

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

I.T.A. NO.204 OF 2013

BETWEEN:

M/S. BANGALORE ELECTRICITY SUPPLY COMPANY LTD.,
REP. BY ITS CHIEF GENERAL MANAGER
SRI. ANANDA NAIK
CORPORATE OFFICE, 4TH FLOOR
K.R. CIRCLE, BANGALORE-560001.

... APPELLANT

(BY SRI. A. SHANKAR, SR. COUNSEL FOR
SRI. M. LAVA, ADV.,)

AND:

THE DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE 11(2), R P. BHAVAN
OPP. RBI, NRUPATHUNGA ROAD
BANGALORE.

... RESPONDENT

(BY SRI. K.V. ARAVIND, ADV.)

- - -

THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX
ACT 1961, ARISING OUT OF ORDER DATED 04.07.2012 PASSED
IN ITA NO.359/BANG/2009 FOR THE ASSESSMENT YEAR 2005-06,
PRAYING TO:

(i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED THEREIN.

(ii) ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO
THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY
THE TRIBUNAL IN ITA NO.359/BANG/2009 DATED 4.7.2012.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2005-06. The appeal was admitted by a bench of this Court vide order dated 21.01.2014 on the following substantial questions of law:

(i) Whether the Tribunal was justified in law in confirming the disallowance of Rs.141,84,44,170/- being deduction claimed under section 80IA(4)(iv)(c) of the Act on the facts and circumstances of the case?

(ii) Whether the Tribunal was justified in law in holding that capitalization of expenditure on renovation and modernization in the books of accounts is condition precedent for claiming deduction under section 80IA(4)(iv)(c) of the Act on

the facts and circumstances of the case?

(iii) Whether the provision of section 115JB of the Act is applicable to the appellant company for the impugned assessment year 2005-06 on the facts and circumstances of the case?.

2. The factual background in which the aforesaid substantial question of law arise for consideration in this appeal need mention. The assessee is a public limited company which is wholly owned by the Government of Karnataka and is engaged in the activity of distribution of electricity. The assessee filed the return of income for the Assessment Year 2005-06 on 30.10.2005 declaring NIL income under normal computation of income after claiming deduction of Rs.141,84,44,170/- under Section 80IA(4)(iv)(c) of the Act and book profits of Rs.88,46,17,415/- under Section 115JB of the Act. The case was selected for scrutiny and notice under Section 143(2) of the Act was

issued. The Assessing Officer passed an order under Section 143(3) of the Act on 31.12.2007 and disallowed the deduction claimed under Section 80IA(4)(iv)(c) of the Act and held that computation as per normal provisions of the Act is adopted as tax liability.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 10.02.2009 dismissed the appeal preferred by the assessee. The assessee thereupon approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for short) Tribunal by an order dated 04.07.2012 affirmed the order passed by the Commissioner of Income Tax (Appeals). In the aforesaid factual background, the assessee has approached this Court.

4. Learned Senior counsel for the assessee, while inviting the attention of this Court to Section 80IA(4)(iv)(c) of the Act, submitted that the aforesaid

provision prescribes for 3 types of undertaking which are different from each other for which deduction under Section 80IA of the Act is available. It is pointed that they are an undertaking which is set up for generation or generation and distribution of power, starts transmission or distribution for laying network of new transmission or distribution lines, undertakes substantial renovation and modernization of existing network of transmission or distribution lines. It is submitted that the case of the assessee falls within the third category of undertaking and therefore, the amount undertaken towards renovation and modernization has to be considered. Alternatively, it is submitted that capital work in progress are to be included, the same should not be restricted only to those amounts which are capitalized in books and substantial renovation and modernization should be at any time during the period beginning on 1st day of April 2004 and ending on 31st day of March 2006. It is contended that in the instant

case, the assessee had undertaken substantial renovation and modernization of existing lines which is more than 50% of book value of assets as on 01.04.2004 as per explanation to Section 80IA(4)(iv)(c) of the Act. It is also pointed out that it is sufficient if the assessee has undertaken substantial renovation or modernization of existing lines and it is not necessary that same has to be capitalized in the books of accounts in the current year itself. It is also argued that the assessee has incurred expenditure towards renovation and modernization and the same is shown in the books of account under the heading 'fixed assets' and sub-heading 'capital work in progress'. The assessee therefore has undertaken and has incurred expenditure in furtherance of the undertaking.

5. Without prejudice to the aforesaid submission, it is further submitted that even if renovation and modernization of only current year is considered, the same is more than 50% of the book

value of plant and machinery as on 01.04.2004. It is further submitted that the Assessing Officer has removed the capital in work in progress as well as assets shown in Schedule 7 of the balance sheet. It is pointed out that since the Assessing Officer has not rejected books of accounts of the assessee, therefore, the figures and classifications mentioned in the balance sheet have to be accepted. It is also urged that there is no requirement of a certain item to be capitalized to the books of accounts for benefit of the claimed and had the legislature intended for such a requirement, it would have clearly said so in Section 80IA(4)(iv)(c) of the Act. In this connection, our attention has been invited to Section 35AD of the Act, which contains a requirement that the amount is to be capitalized in the books of accounts of the assessee in order to enable him to claim the benefit under Section 35AD of the Act. It is contended that once the asset is acquired or purchased for the purpose of business, it has to be treated as

capital expenditure and the provisions of Section 115JB of the Act are not applicable to the fact situation of the case. In support of aforesaid submissions, reliance has been placed on decisions in **'RAGHUNATH RAI BAREJA AND ANR. V. PUNJAB NATIONAL BANK AND OTHERS (2007) 2 SCC 230, STATE LEVEL COMMITTEE AND ANR. V. MORGARDSHAMMAR INDIA LTD. (1996) 1 SCC 108, STATE OF MAHARASHTRA AND OTHERS V. SANTOSH SHANKAR ACHARYA (2000) 7 SCC 463, FEDERATION OF ANDHRA PRADESH CHAMBERS OF COMMERCE AND INDUSTRY V. STATE OF ANDHRA PRADESH (2001) 247 ITR 36 (SC), UOI V. HANSOLI DEVI (2002) 7 SCC 309, NASIRUDDIN V. SITA RAM AGARWAL (2003) 2 SCC 577, MITHILESH SINGH V. UOI (2003) 3 SCC 309, S. REGHURAM REDDY V. CCT (2004) 134 STC 598, CWT V. RAMARAJU SURGICAL COTTON MILLS LTD. (1967) 63 ITR 478 (SC), CIT V. ALCOCK ASHDOWN**

**& CO. LTD. (1997) 224 ITR 353 (SC), CIT V. ING
VYSYA BANK LTD. (2020) 422 ITR 116 (KAR.)**

6. On the other hand, learned counsel for the revenue submitted that deduction under Section 80IA of the Act was intended to be provided to encourage modernization and upgradation of plant and machinery in power sector within a specified period. In order to ensure wider network and prevention of transmission losses. It is further submitted that language employed in Section 80IA (4)(iv)(c) of the Act is unambiguously clear, which provides for deduction towards substantial renovation and modernization of existing network of transmission or distribution lines and explanation to the aforesaid clause explains substantial renovation and modernization to mean increase in plant and machinery network in the network of transmission or distribution lines by at least 50% of the book value of such plant and machinery. It is also pointed out that entire

expenditure has admittedly being incurred by the assessee towards substantial renovation and modernization and unless the work is completed, the value of plant and machinery will not be increased as provided in explanation to Section 80IA (4)(iv)(c) of the Act. Therefore, all the authorities have concurrently held that expenditure reflected as work in progress is not eligible unless work is complete and value of plant and machinery is reflected in the books.

7. It is also argued that eligibility conditions of incentive provisions have to be strictly construed and in case of any ambiguity with respect to eligibility conditions the ambiguity has to be read in favour of the revenue. It is further submitted that since, in order to claim deduction under Section 80IA (4)(iv)(c) of the Act the renovation and modernization work should be complete and the completion should be value addition to the book value of the plant and machinery. It is urged that the aforesaid criteria has not been fulfilled by the

assessee for the Assessment Year 2005-06. It is also argued that if contention of the assessee is to be accepted that incentive would be provided on making advances and not in bringing into existence increase in value of plant and machinery, the incentive provision would not be applicable. Without prejudice to the aforesaid contention, it is urged that assessee had been given benefit for a period of 10 years from Assessment Year 2006-07 and on completion of Assessment Year 2006-07 on completion of renovation and modernization on compliance with the conditions in Section 80IA (4)(iv)(c) of the Act. Therefore, the assessee has not been deprived of the benefit of incentive provisions. It is also urged that the issue with regard to applicability of Section 115JB of the Act does not arise from the orders impugned before this court, and therefore, the substantial question of law with regard to applicability of Section 115JB of the Act does not arise for consideration.

8. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of well settled legal principles with regard to statutory interpretation. It is cardinal rule of construction of statutes to read the statutes literally that is by giving to the words their ordinary, natural and grammatical meaning. It is equally well settled legal proposition that if the language of the statute is plain and unambiguous, the court must adopt the ordinary rule of literal interpretation and departure from the aforesaid rule can only be made only in case of apparent absurdity. [See: **'JUGAL KISHORE SARAF VS. RAW COTTON CO. LTD.'**, AIR 1955 SC 376, **'RAKESH KUMAR PAUL VS. STATE OF ASSAM'**, AIR 2017 SC 3948, **'UNION OF INDIA VS. EXIDE INDUSTRIES LIMITED & ORS.'**, 2020 (5) SCC 274]. Now we may advert to the relevant extracts of Section 80IA(2), 80IA(4)(iv)(c) of the Act, which read as follows:

80-IA. (2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or develops a special economic zone referred to in clause (iii) of sub-section (4) or generates power or commences transmission or distribution of power or undertakes substantial renovation and modernisation of the existing transmission or distribution lines :

Section 80IA(4)(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, 80;

(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, 80:

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, 80.

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;

9. Thus, from perusal of the aforesaid provision, it is evident that there are three types of undertaking, which are considered by the Legislature eligible for deduction under Section 80IA of the Act viz., an undertaking which is

(i) is set up for generation or generation and distribution of power.

(ii) starts transmission or distribution by laying network of new transmission or distribution lines.

(iii) undertakes substantial renovation and modernization of the existing network of transmission or distribution lines.

Thus, for each type of an undertaking, the Legislature has used different expressions viz., 'set up', 'starts' and 'undertakes'. The aforesaid words have different meanings. The expression 'undertake' has not been defined under the Act. Therefore, its common parlance meaning has to be taken into account. The meaning of the word 'undertake' as defined under

Black's Law Dictionary, 9th Edition to mean to give a formal promise; guarantee, to act as surety for (another); to make oneself responsible for (a person, fact, or the like). Similarly, in P Ramanatha Aiyar's Law Lexicon, 2nd Edition, the expression 'undertake' is defined as to engage to look after or attend to. To endeavor to perform or try, to promise, to finalise, engage, agree or assume an obligation. To lay oneself under an obligation or to enter into stipulation, to perform or to execute, to convenient, to contract'. Thus, the word 'undertake' used in Section 80IA(4)(iv)(c) of the Act cannot be equated with the word 'completion'. The Circular dated 15.07.2005 issued by the Central Board of Direct Taxes (CBDT) clearly states that the tax benefit under the Section has been extended to undertakings, which undertake substantial renovation and modernization of existing network of transmission or distribution lines during the period beginning from 01.04.2004 and ending on 31.03.2006.

It is also pertinent to note that provision of Section 80IA(4)(iv)(c) of the Act uses the expression 'any time' during the period beginning from 01.04.2004 and ending on 31.03.2006 and does not use the word 'previous year'. Wherever the Legislature has intended to use the expression Previous Year, it has consciously done so viz., in Section 35AB, Section 35ABB, Section 35AC and Section 35AD as well as in 77 other Sections of the Act.

10. In the instant case, the assessee had undertaking substantial renovation and modernization of existing lines which is more than 50% of the book value of assets as on 01.04.2004 as per explanation to Section 80IA(4)(iv)(c) of the Act. Thus, it can safely be inferred that the assessee has undertaken the works towards renovation and modernization of existing transmission or distribution lines. It is pertinent to note that there is no requirement of capitalization of the amount in the books of accounts mentioned in Section

80IA(4)(iv)(c) of the Act. It is pertinent also to note that Section 80IA(4)(iv)(c) of the Act does not mandate that there has to be increase in the value of plant and machinery in the books of accounts. Therefore, such a requirement, which is not prescribed in the language of the provision cannot be read into it.

11. So far as issue with regard to applicability of Section 115JB of the Act is concerned, the same has already been answered by this court in **'COMMISSIONER OF INCOME TAX VS. ING VYSYA BANK LTD.', (2020) 114 TAXMANN.COM 506 (KARNATAKA)**. Thus, in view of language employed in Section 80IA(4)(iv)(c) of the Act, the requirement contained therein is fulfilled if the assessee undertakes the substantial renovation and modernization of the existing or distribution lines and it is not necessary for the assessee to complete the same as the aforesaid provision does not contain the requirement of completion. The authorities have erred in law in adding

the words 'capital work in progress' in the provision which is not mentioned and have also erred in holding that the renovation and modernization should be done in Previous Year. The aforesaid requirements are not contemplated by the provision in question.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered in favour of the assessee and against the revenue. In the result, the order passed by the tribunal dated 04.07.2012 insofar as it contains findings against the assessee is hereby quashed. In the result, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**