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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO.174 of 2016
With
TAX APPEAL NO.175 of 2016
TO
TAX APPEAL NO.176 of 2016

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M/S ANAND FOOD AND DAIRY PRODUCTS....Appellant(s)
Versus
THE INCOME TAX OFFICER....Opponent(s)
==
Appearance:
MR SN SOPARKAR, SR. ADVOCATE with MR BS SOPARKAR, ADVOCATE for the Appellant(s) No.1
==

CORAM: **HONOURABLE MS. JUSTICE HARSHA DEVANI**
and
HONOURABLE MR. JUSTICE G.R.UDHWANI

Date : 30/03/2016

COMMON ORAL ORDER
(PER : HONOURABLE MS. JUSTICE HARSHA DEVANI)

1. These appeals under section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), at the instance of the assessee are directed against the common order dated 19th June, 2015 passed by the Income Tax Appellate Tribunal, ‘D’ Bench, Ahmedabad (hereinafter referred to as the “Tribunal”) in ITA Nos.1828/Ahd/2014, 1829/Ahd/2014 and 1422/Ahd/2013 by proposing the following three questions stated to be substantial questions of law:-

(1) *Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the initial assessment year should be A.Y. 2002-03?*

(2) *Whether in the facts and circumstances of the case the*

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Income Tax Appellate Tribunal was right in law in holding that assessee is entitled to deduction of 25% and not 100% u/s 80IB(11A) as claimed by the assessee?

(3) Whether in the facts and circumstances of the case the Income Tax Appellate Tribunal was right in law in not appreciating the fact that initial assessment year would be 2005-06 as deduction to the said effect was available to the assessee by virtue of amendment in the section by the Finance Act, 2004, w.e.f. 01.04.2005?

2. The assessment years are 2007-08, 2008-09 and 2009-2010. The appellant assessee is engaged in the business of processing, preservation and packing of vegetables and fruits. For all the three years under appeal, the assessee claimed deduction under section 80IB(11A) of the Act at 100% of the profits and gains of the business of processing, preservation and packaging of fruits and vegetables. The Assessing Officer, while accepting the assessee's claim of eligibility under section 80IB(11A) of the Act, was of the view that the assessee was entitled to deduction at the rate of 25% and not 100%. The assessee admittedly had commenced its business of processing, preservation and packaging of fruits/vegetables with effect from 2nd June, 2001. Therefore, according to the Assessing Officer, the initial assessment year was assessment year 2002-03 and, beginning from this year, five years would end by 2006-07. That the assessee is entitled to 100% deduction of the profit from the business of processing, preservation and packaging of fruits/vegetables for a period of five years, beginning with the initial assessment year and, therefore, is entitled to deduction of 25% of the profit. He, accordingly, allowed deduction under section 80IB(11A) of the Act at 25% in all the three years under appeal as against 100% deduction claimed by the assessee. The

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assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) but did not succeed. Against the order passed by the Commissioner (Appeals), the assessee preferred appeals before the Tribunal, which, by the impugned order, dismissed the appeals and sustained the order passed by the Commissioner (Appeals).

3. Mr. S.N. Soparkar, Senior Advocate, learned counsel appearing with Mr. Bandish Soparkar, learned advocate for the petitioner submitted that section 80IB is a beneficial provision. It was contended that therefore, if the question was as regards eligibility to the benefit of section 80IB(11A) of the Act, the same was required to be construed strictly, however, once it is held that the assessee is entitled to the benefit thereof, the statutory provision should be interpreted liberally in favour of the assessee. It was submitted that section 80IB(11A) of the Act contemplates the grant of the benefit of 100% deduction for a period of five years from the initial assessment year in case of an undertaking deriving profit from the business of processing, preservation and packaging of fruits/vegetables and 25% for the subsequent five years. Thus, the statute contemplates the grant of the benefit for ten consecutive assessment years and hence, section 80IB(11A) of the Act is required to be construed accordingly and the benefit is required to be given to the assessee for a total period of ten years from the coming into force of the provision. It was submitted that the benefit of the provisions of sub-section (11A) of section 80IB of the Act came to be extended to undertakings deriving profit from the business of processing, preservation and packaging of fruits and vegetables with effect from 1st April, 2005 and hence, the appellant is entitled to the

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benefit of said provision for a consecutive period of ten years from the coming into force of the said provision. Therefore, the authorities below were not justified in holding that the ten consecutive years are required to be computed from the date when the assessee commenced the business and not from the date when the provision was made applicable to assessees like the appellant. In support of his submission, the learned counsel placed reliance upon the decision of the Karnataka High Court in the case of ***Ace Multi Axes Systems Ltd. v. Deputy Commissioner of Income Tax, Circle 11(1),*** *(2014) 49 taxmann.com 168 (Karnataka),* wherein the court has held that while there is no express provision indicating as to what would be the position if the small scale industry ceases to be a small scale industry during the period of ten years, if one keeps in mind the object of the legislature providing for these incentives and when a period of ten years is prescribed, then that is the period which is required for any industry to stabilize itself. During the period the industry not only manufactures products, it generates employment and it adds to the wealth of the country. Merely because an industry stabilizes early, makes profits, makes future investment in the business and it goes out of the definition of the small scale industry, the benefit of section 80IB cannot be denied. The court held that if such a literal interpretation is placed on the said provision, it would run counter to the very object of granting incentives. It would kill the industry. Therefore, keeping in mind the object with which these provisions are enacted, keeping in mind the industrial growth which is required to be achieved, if two interpretations are possible, the courts have to lean in favour of extending the benefit of deduction to an assessee who has availed the opportunity given to him under the law and has

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grown in his business. It was submitted that, therefore, a liberal interpretation is required to be adopted which leans in favour of the assessee namely, that the assessee is entitled to the benefit of provisions of section 80IB(11A) of the Act with effect from the date when the same came to be made applicable to assessees like the appellant. It was, accordingly, urged that the appeals require consideration on the questions of law as proposed or as may be formulated by the court.

4. This court has considered the submissions advanced by the learned counsel for the appellant and has perused the orders passed by the authorities below. As can be seen from the impugned order, the Tribunal has, after referring to the provisions of section 80IB(11A) of the Act, observed that an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables is entitled to 100% of the profit and gains derived from such undertaking for five assessment years, beginning with the initial assessment year and thereafter 25% of the profit and gains derived from such undertaking. Thus, 100% deduction is allowed for five years beginning with the initial assessment year. The Tribunal has noted that according to the assessee, the initial assessment year would be assessment year 2005-06 because the provision giving the benefit of section 80IB(11A) to the undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables came into force with effect from 1st April, 2005. The Tribunal, however, took note of the fact that the expression "initial assessment year" has already been defined in section 80IB(14)(c) of the Act and that as per the definition, the initial assessment year for an undertaking engaged in the business

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of processing, preservation and packaging of fruits or vegetables means the assessment year relevant to the previous year in which the undertaking begins such business. Admittedly, the assessee has begun the business of processing, preservation and packaging of fruits and vegetables with effect from 2nd June, 2001. Therefore, the assessment year relevant to previous year 1.4.2001 to 31.3.2002 would be the initial assessment year. The Tribunal, accordingly, agreed with the finding of the lower authorities that the initial assessment year was assessment year 2002-03 and that the assessee would be entitled to 100% deduction only for the first five years including the initial assessment year which would last up to assessment year 2006-07 and thereafter, the assessee would be entitled to 25% deduction for the next five years.

5. In the aforesaid backdrop, it may be germane to refer to section 80IB(11A) of the Act, which to the extent the same is necessary for the present purpose reads as under:-

(11A) The amount of deduction in a case of [an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or [meat and meat products or poultry or marine or dairy products or] from] the integrated business of handling, storage and transportation of foodgrains, shall be hundred per cent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after the 1st day of April, 2001.

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Thus, what is contemplated under the said provision is that an assessee is entitled to 100% deduction of the profits and gains derived for the first five assessment years beginning with the initial assessment year and thereafter, 25% of the profits and gains derived from the operation of such business in such a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after the 1st day of April, 2001.

6. In the facts of the present case, the appellant assessee having fulfilled the requirements for being eligible to deduction under section 80IB(11A) of the Act, the Assessing Officer held that the assessee is entitled to the benefit thereunder. Insofar as undertakings deriving profits from the business of processing, preservation and packaging of fruits and vegetables are concerned, the same came to be included for the benefit of deduction under sub-section (11A) of section 80IB of the Act, only with effect from 1st April, 2005. Therefore, prior thereto, the appellant was not entitled to the benefit thereof. In the present case, the appellant had commenced its business with effect from 2nd June, 2001, which is relevant to the assessment year 2002-03. Section 80IB(11A) of the Act provides for the benefit of deduction of profits and gains of an undertaking deriving profit from the business of processing, preservation and packaging of fruits and vegetables for ten consecutive years beginning with the initial assessment year. "Initial assessment year" has been defined under section 80IB(14)(c)(iv) of the Act to mean in the case of an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables or in the

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integrated business of handling, storage and transportation of foodgrains, the assessment year relevant to the previous year in which the undertaking begins such business. Thus, in terms of the definition of initial assessment year as defined under section 80IB(14)(c)(iv) of the Act, the initial assessment year is the assessment year relevant to the previous year in which the undertaking begins such business. Therefore, the appellant assessee would be entitled to the benefit of deduction under section 80IB(11A) of the Act with effect from initial assessment year namely, the assessment year relevant to the year in which it commenced its business, that is, assessment year 2002-03. However, during assessment year 2002-03, the provisions of section 80IB(11A) of the Act did not cover units like the assessee and hence, the assessee was not entitled to the benefit thereof. The assessee came to be entitled to the benefit of deduction under section 80IB(11A) of the Act only with effect from 1st April, 2005, when the words "an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables" came to be introduced in sub-section (11A). Section 80IB(11A) of the Act provides for a total period of deduction not exceeding ten consecutive years. In other words deduction under section 80IB(11A) of the Act can be availed of for a maximum period of ten years. Section 80IB(11A) of the Act also provides that such deduction shall be hundred percent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter twenty five per cent of the profits and gains derived from the operation of such business. However, the fact that the units like the assessee came to be included for entitlement to the benefit of deduction section 80IB(11A) of the Act only with

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effect from 1st April, 2005 would not change the "initial assessment year" which has been clearly defined under section 80IB(14)(c)(iv) of the Act to mean the assessment year relevant to the year in which the assessee commenced its business. Thus, an undertaking like the assessee, which derives profits from the business of processing, preservation and packaging of fruits or vegetables would be entitled to deduction under section 80IB(11A) of the Act from the initial assessment year, viz. the assessment year relevant to the previous year in which it begins such business. The appellant began its business with effect from 2nd June, 2001 and hence, the initial assessment year in the case of the appellant would be assessment year 2002-03. Since, assessees like the appellant became entitled to the benefit of deduction under section 80IB(11A) of the Act only with effect from 1st April, 2005, for the assessment years under consideration, since five years had already elapsed from the initial assessment year, the appellant was entitled to deduction of only 25% of the profits and gains from its business. The Tribunal was, therefore, wholly justified in holding that no artificial definition to the initial assessment year can be put by holding that the initial assessment year would be 2005-06 even though the assessee has commenced its business with effect from 2nd June, 2001. It is by now well-settled that in a taxing statute, the provisions have to be construed strictly and there is no room for equity therein. Under the circumstances, no infirmity can be found in the view adopted by the Tribunal, which is clearly in consonance with the plain language of the statute.

7. In the light of the above discussion, it is not possible to state that the impugned order passed by the Tribunal

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suffers from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law, warranting interference. The appeals, therefore, fail and are accordingly dismissed.

(Harsha Devani, J.)

(G.R. Udhwani, J.)

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