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

% ***Judgment delivered on: 07.02.2025***

+ ITA 45/2023

M/S LEGACY FOODS PVT. LTD.Appellant

Through: Mr. Somil Agarwal and Mr.
Dushyant Agarwal, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX,
& ANR. ...Respondents

Through: Mr. Abhishek Maratha, SSC
with Mr. Parth Samwal, Mr.
Apoorv Agarwal, JSCs, Ms.
Nupur Sharma, Mr. Gaurav
Singh, Mr. Bhanukaran Singh
Jodha, Ms. Muskaan Goel and
Mr. Himanshu Gaur, Advs. for
Revenue.

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13(1) NEW DELHI & ANR.Respondents

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CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The appellant/assessee impugns the order of the **Income Tax Appellate Tribunal**¹ dated 28 February 2020. We had in terms of our order of 24 January 2023 proceeded to admit this appeal on the following questions of law:-

“(i) Whether the Tribunal misdirected itself on facts and in law in holding that for the appellant/assessee to claim deduction under Section 80IC, it would have to demonstrate that the conditions set forth in Rule 18BBB(4) are fulfilled and that the information sought against serial No. 13 in Form 10CCB is provided?

(ii) Whether the Tribunal misdirected itself on facts and in law in adverting to the provisions of sub-sections (8) and (10) of Section 80IA of the Act, which was not the subject matter of the appeal filed by the respondents/revenue?”

2. The principal issue of contestation appears to be with respect to a purported failure on the part of the appellant to have complied with the stipulations prescribed by Rule 18BBB of the **Income Tax Rules, 1961**². More particularly, the respondents appear to have asserted that there was an evident failure on the part of the appellant to place on the record an agreement or approval that may have been granted to it by either a local or state authority. That prescription appears in Form

¹ Tribunal

² Rules



10CCB of the **Income Tax Act, 1961**³. In order to appreciate the stand which was taken by the respondents, we deem it apposite to extract Rule 18BBB and which reads as follows:-

“18BBB. Form of Audit Report for Claiming Deduction under Section 80-I or Section 80IA or Section 80I-B or Section 80-IC

(1) The report of the audit of the accounts of an assessee, which is required to be furnished under sub-section (7) of section 80-IA or sub-section (7) of section 80-1, except in the cases of multiplex theatres as defined in sub-section (7A) of section 80-IB or convention centres as defined in sub-section (7B) of section 80-IB [or hospitals in rural areas as defined in sub-section (11B) of section 80-IB], shall be in Form No. 10CCB.

(2) A separate report is to be furnished by each undertaking or enterprise of the assessee claiming deduction under section 80-1 or 80-IA or 80-IB [or 80-IC] and shall be accompanied by the Profit and Loss Account and Balance Sheet of the undertaking or enterprise as if the undertaking or the enterprise were a distinct entity.

(3) In the case of an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining an infrastructure facility, the form shall be accompanied by a copy of the agreement of the enterprise with the Central Government or the State Government or the local authority for carrying on the business of developing or operating and maintaining or developing, operating and maintaining the infrastructure facility.

(4) In any other case, the form shall be accompanied by a copy of the agreement, approval or permission, as the case may be, to carry on the activity signed or issued by the Central Government or the State Government or the local authority for carrying on the eligible business.]”

3. Of significance also are the following extracts of Form 10CCB and which are reproduced hereinbelow:-

“FORM NO.10CCB

[See rule 18BBB]

Audit report under section 80-I(7)/80-IA(7)/80-IB/80-IC

1 Name of the assessee

³ Act



2. Permanent Account Number or Aadhaar Number
3. Status
4. Ownership status of the undertaking/enterprise:
(a) Fully owned by assessee ☐ Yes ☐ No
(b) Partly owned by assessee ☐ Yes ☐ No
If yes, please specify the percentage of ownership
5. Address
6. Name of the enterprise or undertaking eligible for deduction under section 80-IA, 80-IB or 80-IC
7. Section and sub-section of the Income-tax Act, 1961, under which deduction is being claimed
8. Date of commencement of operation/activity by the undertaking or enterprise
9. Initial assessment year from when deduction is being claimed
10. Address (with District and State) of the enterprise/ undertaking claiming deduction
11. Excise/service tax registration number and office where registered
12. Sales-tax registration number and office where registered
13. Local/State authorities from whom approval is taken (attach copy of approval)

ELIGIBLE BUSINESS UNDER SECTION 80-IA

14. Development, operation, maintenance of an infrastructure facility:
(a) With respect to the infrastructure facility, does the enterprise (please tick):

☐ Develop

☐ Operate and maintain,
☐ Develop, operate and maintain, the infrastructure facility.

(b) Please specify the nature of the infrastructure facility***

[e.g., road, bridge, rail system, port, etc.]

[Explanation to section 80-IA(4)(i)]

- (c) Has the operation and maintenance of the ☐ Yes ☐ No infrastructure facility been received on transfer from its developer in accordance with the agreement with the Central/State Government/local



- authority/any other statutory body
(d) If yes, please specify the first year of claim of deduction under section 80-IA by the developer (Attach copy of Form 10CCB of developer)
15. Providing telecommunication services :
(a) Please specify the nature of telecom service [e.g., basic telecom service, cellular service, etc. [Section 80-IA(4)(ii)]]
16. Development, operation, maintenance of industrial park/SEZ
(a) With respect to the industrial park/SEZ, does the undertaking (please tick) : ☐ Develop ☐ Develop and operate
(b) Name and address of the industrial park/SEZ
(c) Has the operation and maintenance of the ☐ Yes ☐ No industrial park/SEZ been received on transfer from its developer
(d) If yes, first year of claiming deduction under section 80-IA by the developer (Attach copy of Form 10CCB of developer)
17. Generation, transmission, distribution of power :
(a) Does the undertaking generate power or generate and distribute power ☐ Yes ☐ No
(i) If yes, indicate the year in which the undertaking has started generating power
(b) Does the undertaking transmit or distribute power ☐ Yes ☐ No
(i) If yes, indicate the year in which the new transmission and distribution lines were laid
(c) Has there been substantial renovation and modernization of the existing network of transmission or distribution lines ☐ Yes ☐ No
If yes, please specify,-
(i) the year in which the substantial renovation and modernisation of the existing network of transmission or distribution lines took place
(ii) book value of plant and machinery as on 1-4-2004
(iii) value of increase in the plant and machinery in the year of substantial renovation and modernisation

ELIGIBLE BUSINESS UNDER SECTION 80-IB



18. Industrial undertakings engaged in manufacture or production of article or thing or operation of cold storage plant
- (a) Does the industrial undertaking manufacture or produce any article or thing specified in the ☐ Yes ☐ No Eleventh Schedule
(Please specify the article or thing.....)
- (b) If yes, does the manufacturing process use ☐ Yes ☐ No power
- (c) Number of workers employed in the manufacturing process
- (d) Does the industrial undertaking operate any cold storage plant ☐ Yes ☐ No
- (e) Please specify if the company is a small scale industrial undertaking ☐ Yes ☐ No
- (f) If the industry is located in the North Eastern Region, is the industry a notified industry as per second proviso to section 80-IB(4)? ☐ Yes ☐ No
- (g) If the industry is located in Jammu & Kashmir, does it manufacture or produce any article or thing specified in part 'C' of the Thirteenth Schedule? ☐ Yes ☐ No
19. Business of ship
- (a) Is the ship owned by an Indian company and wholly used for the business carried on by it ☐ Yes ☐ No
- (b) If the ship was acquired on transfer, was the ship owned or used in Indian territorial waters by a person resident in India ☐ Yes ☐ No
20. Business of hotel
- (a) Is the hotel located in
- (i) Hilly area
- (ii) Rural area
- (iii) Place of pilgrimage
- (iv) Other notified area (Please specify _____)
- (v) None of the above (Please specify _____)
- (b) Is the hotel approved by the prescribed authority under rule 18BBC of the Income-tax Rules, 1962? ☐ Yes ☐ No
21. Business of scientific research and development
- (a) Is the business approved by the prescribed authority under rule 18D? ☐ Yes ☐ No
(Please attach copy of approval)
- (b) Does it fulfil the conditions prescribed in rule 18DA of the Income-tax Rules? ☐ Yes ☐ No
22. Commercial production or refining of mineral oil
- (a) Is the undertaking engaged in the commercial production or refining of mineral oil? ☐ Yes ☐ No



(b) If yes, please specify:

- ☐ Commercial production of mineral
- ☐ oil
- ☐ Refining of mineral oil

23. Developing and building housing projects

(a) Date of approval by local authority

(Please attach copy of approval/if approval is obtained more than once, attach copy of first approval of the building plan)

(b) Date of completion of the housing project

(Please attach copy of the completion certificate issued by the local authority)

(c) Size of plot of land of the project

(d) Is the project situated in Delhi or Mumbai or within 25 kilometres from their municipal limits ☐ Yes ☐ No

(e) Built-up area of the residential unit of the project

(f) Built-up area of the shops and other commercial establishments situated in the project

(g) Whether the project is carried out in accordance with a scheme framed by Central/State Government for re-construction/re-development of existing buildings in areas declared to be slum areas under any law in force and notified by the Board.

(Please attach a copy of CBDT's notification)

(h) Please specify the method of accounting adopted

24. Other business activities

(a) Is the undertaking in the business of setting up and operating a cold chain facility for agricultural produce ☐ Yes ☐ No

(b) Is the undertaking in the integrated business of handling, storage and transportation of foodgrains ☐ ☐

(c) Is the undertaking in the business of processing preservation and packaging of fruits or vegetables ☐ ☐

Eligible business under section 80-IC

25. (i) Whether the undertaking or enterprise is located ☐ ☐
Yes No

in an area notified by the Board for the purposes of section 80-IC

(ii) If yes, please indicate,—



- (a) Name of the Export Processing Zone/Integrated Infrastructure Development Centre/Industrial Growth Centre/Industrial Park/Estate/Software Technology Park/Industrial Area/Theme Park and the District/State in which located
- (b) Khasra No. of the undertaking or enterprise (Also indicate the Board's Notification No.)
- (c) If the eligible business is new, please give the date of commencement of production or manufacture of article or thing
- (d) If the existing business has undertaken substantial expansion, please specify,-
- (i) The date of substantial expansion
- (ii) The total book value of plant and machinery (before taking depreciation in any year) as on first day of the previous year in which substantial expansion took place.
- (iii) Value of increase in the plant and machinery in the year of substantial expansion.
- (e) Does the undertaking or enterprise manufacture or produce any article or thing specified in the Thirteenth Schedule ☐ Yes ☐ No
(If yes, please specify the article or thing)
- (f) Does the undertaking or enterprise manufacture or produce any article or thing specified in the Fourteenth Schedule ☐ Yes ☐ No
(If yes, please specify the article or thing or operation)
26. For claim of deduction under section 80-IA(4)(ii) and (iv)/ 80-IB(3), (4), (5), (7) and (11)/80-IC, please indicate :
- (a) Whether the undertaking or enterprise has been formed by the splitting up or the reconstruction of a business already in existence ☐ Yes ☐ No
- (b) If yes, whether the circumstances and the period specified in section 33B is applicable
(Please give details)
- (c) Has the undertaking or enterprise received any machinery or plant on transfer which was ☐ Yes ☐ No previously used for any purpose
- (d) If yes, please specify value of machinery or plant received on transfer
- (e) Total value of machinery or plant used in business
27. Total sales of the undertaking
28. Transactions by the undertaking to a related concern of the assessee, or another undertaking of



the assessee, or the co-owner of the undertaking, or another undertaking of the co-owner :
[Related concern is a person within the meaning of section 40A(2)(b)]

<i>Name of the Related Concern</i>	<i>Transaction</i> (Please specify nature and amount)
(a)	Rs.
(b)	Rs.
(c)	Rs.
(d)	Rs.
29.	Profits and gains derived by the Undertaking/enterprise from the Eligible business#
30.	Deduction under section 80-I/80-IA/80-IB/80-IC (Strike out whichever is not applicable).

Declaration

I/We have examined the balance sheet of the above industrial undertaking or enterprise styled _____ and belonging to the assessee M/s ____ (Permanent Account Number or Aadhar Number as at _____ and the profit and loss account of the said industrial undertaking or enterprise for the year ended on that date which are in agreement with the books of account maintained at the head office at and branches at

*I/We have obtained all the information and explanations which to the best of *my/our knowledge and belief were necessary for the purposes of the audit, in *my/our opinion, proper books of account have been kept by the head office and the branches of the industrial undertaking or enterprise aforesaid visited by *me/us so far as appears from *my/our examination of books, and proper returns adequate for the purposes of audit have been received from branches not visited by *me/us, subject to the comments given below :

In *my/our opinion the undertaking or enterprise satisfies the conditions stipulated in section 80-I/80-IA/80- IB/80-IC (strike out whichever is not applicable) and the amount of deduction claimed under this section in item 30 is as per the provisions of the Income-tax Act and meets the required conditions.

In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, the said accounts give a true and fair view—

- in the case of the balance sheet, of the state of affairs of the above named industrial undertaking or enterprise as at ; and
- in the case of the profit and loss account, of the profit or loss of the industrial undertaking or enterprise for the accounting year



ending on
Place
Date

Signed
Accountant^s

4. The appellant is stated to have established a unit in the State of Himachal Pradesh and had thus sought deductions as contemplated under Section 80IC. That provision enables an assessee who may have earned gross total income from an undertaking or an enterprise from businesses specified in sub-section (2) to avail of such deductions from such profits and gains as prescribed in that provision.

5. The appellant had placed its case under Section 80IC(2)(b)(ii) by virtue of having established that unit in the State of Himachal Pradesh between the period 07 January 2003 and 01 April 2012. It is pertinent to note that Section 80IC(7) further provides that the stipulations contained in sub-section (5) and sub-sections (7) to (12) of Section 80IA shall, as far as applicable to eligible undertakings, also apply to those which claim benefits under Section 80IC.

6. Section 80IA is a provision which is, in a sense, *pari materia* to the deductions that may be claimed by an assessee by virtue of establishing an undertaking which is engaged in an “*eligible business*” and thus entitling the assessee to claim deductions from the profits and gains that may be earned therefrom. The distinction which imbues Section 80IA, however, is of the same not being concerned with the establishment of a unit in an industrial area or an industrial park but pertaining to an enterprise which undertakes a business referred to in sub-section (4) thereof. Eligible businesses are set forth in Section 80IA(4) and are envisaged to be the development, operation



and maintenance or development, operation and maintenance of any infrastructural facility. The Explanation to sub-section (4) then proceeds to stipulate activities which would fall within the ambit of an “infrastructural facility”. The relevant part of Section 80IA is extracted hereinbelow:-

“80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

(4) This section applies to—

(i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely:—

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place:

Provided further that nothing contained in this section shall apply to any enterprise which starts the development or operation and



maintenance of the infrastructure facility on or after the 1st day of April, 2017.

Explanation.—For the purposes of this clause, "infrastructure facility" means—

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
- (d) a port, airport, inland waterway, inland port or navigational channel in the sea;
- (ii) any undertaking which has started or starts providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services on or after the 1st day of April, 1995, but on or before the 31st day of March, 2005.

Explanation.—For the purposes of this clause, "domestic satellite" means a satellite owned and operated by an Indian company for providing telecommunication service;

- (iii) any undertaking which develops, develops and operates or maintains and operates an industrial park or special economic zone notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006:

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 or a special economic zone on or after the 1st day of April, 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, to another undertaking (hereafter in this section referred to as the transferee undertaking), the deduction under sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking :

Provided further that in the case of any undertaking which develops, develops and operates or maintains and operates an industrial park, the provisions of this clause shall have effect as if for the figures, letters and words "31st day of March, 2006", the figures, letters and words "31st day of March, 2011" had been substituted;



(iv) an undertaking which,—

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2017;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, 2017:

Provided that the deduction under this section to an undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;

(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2017.

Explanation.—For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004;

(v) an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if—

(a) such Indian company is formed before the 30th day of November, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before the 31st day of December, 2005 by the Central Government for the purposes of this clause;

(b) such undertaking begins to generate or transmit or distribute power before the 31st day of March, 2011;

(vi) [***]"

7. As would be manifest from a reading of sub-section (4) thereof, the provision applies to any enterprise carrying on business of developing, operating and maintaining any infrastructure facility which fulfils the conditions stipulated therein. It is here, that one finds mention of such an enterprise being required to have entered into an



agreement with the Central or State Government, local authority or any other statutory body for the purposes of undertaking the activities which are spoken of in the principal parts of Section 80IA.

8. We had an occasion to view Rule 18BBB in the preceding parts of this decision. As is manifest from a reading of its title, the aforementioned rule spells out the requirements with respect to an audit report which must accompany a claim for deduction that is claimed under either Section 80I, 80IA, 80IB or 80IC. Viewed in that context it is apparent that it is a provision which compendiously seeks to regulate and introduce prescriptions with respect to an audit report which must accompany a claim for deduction under those family of provisions.

9. The requirement of an audit report is also found in Section 80IA(7) and which postulates that a deduction from profits and gains would not be admissible unless the accounts of the undertaking for the previous year for which the deduction is claimed have been audited by an accountant. That prescription by virtue of Section 80IC(7) also applies to a unit which claims deduction under that provision.

10. Till here there is perhaps no dispute between the contesting parties before us and insofar as the prescription of an audit report per se is concerned. The solitary question which arises is whether the audit report which would have to be submitted by an assessee claiming benefits under Section 80IC would also have to necessarily include an approval granted by the local or state authorities. This requirement finds mention in Clause 13 of Form 10CCB.



11. The Tribunal, while ruling on this aspect, has observed while taking into consideration the conclusions which were rendered by the **Commissioner of Income-Tax (Appeals)**⁴ as follows:-

“4.9 On perusal of the above finding of the learned CIT(A), we find that Ld. CIT(A) has not appreciated the requirement of the sub-rule (4) of the Rule 18BBB of the Rules. We have already reproduced Rule 18BBB in preceding paragraphs of this order. The sub-rule (3) is applicable in case of the enterprise carrying on the business of the developing or operating and maintaining or developing, operating and maintaining the infrastructure facility, whereas the sub-rule (4) is applicable on the any other case carrying on the eligible business. No doubt that the deduction under section 80IC is allowable to an undertaking or enterprises carrying on the business referred to in subsection 80IC(2), which are eligible business for said section. Thus, the sub-rule (4) is applicable in case of deduction under section 80IC of the Act and the form 10CCB filed by the assessee was to be accompanied with a copy of the agreement or approval or permission, as the case may be, to carry on the activity, signed or issued by the Central Government or the State Government or the local authority for carrying on the eligible business. Evidently, this requirement has not been fulfilled by the assessee. The Revenue before us has taken this ground specifically and also submitted that this issue has not been considered by the Tribunal in assessment year 2009-10. The filing of agreement/approval/permission being one of requirement of the statute and not complied by the assessee cannot be rejected as non-issue. In the facts and circumstances of the case and in the interest of the substantial justice, we feel it appropriate to restore the issue in dispute the file of the Assessing Officer to provide one more opportunity to the assessee to satisfy the requirement of section 80IA(7) of the Act along with Rules thereon. We are aware that activity of the assessee has been held to manufacturing activity in earlier year by the Tribunal but the assessee is required to fulfill the requirement of law in relevant assessment year. We may note that the Hon'ble Supreme Court in the case of Distribution (Baroda) Pvt. Ltd. Vs. Union of India 155 ITR 120 has held that to perpetuate an error is no heroism and to rectify it is compulsion of judicial conscience. The issue in dispute is accordingly restored to the file of the Learned Assessing Officer, who after verification of the compliance of Section 80-IC(7), shall decide the issue in dispute of deduction under section 80-IC of the Act in accordance

⁴ CIT(A)



with law.”

12. It is on the basis of its conclusion that the stipulation of an agreement with the Central/State government or local authority would have to necessarily accompany Form 10CCB, that it has proceeded to remit the matter for examination of the **Assessing Officer**⁵.

13. We find that it has while framing that direction for remit clearly lost sight of the principal distinction between Sections 80IA and 80IC. As we view Section 80IC it becomes apparent that there is clearly no requirement of an entity which claims coverage under Section 80IC(2)(b)(ii) to have in place an agreement with either the Central or State Government or for that matter any local authority.

14. While Section 80IC(2)(a) does refer to the Central Government, the same is confined to the aspect of the manufactory having been set up pursuant to a scheme notified by that government. However, sub-clause (b) clearly avoids reference to any of those species of authorities. All that sub-clause (b) requires is for the undertaking to be engaged in the manufacture or production of any article or things specified in the Fourteenth Schedule and having commenced operations in the periods prescribed therein and in States of the Union mentioned therein.

15. This must necessarily be contrasted with what obtains under Section 80IA(4)(i)(b) and where an agreement with the Central or State Government has been recognized as being a precondition for the purposes of claiming benefits under that provision itself. The Tribunal

⁵ AO



also appears to have clearly overlooked the fact that Rule 18BBB as well as Form 10CCB straddles more than one provision in the Act. As is evident from the title of that rule, it is intended to cater to varied enterprises and eligible businesses as envisaged in Sections 80I, 80IA, 80IB or 80IC. We are of the considered opinion that in the absence of Section 80IC requiring an agreement between the assessee and the Central/State Government or local authority or mandating such an agreement as being a mandatory precondition for claiming benefits, the Tribunal has clearly erred in reading such a requirement in respect of an assessee which may have been claiming benefits under Section 80IC.

16. The Tribunal thereafter has further proceeded to examine the case of the assessee from the stand point of Section 80IA(8) and 80IA(10). This exercise undertaken by it for purposes of discerning abnormal profits and whether the assessee had allegedly shifted profit or expenditure to an eligible business is an issue which was neither canvassed, raised nor urged either before the AO or the CIT(A). It also does not appear to have constituted a ground of appeal that was urged by the Revenue for the consideration of the Tribunal.

17. In our considered opinion, therefore, the following observations which appear in para 4.12 were wholly unwarranted and are liable to be set aside.

“4.12 The Ld. CIT(A) in para 5.6.3 of the impugned order has mentioned that the Assessing Officer has not commented in remand report on this issue. The Ld. CIT(A), however, on the basis of the financial statements and discussion with the Authorized Representative of the assessee held that there was no other business which was carried out by the assessee company and, therefore,



there was no reason to go into the issue of deriving more than ordinary profit which might be expected to arise in the eligible business. The learned CIT(A) did not call for report or comment from the Assessing Officer on the specific submission of Authorized Representative. In our opinion, for application of section 80-IA(8) and 80-IA(10), the Ld. CIT(A) was required to examine all the expenses incurred by the assessee for ascertaining shifting of any expenses to any other business of the assessee or to any other concern. From the finding of the Ld. CIT(A), it cannot be ascertained that he has examined the expenses as per the requirement of the section 80IA(8) or 80IA(10) of the Act. The Ld. CIT(A) is having coterminous power of the Assessing Officer, and thus, he was required to examine this issue thoroughly. In view of the facts of the circumstances of the case and in the interest of the substantial justice, we feel it appropriate to restore this issue back to the file of the Assessing Officer for deciding applicability of section 80IA(8) and 80IA(10) of the Act over the affairs of the assessee.”

18. We, accordingly, and for all the aforesaid reasons, allow the instant appeal and set aside the order of the Tribunal dated 28 February 2020. The questions thus posited are answered in the affirmative and in favour of the appellant.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 07, 2025/DR