments for assessment years 2002-03, 2003-04 and 2004-05 alone to disturb the sequence of claim as being wholly misconceived and without any basis whatsoever.

33. It is also likely that if Form 10CCB for the previous two assessment years, ie., 2000-01 and 2001-02 were taken up for verification, the same errors that have featured in column 8 of Form 10 CCB would figure in those Forms as well.

34. However, in the assessment years post 2004-05 as well, the admitted position is that the assessments have been finalized accepting the returns of income filed by the assessee, in respect of deduction under Section 80IA/IB. Hence, we reiterate that picking three years from the block of 10 years would only skew the scheme of assessment and deduction as envisaged under the Act.

35. Moreover, the reasons do not set out any other material which

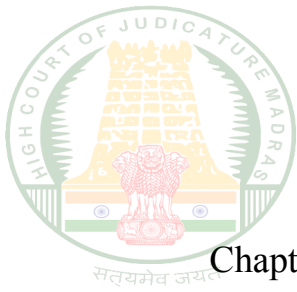


W.A.Nos. 1520, 1521 & 1522 of 2012

was suppressed by the assessee. Hence, the department is not entitled to the extended limitation of 6 years.

36. The date set out in column 8 in Form 10CCB is the date of grant of Licence to Work. However, detailed discussions have taken place prior to framing of the original scrutiny assessments and the return of income and accompanying Forms were well available before the assessing authority. We hence do not accept Mr.Mahalingam's argument that the error of the Chartered Accountant in stipulating the date of grant of Licence to Work as date of commencement of commercial production would justify the re-assessment proceedings.

37. Having regard to the true spirit, object and purport of Section 80IA/IB, an assessee must be given the choice of when the claim of deduction may be made. In the computation of income accompanying the return for the year ending 31.03.2000, a copy of which is supplied to us, the assessee has clearly revealed by way of two notes that no deduction under Chapter VIA was claimed in that year, since unabsorbed losses and depreciation were available to be adjusted/unabsorbed. However, on completion of assessment, if there were sufficient profits to absorb the losses, the company has reiterated its eligibility for deduction under



Chapter VI A. These notes are part of the records of the Department.

WEB COPY

38. The judgments relied on by Mr.Mahalingam are briefly discussed below.

In *Premier Automobiles Ltd*²⁶, the Bombay High Court decided the interplay between Sections 148 and 154 which issue does not arise from the order of the Writ Court.

39. The judgments in the cases of *Pandian Chemicals Limited*²⁷, *Liberty India*²⁸ and *Saraf Exports*²⁹ are in the context of the phrase 'derived from', perhaps to support the averment in the reasons that deduction under Section 80IA/IB ought not to have been granted in respect of interest income.

40. However, our decision proceeds on the aspect of assumption of jurisdiction by the assessing officer under Section 147 and we have found, in the course of our discussion above that the assumption of jurisdiction by the assessing officer is contrary to the provisions of law.

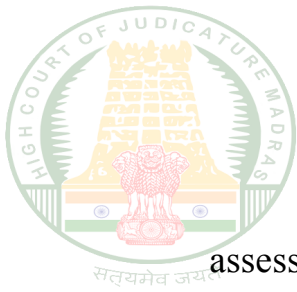
41. As far as the first two years are concerned, the assessing officer has availed the benefit of larger limitation of 6 years which he is not entitled to, since there has been no untrue or incomplete disclosure by the

26 Foot Note Supra (9)

27 Foot Note Supra (4)

28 Foot Note Supra (5)

29 Foot Note Supra (6)



assessee at the first instance.

WEB COPY

42. As far as assessment year 2004-05 is concerned, we find that the grant of deduction is based on the records. There is absolutely no material available to indicate that the original order of assessment is liable to be re-opened.

43. In *Kelvinator India Ltd.*³⁰, which is a matter relating to re-assessment within 4 years, the Supreme Court has categorically emphasised the difference between proceedings for re-assessment and proceeding for review holding that the department officer has the power only to re-assess and not review on the same facts.

44. In *Mangalam Publications*³¹, a recent judgment of the Supreme Court, *ITC Limited*³² and *T.K.Salim*³³, the Supreme Court, Calcutta High Court and the Kerala High Court were concerned with re-assessments where the assessments concluded were not in accordance with law. There are findings in those judgments to show that the initial assessments had been made ignoring the mandatory provisions of law and Circulars which bind the assessing officer. Thus, in those cases the Courts have held that

30 Foot Note Supra (7)

31 Foot Note Supra (8)

32 Foot Note Supra (10)

33 Foot Note Supra (11)



W.A.Nos. 1520, 1521 & 1522 of 2012

the re-assessments were valid. Those cases are distinguishable from the present case on facts and in law.

45. These Writ Appeals are dismissed. No costs. Connected Miscellaneous Petitions are closed.

[A.S.M., J] [G.A.M., J]
25.04.2025

Index:Yes
Neutral Citation:Yes
Speaking Order
sl



WEB COPY



W.A.Nos. 1520, 1521 & 1522 of 2012

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

sl

W.A.Nos. 1520, 1521 & 1522 of 2012

25.04.2025