आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)
श्री एन.के.सैनी, उपाध्यक्ष एवं श्री विकास अवस्थी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA No. 723/Chd/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Shri Sanjeev Batish C/o Rajiv Goel & Associates, 179, Bank Road, Ambala Cantt- Haryana	बनाम	The DCIT, Circle Sector-2 Panchkula-Haryana
स्थायी लेखा सं./PAN NO: AEUPB4488D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Rohit Goel
राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 01/11/2021
उदघोषणा की तारीख/Date of Pronouncement : 03/11/2021

आदेश/Order

PER VIKAS AWASTHY, JM

This appeal has been filed by the Assessee against the order of Commissioner of Income Tax (Appeals), Panchkula (hereinafter referred to as 'the CIT(A)') dt. 14/10/2015 for the A.Y. 2012-13.

2. The appeal is time barred by 879 days. The assessee has filed an application seeking condonation of delay supported by an affidavit. Shri Ashok Khanna, representing the Department opposed the application for condonation of delay. A perusal of aforesaid application reveals that the delay in filing of the appeal is attributed to inadvertent oversight by Shri Gajendra Arya, Accountant of the assessee. Ostensibly, the assessee had deputed Shri Gajendra Arya to contact the Chartered Accountant to get the appeal drafted. After drafting the grounds of appeal and Form No. 36, the Chartered Accountant handed over the documents for signature and filing to Sh.

Gajendra Arya. The Accountant placed the aforesaid documents in another file and forgot to get signature of the assessee on the same. It was only when the appeal for subsequent years was decided by the CIT(A) it transpired that the appeal against the order of CIT(A) for A.Y. 2012-13 was not filed before the Tribunal. An affidavit of Shri Gajendra Arya has been filed wherein he has admitted that the delay in filing of appeal was because of his unintentional mistake.

3. After examining the affidavit we are satisfied that the delay in filing of the appeal is on account of unintentional bonafide mistake. The Hon'ble Supreme Court of India in the case of Ram Nath Sahu Vs. Gobardhan Sao And Others reported as 2002(3)(SCC) 195 has held that acceptance of explanation for condonation of delay should be the rule and refusal an exception. The application seeking condonation of delay should not be rejected on hyper technical reason or by taking pedantic view when the stakes are high and / or arguable points of facts and law are involved. Rejecting the application for seeking condonation would by taking a hyper technical view cause enormous loss or irreparable injury to the party against whom the lis terminates either by default or inaction, defeating valuable right of such a party to have the decision on merit.

The Hon'ble Apex Court in case of Collector, Land Acquisition Vs. MST Katiji and Others reported as 167 ITR 471 has held that when substantial justice and technical considerations are pitted against each other, the course of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. In view of the reason explained causing delay in filing of appeal and the law laid down by the Hon'ble Apex Court, the delay in filing of appeal is condoned and the appeal is admitted to be heard on merit.

4. Shri Rohit Goel appearing on behalf of the assessee submitted that the assessee is engaged in manufacturing and trading of construction chemical. The assessee had claimed deduction @100% under section 80IC in respect of a unit eligible for deduction in the assessment year under consideration. The claim of 100% deduction under section 80IC of the Act has been made on the basis of substantial expansion done by the assessee during the F.Y. 2009-10. The A.O. restricted the claim of assessee to 25% of eligible profits on the ground that 100% deduction under section 80 IC of the Act is eligible only upto five initial assessment years and thereafter the assessee is eligible for deduction @25%. The AR failed to appreciate the fact that the assessee has made claim of deduction under section 80IC @ 100% in respect of substantial expansion made during the period relevant to the A.Y. 2010-11.

Aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) placing reliance on the decision rendered in the case of Hycron Electronics Vs. ITO in ITA No. 798/Chd/2012 dismissed the appeal of assessee. Hence, the present appeal before the Tribunal. The Ld. AR submitted that the case of the assessee is squarely covered by the decision of Hon'ble Supreme Court of India in the case of Pr. CIT Vs. Aarham Softronics reported as 419 ITR 623. The Hon'ble Apex Court has held that the assessee would be entitled for deduction under section 80IC @ 100% even if substantial expansion has been undertaken in the year after first five years of claim of 100% deduction.

5. Per contra Shri Ashok Khanna representing the Department vehemently defended the impugned order and prayed for dismissing appeal by the assessee. The ld. DR submitted that the assessee has already availed deduction under section 80IC of the Act, at 100% for initial five Assessment Years as per the provisions of the section. After initial five assessment years the assessee is eligible for deduction @ 25%.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The solitary issue in the present appeal is, whether the assessee is entitled to claim 100% deduction u/s 80IC on the profits from the eligible undertaking during the period relevant to the assessment year under appeal. The brief facts as emanating from the record are; the assessee has set up an undertaking in the State of Himachal Pradesh, the assessee started its commercial production on 24/05/2005 i.e; during the period relevant to A.Y. 2006-07 and that was initial assessment year of assessee's claim of deduction under section 80IC of the Act. The assesse claimed deduction under the aforesaid section @ 100% for the initial five assessment years. Thereafter, the assessee made "substantial expansion" during the period relevant to the A.Y. 2010-11. The assessee again claimed 100% deduction against eligible profit during the period A.Y. 2012-13. The A.O. rejected assessee's claim of 100% deduction and restricted it to 25%. The CIT(A) in first appeal upheld the view of Assessing Officer.

7. A perusal of assessment order shows that the A.O. has not disputed the fact that the assessee has made investment in plant and machinery to the tune of 50% of existing book value of plant and machinery. In other words the A.O. has not controverted the fact of substantial expansion. The A.O. has rejected assessee's claim of 100% deduction under section 80IC of the Act on the issue that the assessee is eligible for 100% deduction only in initial five assessment years, since initial five years have elapsed, the assessee is eligible for deduction at reduced rate of 25%. Similar view has been taken by the CIT(A).

8. We find that the Hon'ble Apex Court in the case of Pr. CIT Vs. Aarham Softronics (supra) had decided similar issue. The question before Hon'ble Court was:

> *"Whether an assessee who sets up a new industry of a kind mentioned in sub-section(2) of Section 80-IC of the Act and starts availing exemption of 100 per cent tax under sub-section (3) of*

Section 80-IC(which is admissible for five years) can start claiming the exemption at the same rate of 100% beyond the period of five years on the ground that the assessee has now carried out substantial expansion in its manufacturing unit?"

The Hon'ble Court after examining the facts and provisions of the Act held as under:

14.In the aforesaid conspectus, the focus has to be on the question as to whether definition of 'initial assessment year' contained in clause (v) of sub-section (8) of Section 80-IC makes any difference? We would like to reproduce the said definition once again, hereunder, for the purpose of continuity of thought process.

"S. 80-IC : xxx xxx xxx
(8) xxx xxx xxx
(v) —Initial assessment year means the assessment year ‖ relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion"

15. On the basis of this definition, counsel for the assessees before us have argued that there can be more than one 'initial assessment year' which can be triggered by the contingency provided therein.
16. As per this definition, there can be 'initial assessment year', relevant to previous year, in any of the following contingencies:

(i) The previous year in which the undertaking or the enterprise begins to manufacture or produce article or things; or

(ii) Commences operation; or

(iii) Completes substantial expansion

First two events are relatable to new units whereas third incident would occur in respect of existing units. The benefit of Section 80-IC is, thus, admissible not only when an undertaking or enterprise sets up new unit and starts manufacturing or producing article or things. The advantage of this provisions is also accrued to those existing units, if they carry out "substantial expansion" of their units by investing required capital, in the assessment year relevant to the previous year.

"Substantial expansion" is defined in clause (ix) of sub-section (8) of Section 80-IC and it reads as under:

"(ix) "Substantial expansion" means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

17.As per the aforesaid definition, an existing unit would be treated as having carried out substantial expansion when there is increase in the investment in the plant and machinery by at least 50% of the book value of the plant and machinery (before taking depreciation in any year). As already noted above, in all these cases at hand, the assessees had initially set up new industry in the State of Himachal Pradesh of the nature specified under Section 80-IC of the Act. As a result, they became entitled to avail the concession provided in the said provision. It is also an admitted fact that after five years and before the expiry of 10 years, the assessees had carried substantial expansion of their units in terms of the aforesaid definition. When we consider the definition of 'initial assessment year', keeping in view these factors, we find substance in the submissions made by the learned counsel for the assessees and are inclined to accept that there can be another 'initial assessment year' on the fulfillment of the condition mentioned in the said definition, namely, completion of substantial expansion of the existing unit.

18.The Court is supposed to give effect to the provisions of Section 80-IC by reading various provisions conjointly. For the purpose of these cases, relevant provisions are sub-section (2)(a)(ii), sub-section 3(ii), sub-section (6) and sub-section (8)(v) and (ix). Clause (ii) of sub-section (2) provides that in case an undertaking or enterprise sets up a unit of the nature specified therein in the State of Himachal Pradesh or the State of Uttaranchal between the 7th January, 2003 and 1st April, 2015, such an undertaking or enterprise shall become eligible for the deductions from such profits and gains, as specified in sub-section (3). In respect of State of Himachal Pradesh (in respect of which these cases pertain to) sub-section (3) enumerates the extent of deduction. It is 100% of profits and gains for first five initial assessment years commencing with the initial assessment year and thereafter 25% (or 30% where the assessee is a company) of the profits and gains. The deduction @ 25% for the neat five years in on the assumption that the new unit remains static insofar as expansion thereof is concerned. However, the moment substantial expansion takes place, another 'initial assessment year' gets triggered. This new event entitles that unit to start getting deduction @ 100% of the profits and gains. At the same time, new period of 10 years does not start. It is because of the reason that total period for which deduction can be allowed is capped at 10 years, inasmuch as sub-section (6) in no uncertain terms stipulates that deduction shall be not allowed for a period exceeding 10 assessment years. In fact, this period of 10 years relates not only in respect of deduction under Section 80-IC but under the second proviso to sub-section (4) of Section 80-IB as well. It would mean that total deduction under Section 80-IB as well as 80-IC is for a period of 10 years.

19.Having examined the scheme in the aforesaid manner, we arrive at the conclusion that the definition of 'initial assessment year' contained in clause (v) of sub-section (8) of Section 80-IC can lead to a situation where there can be more than one "initial assessment year" within the said

period of 10 years. As per sub-section (6), cap is on the 10 assessment years. It is not on quantum. We have also to keep in mind the purpose for which Section 80-IC was enacted. The purpose was to establish the business of the nature specified in the said provision in the specified States. This provision was, thus, aimed at encouraging the undertakings or enterprises to establish and set up such units in the aforesaid States to make them industrially advanced States as well. Undoubtedly, these are difficult States as most of these States fall in hilly areas. Therefore, cost of production and transportation may also go up.

20.When we keep in mind these objectives for which Section 80-IC was enacted, an irresistible conclusion would be to grant 100% deduction of the profits and gains even from the year when there is substantial expansion in the existing unit. After all, this substantial expansion involves great deal of investment which has to be, at least 50% in the plant and machinery, of the book value thereof before taking depreciation in any year. With an expansion of such a nature not only there would be increase in production but generation of more employment as well, which would benefit the local populace. It is for this reason, carrying out substantial expansion by itself is treated as 'initial assessment year'. It would mean that even when an old unit completes substantial expansion, such a unit also becomes entitled to avail the benefit of Section 80-IC. If that is the purpose of the legislature, we see no reason as to why 100% deduction of the profits and gains be not allowed to even those units who had availed this deduction on setting up of a new unit and have now invested huge amount with substantial expansion of those units. We would like to reproduce following discussions from the Constitution Bench judgment in Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and Others :

> *"20. It is well accepted that a statute must be construed according to the intention of the legislature and the courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In this connection, the following observations made by this Court in District Mining Officer v. TISCO [District Mining Officer v. TISCO, (2001) 7 SCC 358] , may be noticed: (SCC pp. 382-83, para 18)*
>
> > *"18. … A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative*

> *legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."*

"28. The decision of this Court in Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [Punjab Land Development and Reclamation Corpn. Ltd.v. Labour Court, (1990) 3 SCC 682 : 1991 SCC (L&S) 71] , made the said distinction, and explained the literal rule: (SCC p. 715, para 67)

> *"67. The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning, whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."*

That strict interpretation does not encompass strict literalism into its fold. It may be relevant to note that simply juxtaposing "strict interpretation" with "literal rule" would result in ignoring an important aspect that is "apparent legislative intent". We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, "strict interpretation" does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then "strict interpretation" can be implied to accept some form of essential inferences which literal rule may not accept.

29. We are not suggesting that literal rule dehors the strict interpretation nor one should ignore to ascertain the interplay between "strict interpretation" and "literal interpretation". We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly

one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

30. Justice G.P. Singh, in his treatise Principles of Statutory Interpretation (14th Edn. 2016 p. 879) after referring to Micklethwait, In re [Micklethwait, In re, (1855) LR 11 Ex 452 : 156 ER 908] ; Partington v. Attorney General [Partington v. Attorney General, (1869) LR 4 HL 100] , Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd. v. CIT [Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd. v. CIT, (2014) 11 SCC 672] , State Bank of Travancore v. CIT [State Bank of Travancore v. CIT, (1986) 2 SCC 11 : 1986 SCC (Tax) 289] and Cape Brandy Syndicate v. IRC [Cape Brandy Syndicate v. IRC, (1921) 1 KB 64] , summed up the law in the following manner:

> *"A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury [Ed.: Tennant v. Smith, 1892 AC 150 at p. 154] and Lord Simonds [Ed.: St Aubyn v. Attorney General, 1952 AC 15 at p. 32 (HL)] , means: '"The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words."'*

In a classic passage Lord Cairns stated the principle thus:

> *'If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.'*

Viscount Simon quoted [Ed.: Canadian Eagle Oil Co. Ltd. v. Selection Trust Ltd., 1946 AC 119 at p. 140 (HL)] with approval a passage [Cape Brandy Syndicate v. IRC, (1921) 1 KB 64] from Rowlatt, J. expressing the principle in the following words: (Cape Brandy case [Cape Brandy Syndicate v. IRC, (1921) 1 KB 64] , KB p. 71)

> *'… in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'"*

21.The High Court has interpreted these provisions in the following manner:

> *"80-IC(3)(ii) [for Himachal Pradesh] stipulates that deduction shall be @ 100% for five years commencing with "initial assessment year" and thereafter @ 25%. "Initial assessment year", as per Section 80-IC (8)(v) means, year in which the unit begins/commences to manufacture/produce or completes "substantial expansion" [As per Section 80-IC(8)(ix)].*

46. The moment "substantial expansion" is completed as per Section 80-IC(8)(ix), the statutory definition of "initial assessment year" [Section 80-IC(8)(v)] comes into play. And consequently, Section 80-IC(3)(ii) entitles the unit to 100% deduction for five years commencing with completion of "substantial expansion", subject to maximum of ten years as per Section 80-IC(6).

47. A unit that started operating/existed before 7.1.2003 was entitled to 100% deduction for first five years under Section 80-IB(4). If this unit completes substantial expansion during the window period (7.1.2003 to 31.3.2012), it would be eligible for 100% deduction again for another five years under Section 80-IC(3)(ii), subject to ceiling of ten years as stipulated under Section 80-IC(6)."

We are inclined to agree with the aforesaid interpretation.

22.It would be pertinent to point out that in Para 20 of the judgment in Classic Binding Industries, this+ Court observed that if deduction @ 100% for the entire period of 10 years, it would be doing violence to the language of sub-section (6) of Section 80-IC. However, this observation came without noticing the definition of 'initial assessment year' contained in the same very provision.

9. The Hon'ble court summed up its observations as under:

"24.The aforesaid discussion leads us to the following conclusions:

(a) Judgment dated 20th August, 2018 in Classic Binding Industries case omitted to take note of the definition 'initial assessment year' contained in Section 80-IC itself and instead based its conclusion on the definition contained in Section 80-IB, which does not apply in these cases. The definitions of 'initial assessment year' in the two sections, viz. Sections 80-IB and 80-IC are materially different. The definition of 'initial assessment year' under Section 80-IC has made all the difference. Therefore, we are of the opinion that the aforesaid judgment does not lay down the correct law.

(b) An undertaking or an enterprise which had set up a new unit between 7th January, 2003 and 1st April, 2012 in State of Himachal Pradesh of the nature mentioned in clause (ii) of sub-section (2) of Section 80-IC, would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the 'initial assessment year'. For the next five years, the admissible deduction would be 25% (or 30% where the assessee is a company) of the profits and gains.

(c) ***However, in case substantial expansion is carried out as defined in clause (ix) of sub-section (8) of Section 80-IC by such an undertaking or enterprise, within the aforesaid period of 10 years, the said previous year in which the substantial expansion is undertaken would become 'initial assessment year', and from that assessment year the assessee shall been entitled to 100% deductions of the profits and gains****.*

(d) Such deduction, however, would be for a total period of 10 years, as provided in sub-section (6). For example, if the expansion is carried out immediately, on the completion of first five years, the assessee would be entitled to 100% deduction again for the next five years. On the other hand, if substantial expansion is undertaken, say, in 8th year by an assessee such an assessee would be entitled to 100% deduction for the first five years, deduction @ 25% of the profits and gains for the next two years and @ 100% again from 8th year as this year becomes 'initial assessment year' once again.

However, this 100% deduction would be for remaining three years, i.e., 8th, 9th and 10th assessment years."

(Emphasized by us)

10. We find that the Hon'ble Supreme Court of India in an unambiguous manner has held that the substantial expansion has been made within the meaning of section 80IC (8) (ix) of the Act after initial assessment year, the assessee is further entitled to claim deduction @ 100% of profits from eligible undertaking under section 80IC of the Act. The aforesaid ratio squarely applies to the facts, of the instant case. Hence, we hold that the assessee is eligible to claim deduction under section 80IC @ 100% after 'substantial expansion' during the assessment year under appeal.

In light of our above findings, the impugned order is set aside and appeal of the assessee is allowed.

(Order pronounced on 03/11/2021)

Sd/-	**Sd/-**
एन.के.सैनी,	**विकास अवस्थी**
(N.K. SAINI)	**(VIKAS AWASTHY)**
उपाध्यक्ष / VICE PRESIDENT	**न्यायिक सदस्य/ Judicial Member**

Date: 03/11/2021
AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File