

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

INCOME TAX REFERENCE NO. 114 OF 1998

Somaiya Organo-Chemicals Ltd.,]
Fazalbhoy Building, 45-57,]
M. G.Road, Fort, Bombay 400 023.] .. Applicant.

v/s.

The Commissioner of Income Tax]
Bombay City II, Bombay.] .. Respondent.

Mr. Nishant Thakkar with Ms. Jasmin Amalsadvala and Mr. Rajesh Poojary, i/b. Mulla & Mulla, for the Applicant.
None for the Respondent.

**CORAM: M.S.SANKLECHA, &
S.C.GUPTE, JJ.**

**RESERVED ON : 22nd SEPTEMBER, 2016.
PRONOUNCED ON : 30th SEPTEMBER, 2016**

JUDGMENT (Per S. C. GUPTE, J.):-

By this Reference under Section 256(1) of the Income Tax Act, 1961 (“Act”), the Income Tax Appellate Tribunal (“Tribunal”) has referred the following questions of law for our opinion:

“(a) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the limit of Rs.40,000/- laid down in Section 37(3A) of the Income Tax Act, 1961, could not be proportionately increased because the previous year relevant for the assessment year was seventeen months instead of twelve months?

S.R.JOSHI

(b) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the amount of Rs.28,983/- transferred out of Profit & Loss Account to Storage Fund for Molasses and Alcohol account to meet with the statutory requirements of Ethyl Alcohol (Price Control) Amendment Order, 1971, was not an admissible deduction in working out the business income?

(c) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the provisions of Section 40A(8) of the Income Tax Act, 1961 also applied to the accounts of S.K. Somaiya (IND) which were claimed to be current accounts paid in these accounts, the disallowance as laid down in section 40A(B) of the Act was justified?

(d) Whether on the facts and in the circumstances of the case, the Appellant Tribunal was justified in holding that the insurance claim of Rs.4,17,472/- received from the insurance company on account of loss of stocks-in-trade and other goods due to fire was the assessee's business income liable to tax?"

2 This Reference relates to Assessment Year 1980-81.

Re: Question (a):-

3 Question (a) relates to disallowance of certain advertisement expenses under Section 37 (3-A) of the Act. The short controversy may be stated thus:-

(i) Section 37 of the Act generally deals with expenditure laid out or incurred wholly and exclusively for the purpose of business or profession which is allowed as a deduction while computing income chargeable to tax under the head '*profit and gains of business or profession*'. Expenses incurred by an assessee on advertisement, publicity and sales promotion would accordingly be allowed as deduction whilst computing income

under this Section.

(ii) Section 37 was amended in the previous year relevant to A. Y. 1980-81 *inter alia* by introduction of Sub-section (3-A) therein, which provided for a limit of expenditure on advertisement etc. beyond which portions of such expenditure, were to be disallowed as provided therein.

Sub-section 3-A reads as under:-

“Sub-section 3-A:-*Notwithstanding anything contained in sub-section (1), but without prejudice to the provisions of sub-section (2B) or sub-section (3), where the aggregate expenditure incurred by an assessee on advertisement, publicity and sales promotion in India exceeds forty thousand rupees, so much of such aggregate expenditure as is equal to an amount calculated as provided hereunder shall not be allowed as a deduction, namely:-*

(i)	Where such aggregate expenditure does not exceed 4 per cent of the turnover, or as the case may be, gross receipts of the business or profession	10 per cent of the adjusted expenditure;
(ii)	Where such aggregate expenditure exceeds $\frac{1}{4}$ per cent but does not exceed $\frac{1}{2}$ per cent of the turnover or, as the case may be, gross receipts of the business or profession	12 $\frac{1}{2}$ per cent of the adjusted expenditure;
(iii)	Where such aggregate expenditure exceeds $\frac{1}{2}$ per cent of the turnover or, as the case may be, gross receipts of the business or profession	15 per cent of the adjusted expenditure.

(iii) The Assessee is a limited company. For Assessment Year 1980-81, it applied to the Income Tax Officer (“ITO”) for change of its previous year. The ITO allowed the application with the result that the previous year of the Assessee got changed from 1st June, 1978 to 31st May, 1979 (12

months) to 1st June, 1978 to 31st October, 1979 (17 months).

(iv) The Assessee *inter alia* claimed before the ITO in the course of the assessment proceedings that the limit for the purpose of disallowance under Section 37 (3-A) of the Act should be increased proportionately from Rs.40,000/- to Rs.56,660/-, taking into account the fact that the previous year was increased from 12 months to 17 months; and that after increasing the limit thus and applying the provisions of Sub-section 3-A of the Act on the basis of such limit, no portion of the advertisement and publicity expenses should be disallowed under Section 37(3-A) of the Act.

(v) The Assessing Officer did not accept the contention of the Assessee. He applied the limit of Rs.40,000/- to the previous year consisting of 17 months and disallowed 10% of the expenditure in excess over the limit of Rs.40,000/-, resulting in disallowance of Rs.4,522/-.

(vi) In Appeal, the Commissioner of Income Tax (Appeals) ["CIT(A)"] held that there was no provision in the Act for proportionate increase of allowances, when the previous year was increased to more than 12 months. On that basis, the Assessee's appeal was rejected by CIT(A).

(vii) The matter was carried by the Assessee in appeal before the Tribunal. The Tribunal rejected the appeal, holding that Section 37 (3-A), as it then stood, spoke of the expenses on advertisement, publicity and sales promotion exceeding Rs.40,000/- for any previous year; that it was irrelevant whether the previous year consisted of only one month or more than 12 months.

S.R.JOSHI

4 At the outset, it is important to note that the definition of “previous year”, as applicable at the relevant time, *inter alia* provides for different previous years in terms of clauses (a) to (g) of Sub-section (1) of Section 3 of the Act. Sub-section (4) *inter alia* provides for a case of change or variation of the previous year. Under this Sub-section, the Assessee, having once been assessed on the basis of, or exercised his option of choosing, his previous year, is not entitled to vary the meaning of the “previous year” as applicable to him except with the consent of the ITO and upon such conditions as the ITO may think fit to impose. In this case, admittedly, the ITO has permitted the Assessee to vary the previous year from the period of 12 months to the period of 17 months preceding the particular Assessment Year without any particular conditions. The question is, whether by reason of this change, the limit of expenditure incurred on advertisement, publicity and sales promotion, which can be said to be fixed for a previous year ordinarily consisting of 12 months, should be proportionately increased.

5 Mr. Thakkar, learned Counsel for the Applicant-Assessee, submits that it should be so increased. He submits that whilst interpreting any particular provision of a statute, one must look at the other provisions in the statute for harmonious construction. He submits that if the statute contains any ambiguity, such ambiguity must be resolved in favour of the Assessee. He argues that it is permissible to take into account not only circulars issued by the Central Board of Direct Taxes, but also subsequent amendments in law for the purposes of such interpretation. Relying on the

amendments introduced in the law subsequently in the year 1989 and also a circular issued by the Board in this behalf, Counsel would contend that the particular ambiguity in the provisions of law has been recognized by the legislature as also the resultant hardship, for which a remedy has been specifically provided. It is submitted that this remedy must be applied retrospectively to the statute within the permitted canons of statutory interpretation. Learned Counsel relies on cases of **K. P. Varghese v/s. ITO¹**, **CIT v/s. J. H. Gotla²**, **CIT v/s. Gwalior Rayon Silk Manufacturing Co.³**, **CIT v/s. Shri Ram Honda Power Equip⁴** in support of his submissions.

6 A plain reading of Sub-section (3-A) of Section 37 of the Act makes it clear that it refers to the aggregate expenditure incurred by the Assessee on advertisement, publicity and sales promotion. If the previous year of the Assessee consists of 17 months, it would refer to the aggregate expenditure incurred by the Assessee on these items over the period of 17 months. This is clear also from the formula of deduction laid down in Sub-section (3-A). If the aggregate expenditure over 17 months is to be taken into account or the formula for working out the disallowance is to be applied on that basis, there is no reason why the limit of Rs.40,000/- should not be proportionately increased to cover the entire period of 17 months. What is necessary to consider, however, is whether such interpretation, which accords with plain reason, ought to be applied in the present case, particularly considering that we are concerned here with a taxing statute.

1 131 ITR 597

2 156 ITR 323

3 196 ITR 149

4 289 ITR 475

7 In **K. P. Varghese** (supra), the Supreme Court was concerned with Section 52 of the Income Tax Act, as it then applied, which provided for fair market value of a capital asset to be taken into account for computing capital gain, in cases of under-statement of consideration. Under Sub-section (1), where a person acquired a capital asset from an Assessee and the ITO had reason to believe that the transfer was effected with the object of avoidance or reduction of the liability of the Assessee for payment of capital gains tax, the consideration for such transfer could be taken to be the fair market value of the capital asset as on the date of the transfer. Sub-section (2) had a deeming provision which provided that if in the opinion of the ITO, the fair market value of the capital asset transferred by the Assessee as on the date of the transfer exceeds the full value of the consideration declared by the Assessee by an amount of not less than 15% of the value so declared, the value of the consideration of the capital asset shall be taken to be its fair market value on the date of its transfer. The question before the Court was, whether the condition for applicability of Sub-section (2) was attracted in the case of an honest and *bona fide* transaction where the consideration received by the Assessee had been correctly declared by him. The argument of the Revenue was that the Sub-section simply required excess of the fair market value of the asset on the date of the transfer by not less than 15% over the value of consideration declared by the Assessee; once such excess was found by the Assessing Officer, the deeming provision had to be applied. On the other hand, it was contended by the Assessee that a further condition of under-statement of consideration in respect of the transfer would have to be read into the statutory provision. Whilst analysing the provision, the

S.R.JOSHI

Supreme Court observed that the task of interpretation of a statutory enactment was not a mechanical task; it was an attempt to discover the intent of the legislature from the language used by it; and the language being at best an imperfect instrument for expression of human thought, the statute would have to be interpreted having regard to the purpose or object which the statute sought to accomplish. If a strictly literal interpretation of the statute led to a manifestly unreasonable and absurd consequence, the literal interpretation would have to make way for a reasonable interpretation which avoids such absurdity and mischief and makes the provision rational and sensible, and in accordance with the object and purpose of the statute, even if such interpretation results into doing of “some violence” to the language used by legislature. There is, of course, one caveat, and that is, if the Court's “hands are tied”, it “cannot find any escape from the tyranny of literal interpretation”. Only in such extreme cases, which would arise when the plain meaning of the provision is so clear as not to admit of any other interpretation, the Court cannot apply this rule of reasonable interpretation. The observations of the Supreme Court are quoted hereinbelow:

“ Now, on these provisions the question arises as to what is the true interpretation of s.52 sub-s.(2). The argument of the revenue was, and this argument found favour with the majority judges of the Full Bench, that on a plain and natural construction of the language of s.52, sub-s.(2), the only condition for attracting the applicability of that provision was that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeded the full value of the consideration declared by the assessee in respect of the transfer by an amount of not less than 15% of the value so declared. Once the ITO is satisfied that this condition exists, can proceed to invoke the provision in s. 52, sub-s.(2), and take the

fair market value of the capital asset transferred by the assessee as on the date of the transfer as representing the full value of the consideration for the transfer of the capital asset and complete the capital gains on that basis. No more is necessary to be proved, contended the revenue. To introduce any further condition such as under-statement of consideration in respect of the transfer would be to read into the statutory provision something which is not there; indeed, it would amount to re-writing the section. This argument was based on a strictly literal reading of s. 52, sub-s. (2), but we do not think such a construction can be accepted. It ignores several vital considerations which must always be borne in mind when we are interpreting a statutory provision. The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formula because few words possess the precision Legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thoughts and, as pointed out by Lord Denning, it would be idle to expect every statutory provision to the “drafted with divine prescience and perfect clarity”. We can do no better than repeat the famous words of judge Learned Hand when he said:

“.... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.”

We must not adopt a strictly literal interpretation of s. 52, sub-s (2), but we must construe its language having regard to the object and purpose which the Legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which

s.52, sub-s. (2), appears because, as pointed out by judge Learned Hand in the most felicitous language:

“.... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create.”

Keeping these observations in mind we may now approach the construction of s. 52, sub-s. (2).

The primary objection against the literal construction of s. 52, sub-s. (2), is that it leads to manifestly unreasonable and absurd consequences. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision but it can certainly help to fix its meaning. It is a well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the revenue would lead to a wholly unreasonable result which could never have been intended by the Legislature”.

“.... We must, therefore, eschew literalness in the interpretation of s.52, sub-s.(2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature, the court may modify the language used by the Legislature or even “do some violence” to it, so as to achieve the obvious intention of the Legislature and produce a rational construction: Vide Luke v. IRC [1963] AC 557; [1964] 54 ITR 692. The court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We

think that, having regard to this well-recognized rule of interpretation, a fair and reasonable construction of s.52, sub-s. (2), would be read into it a condition that it would apply only where the consideration for the transfer is understated or, in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in the case of a bona fide transaction where the full value of the consideration for the transfer is correctly declared by the assessee.”

To the same effect, are the judgments of the Supreme Court in the cases of **Gwalior Rayon Silk Manufacturing Co.** (supra) and **J. H.Gotla** (supra).

8 Having regard to the statement of law quoted above, we may now construe Section 37(3-A), and consider particularly as to whether the limit of Rs.40,000/- provided under Sub-section (3-A) ought to be increased proportionately. The definition of “*previous year*” (Section 3, as then applicable) makes it clear that ordinarily a previous year implies a period of 12 months preceding the assessment year. The only exceptions are to be found in cases of newly set up businesses or professions and alterations made in the previous year with the permission of the ITO or according to the directions of the Board. In the case of a newly set up business or profession, the previous year may comprise of the period beginning with the setting up of the business or profession and ending with the financial year preceding the assessment year (or ending with the date within such financial year upto which the accounts of the assessee have been made up) which may be different from 12 months. So also, in the case of a determination by the Board under clause (c) of Sub-section (1) of Section 3 or permission by the ITO under Sub-section (4) of Section

S.R.JOSHI

3, the period of “previous year” could be different from 12 months. It may be more than 12 months or less than 12 months. Barring these exceptions in all cases, the “previous year” would be a period of 12 months. The limit of Rs.40,000/- provided in Sub-section (3-A) can be said to be fixed keeping this ordinary period of 12 months in mind. In the exceptional cases referred to above, if the previous year is altered, either reduced or extended from the period of 12 months, the limit of Rs.40,000/- will have to be proportionately reduced or extended, just as the aggregate expenditure would get reduced or extended, depending on the period over which it is to be applied. That would be in keeping with the object and purpose of the provision and any other interpretation would lead to unreasonable and absurd consequences as pointed out below.

9 The object and purpose of the limit provided in Sub-section (3-A) are to restrict wasteful expenditure on advertisement, publicity and sales promotion at the cost of the Exchequer. Explanatory Notes to the provisions relating to direct taxes in the Finance Act, 1978, to be found in Circular No.240 dated 17 May 1978, explain the object of introduction of Sub-section (3-A) in the following words: *“In order to place a curb on extravagant and specially wasteful expenditure on advertisement, publicity and sales promotion at the cost of the Exchequer, the Finance Act has inserted new Sub-section (3-A) in Section 37 of the Act for disallowance of a part of such expenditure in the computation of taxable profits.”* If that is the object or purpose of the law, the limit of expenditure provided thereunder must have a relation to the period over which such expenditure is to be computed. It makes scarce sense to stipulate such limit without reference to the length of the period over which the limit needs to be applied. Sub-

S.R.JOSHI

section (3-A) itself does not provide for any particular length; it is to be applied for the whole of the previous year. The previous year, as we have seen above, may mean 12 months (which is ordinarily the case) or anything between one day to less than two years (which is an exceptional case, as we have noted above). Can it possibly be suggested that the measure of the limit, namely, Rs.40,000/-, should be the same whether the previous year includes one month or twenty three months. The answer is obviously in the negative. Absurd consequences would follow, if it were in the positive, which cannot be said to be intended by the legislature, for in that case Rs.40,000/- spent over one month would not be termed as extravagant or wasteful, whereas Rs.40,000/- spent over twenty three months would be treated as extravagant and wasteful. The reasonable interpretation to be applied, on the principle of law stated in the cases of **K. P. Varghese** and others would be to hold that the limit is to be applied to a period of 12 months, and increased or reduced proportionately to the length of the previous year, if such year is other than 12 months.

10 This interpretation also accords with the rest of the Sub-sections introduced in Section 37 of the Act by the subject amendment. For example, Explanation I to Sub-section (3-B) (which gives relief in respect of advertisement in small newspapers) requires the average circulation of the newspaper to be calculated for the year in which the advertisements have been published. The Explanation provides that an advertisement shall be taken to be an advertisement in a small newspaper if the average circulation of the newspaper does not exceed 15,000 copies. The number of copies mentioned as 15,000 will have to be reckoned clearly in relation to one year which would include 12 months. If it is less

than one year, the number of copies will have to be proportionately reduced to consider the relevant average circulation. So also, exemption from any disallowance under Sub-section (3-A) provided in Sub-section (3-D) of the Act must be applied to the whole length of the previous years referred to therein in respect of new industrial undertakings. If any previous year exceeds 12 months, whatever increased expenditure made over such extended period would be entitled to such exemption and not expenditure relatable only to 12 months.

11 It is pertinent to note that such construction has been applied to the term “*previous year*” in the particular context of its length in quite a few cases. The High Court of Andhra Pradesh in **Ardeshir H.J. Hormasji vs. Commissioner of Income Tax**⁵ has considered the income of a period of 18 months being the total income for the previous year determined with reference to an assessment year in which the same was brought to tax. The assessee in that case had *inter alia* derived income from property. Section 9 of the Act, as applicable then, enjoined that the tax shall be payable by the assessee under the head “Income from property” in respect of the “bona fide annual value” of the property. The annual value of the property under sub-section (2) was deemed to be the sum for which the property might reasonably be expected to let from year to year. The assessee contended that though in principle 18 months' income could be taken in one assessment, even so, in view of the clear provisions of Section 9, the chargeable income of the property would be only of 12 months and not 18 months. His contention was that under Section 9, the bona fide annual value of the property was the measure of the assessment and that value was the reasonably expected letting value of the property

⁵ (1966) 59 ITR 0057

calculated for 12 months and not 18 months. The court negatived the contention holding that the previous year being of a period of 18 months, the entire income of the period must necessarily be subject to taxation. The Court, in particular, observed as follows :

“Normally, the previous year is only of 12 months' duration. But when in the particular circumstances, it has been extended to 18 months because the previous year cannot be split up and there can be only one previous year to a given year of assessment, the full period from the end of the previous year for the preceding year's assessment to the end of the new accounting date has to be taken into consideration. What all S.9 enjoins is that the bona fide annual value of the property shall be the measure of the assessment. The bona fide annual value or in other words the reasonably expected letting value for an year of 12 months being the standard for the accounting year of 12 months, total income in this case has to be worked out having regard to the whole period of eighteen months included in the accounting or previous year in this case. when the change of the year was allowed subject to certain conditions which the law permits the condition must necessarily be complied with. While levying the tax, the Income tax Officer has not departed from this principle. He has taken the bona fide annual value into account and has determined the total income having regard to the length of that year which is of 18 months. The method adopted cannot be said to be inconsistent with the provisions S.9. Thus, on the question referred to, we are of the view that when the ITO had allowed the change in the previous year as requested on condition that the income of whole period shall be brought to tax in one year and the previous year, as a result, for the accounting year in question, covered a period of more than 12 months, the total income for that period was chargeable to tax at the rates applicable to such total income. Even in relation to tax on property the year in this case being of 18 months be expected letting value of the property for such year would be the measure of assessment

of the income for that year. We are also of opinion that s.9 which provides for levy of tax not on actual but on the notional income of the property and fixes the measure as annual value cannot be constructed to mean that even though the previous year may be of a longer period, only 12 months notional income shall be taken into account for taxation.”

12 The Gujarat High Court in the case of **VXL India Ltd. vs. Income Tax Officer**⁶ considered the condition laid down by the ITO for permitting the assessee to change his previous year from 12 months to 15 months, which required the assessee to claim deduction towards depreciation allowance, development rebate, etc. applicable only to the previous year. The Court held the condition imposed by the ITO to be arbitrary and against the spirit of the Act, resulting into denial of lawful deductions to the assessee. The Court held that these deductions had to be proportionately increased (i.e. in the proportion of 15 : 12).

13 In **Esthuri Aswathaiah vs. Commissioner of Income Tax**⁷, the Supreme Court was concerned with the charging section, namely, Section 3, which did not define the length of the previous year. The definition of the previous year was then contained in Section 2(11). The Court noted that though the expression “*previous year*” substantially meant an accounting year comprising of a period of 12 months and usually corresponding to a year preceding the year of assessment, the length of the previous year may not necessarily be of 12 calendar months in each case. The court held that once the assessee exercises an option by

6 (1987) 66 CTR 0089

7 (1966) 60 ITR 0411

choosing a previous year, the meaning of the expression “*previous year*” as applicable to him is determined and cannot be changed except with the consent of the ITO and upon such conditions as the ITO may deem fit to impose. In the particular case before the court, the ITO sanctioned a change in the previous year so as to make it a period of 21 months on the condition that the previous year would consist of the entire period of 21 months commencing on 30 June of the year (up to which the assessee's accounts were last made up) to 31 March of the year (up to which his accounts were newly made up). The court held that this condition safeguarded the interest of the revenue inasmuch as had the change been sanctioned on the footing that the previous year of the assessee in relation to the current assessment year would be the period of 12 months from 1 April to 31 March, the income of the preceding 9 months, i.e. from 1 July to 31 March, would have escaped taxation altogether. The assessee's alternative submission that the ITO could accord sanction to the change on the basis that the income for 21 months should be assessed at the rate applicable to the income of the last period of 12 months was also negatived by the court holding that the rate of tax is fixed by the Finance Act for every assessment year and the same is in respect of the income of the previous year. Once the length of the previous year is fixed and the income of the previous year is determined, that income must be charged at the rate specified in the Finance Act and in no other way.

14 There is another reason why the interpretation proposed by us can be said to be in accordance with the intended purpose of the legislature. Section 3 of the Act, which defines “*previous year*” substituted by the Direct Tax Laws (Amendment) Act, 1987 with effect from

1.4.1989, in effect did away with varying meanings of the term “*previous year*” and defined it as 'the financial year immediately preceding the assessment year'. In cases of newly set up business or profession, such previous year was to begin with the date of setting up of the business or profession, as the case may be, and end with the financial year. It, however, had a transitional provision in relation to the assessment year commencing on the 1st day of April, 1989 (when the new Section came into force) for the assesseees who had adopted different previous year/s for earlier assessment years. In case of such assesseees, the “*previous year*” in relation to the assessment year commencing from 1.4.1989 was defined as the period which began with the date immediately following the last day of their relevant previous year/s relevant to the assessment year commencing on 1.4.1998 and ending on 31st March, 1999. This transitional provision led to the definite possibility of the “*previous year*” in case of some assesseees exceeding the period of twelve months. The legislature realized the hardship that would follow as a sequitur to this extended period, and introduced the tenth schedule in the Act to make special provisions for such transitional previous year, which exceeds twelve months. The schedule *inter alia* provided for the modification that the reference to various amendments specified in the provisions of the Act set out therein would be “*construed as a reference to the said amount or amounts as increased by multiplying each such amount by a fraction of which the numerator is the number of months in the transitional previous year and the denomination is twelve*”. In other words, the amounts and limits which were enacted for the ordinary length of the previous year, i.e. of twelve months, were to be proportionately increased (i.e. in proportion to the increase in the year). Explanatory Notes to these provisions of the

Direct Tax Law (Amendment) Act, 1987, contained in Circular No.549 dated 31st October, 1989 of C.B.D.T., explained that these amendments were made to remove hardships and anomalies which would result in respect of assessees whose transitional previous year would exceed twelve months. The amendment introduced by the Finance Act in terms of the tenth schedule indicates two things. Firstly, any increase in the previous year (over twelve months) would result into a hardship or anomaly if the amounts or limits specified in the provisions of the Act were not proportionately increased. Secondly, proportionate increase in the amounts was a legitimate relief in such cases. There is no reason why we should not adopt the same approach in dealing with the hardship or anomaly we are faced with in a case like the present. The hardships or anomalies which we have referred to above in relation to the interpretation of Section 37 (3-A) of the Act, would require us to depart from a literal construction and adopt a reasonable and purposive construction requiring alteration of the limit of Rs.40,000/- provided in Sub-section (3-A) in proportion to the increase in the previous year. Such interpretation accords with the object and purpose of the provision and does away with the anomaly or hardship without really doing any violence to the words of the provision.

15 The Supreme Court in the case of **State of Bihar vs. S.K. Roy**⁸ has held that it is a well recognized principle that a subsequent legislation may be looked at whilst interpreting an earlier statute, where the earlier statute is capable of more than one interpretation. Following that judgment, a Division Bench of our Court (to which one of us, M.S.

8 AIR 1966 SC 1995

Sanklecha J, was a party) in **CIT vs. Knight Frank (India) Pvt.Ltd.**⁹ made use of subsequent amendment introduced in the Act to interpret a previously existing provision concerning service tax. In the present case, the interpretation adopted by us is in keeping with the amendment made by the Direct Tax Law (Amendment) Act, 1987.

16 In the light of the foregoing discussion, we hold that there is a clear warrant for proportionately increasing the limit laid down in Section 37 (3-A) as a result of increase in the previous year of the Applicant-Assessee from 12 months to 17 months. Question (a) is, accordingly, answered in the negative, i.e. in favour of the Applicant-Assessee and against the Revenue.

Re : Question (b) :

17 Question (2) deals with disallowance of the amount deducted from the sale proceeds of alcohol and transferred out of the profit & loss account to storage fund for molasses and alcohol account under the Ethyl Alcohol (Price Control) Amendment Order, 1971. This question is already decided by a Division Bench of our Court in **Somaiya Organo Chemicals Ltd. vs. CIT**¹⁰ in favour of the Assessee. Following that judgment, we answer Question (2) in the negative, in favour of the Applicant Assessee and against the Revenue.

Re : Question (c) :

18 This question relates to disallowance of interest paid to the current account of the director under Section 40A(8) of the Act. This

9 ITA 247/2014 decided on 16-8-2016

10 (1994) 117 CTR 0001

question, it is accepted by the Assessee, is decided by our Court in **CIT vs. Jhaveri Bros. & Co. Pvt.Ltd.**¹¹ against the Assessee and in favour of the Revenue. Accordingly, Question (3) is answered in the affirmative, i.e. in favour of the Revenue.

Re : Question (d) :

19 This question concerns treatment of the insurance claim received by the Applicant Assessee from the insurance company on account of loss of stocks-in-trade and other goods due to fire as business income of the Assessee. This question has been decided by our Court in **CIT vs. Pfizer Ltd.**¹² Our Court has held that an insurance claim is an indemnification and must stand on the same footing as the income that would have been realized by the assessee on the sale of the stock-in-trade. We, accordingly, answer Question (4) in the affirmative, i.e. in favour of the Revenue and against the Assessee.

20 The Reference is disposed of accordingly. No order as to costs.

(S.C.GUPTE, J.)

(M.S.SANKLECHA, J.)

11 (1995) 126 CTR 0047

12 (2010) 233 CTR 0521