IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, CHANDIGARH

BEFORE SHRI H.L.KARWA, HON'BLE VICE PRESIDENT &
MS. RANO JAIN, ACCOUNTANT MEMBER

ITA Nos. 501 & 502/Chd/2015
Assessment Years: 2010-11 & 2011-12

M/s Shree Dhanwantri Herbals, Vill Kishpura Distt. Solan	Vs.	The ITO, Baddi.

PAN No. AAZFS3118E

(Appellant) (Respondent)

Appellant By : Sh. Rakesh Gupta
Respondent By : Sh. Sunil Verma

Date of hearing : 02.09.2015
Date of Pronouncement : 08.09.2015

ORDER

PER H.L.KARWA, VP

These two appeals by the assessee relating to assessment years 2010-11 & 2011-12 were heard together and are being disposed of by this common order for the sake of convenience.

2. Firstly, we will take up appeal in **ITA NO. 501/Chd/2015 relating** to assessment year 2010-11. This appeal is directed against the order of CIT(A), Shimla dated 9.2.2015. In this appeal, assessee has raised following grounds:-

1. *The Ld. CIT(A) is wrong in confirming the arbitrary addition of Rs. 45,80,728/- by disallowing deduction u/s 80IC @ 3% of the turnover on account of non-incurrence of expenditure towards royalty /fee for technical knowhow services.*

2. *The Ld. CIT(A) is wrong in confirming the arbitrary addition of Rs. 30,53,918/- by disallowing deduction u/s 80IC @ 2% of the turnover on account of non-incurrence of expenditure towards compensation for use of goodwill or customer base.*

3. Briefly stated the facts of the case are that assessee firm derives income from the manufacturing and sale of herbal medicines. During the year under consideration the assessee firm had declared gross sales at Rs. 18,34,74,346/-. The Assessing officer noticed that assessee was carrying out its business activity at two places one at Amritsar and the other at Kishanpura (Baddi.), H.P. According to Assessing officer, the profits derived from Kishanpura unit has been claimed as deduction u/s 80IC of Income-tax Act, 1961 (in short 'the Act') whereas no such deduction is available to the Amritsar unit of the assessee. The Assessing officer further noted that there was huge difference of GP and NP ratio in Amritsar and Kishanpura unit i.e. GP and NP ratio of Amritsar Unit was 43.62% and 1.63% as compared to Kishanpura unit having ratio of 52.21% and 11.99%. Considering the above facts, the Assessing officer invoked the provisions of section 80IC read with section 80IA(10) and considering that Kishanpura unit being a new unit should have incurred expenditure on technical know-how and goodwill. The Assessing officer further opined that the assessee has transferred to the eligible business technology and goodwill without any consideration. The Assessing officer has further observed that partners have agreed to provide technical know-how and services to the assessee's eligible unit free of cost. Thus, the Assessing officer reduced the profit eligible u/s 80IC by invoking the provisions of section 80IC(7) read with section 80IA(1). Accordingly, the Assessing officer disallowed deduction claimed u/s 80IC to the

extent of Rs. 45,80,728/- @ 10% of the turnover on account of non incurrence of expenditure towards royalty / fee for technical knowhow services and further disallowance of 2% turnover on account of claim of goodwill i.e Rs. 30,53,918/-. Consequently, the Assessing officer made the addition of Rs. 76,34,546/-.

4. On appeal , the CIT(A) upheld the order of Assessing officer and hence the assessee is in appeal before the Tribunal.

5. After hearing the Ld. representatives of both the parties we find that both the above issues are squarely covered in favour of the assessee and against the Revenue by the decision of ITAT, Chandigarh Bench in the case of M/s Shree Dhanwantri Herbal, Solan vs ITO in ITA No. 117/Chd/2010 relating to assessment year 2006-07. While deciding similar issues the Tribunal vide its order dated 11.8.2010 observed as under:-

> "2. At the time of hearing, it was a common point between the parties that the issues involved are covered by the earlier decisions of the Tribunal in the case of M/s Lambda Microwaves ITA No.725/Chandi/2009 dated 29.01.2010 and M/s Poly Lab Products vide ITA No. 710/Chd/2009 dated 29.01.2010 respectively. In this manner, the captioned appeal is being disposed of as follows.
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> 3. On both the Grounds, the dispute arises from claim of deduction made by the assessee u/s 80IC of the Income Tax Act, 1961 (in short 'the Act') in the return of income. The assessee is a partnership firm which started its business from 25.07.2005 and declared income from manufacture of Ayurvedic Pharmaceuticals etc. In the first Ground, dispute relates to the stand of the the Assessing Officer that non-claiming of any expenditure for use of technical know-how, customer base, goodwill of the sister concern, has resulted in excess profits and therefore he applied the provisions of Section 80IA(10) read with Section 80IC(7), and addition has been made.
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> 4. On this point, both the parties agreed that the issue involved is identical to Ground No.1 in the case of M/s Lambda Microwaves (supra) wherein the following discussion has been made :

"10. We have considered the rival submissions carefully. The short point involved in this appeal relates to the profits declared by the assessee from industrial undertaking which is otherwise eligible for 80IC benefits. Section 80IC provides for deduction of profits and gains derived by certain undertakings or enterprises. The core controversy before us relates to invoking of section 80IA(10) of the Act for the purposes of computing profits derived by the assessee's industrial undertaking which is eligible for 80IC benefits. It is, therefore, appropriate to reproduce hereinafter the provisions of section 80IA(10) which read as under :-

"80-IA.*(10) Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom"*

11. Sub-section (7) of 80IC provides, inter-alia, that the provisions of section 80IA(10) would also apply to an undertaking or enterprise eligible for 80IC benefits. Thus, the said provision is relevant for the purposes of examining the aforesaid controversy. The essentials of the aforesaid section can be understood as follows. The Assessing Officer is empowered to scrutinize transactions between an assessee eligible for 80IC benefits and any other person with a view to ascertaining whether the business transacted between them produces to the assessee more than the ordinary profits or not. If the Assessing Officer is satisfied that the business so transacted between them produces more than ordinary profits which might be expected to arise in such eligible business, the Assessing Officer is empowered to take the amount of profits as may be reasonably deemed to have been derived therefrom. Evidently, the entire mechanics of the section revolve around "the course of business" being "so arranged that the business transacted between them" produces more than the ordinary profits to the assessee. The presence of a

"business transacted" between the two entities is a sine qua non for enabling the Assessing Officer to apply the said section and determine the profits as may be reasonably deemed to have been derived by the assessee from the eligible business. Ostensibly, the presence of the words "--------- where it appears to the Assessing Officer ------", imply that burden is on the Assessing Officer to demonstrate that the course of business between the two entities is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business.

12. In the aforesaid light, we have examined the case set up by the Assessing Officer. In this case, the Assessing Officer has held that the assessee has not incurred expenditure by way of royalty/fee of technical service for use of trade mark/trade name, which has enabled the assessee to earn more than the ordinary profits which can be expected to arise in such business. According to the Assessing Officer, such technical know-how and use of trade mark/trade name have been obtained by the assessee from its sister concerns, for which no expenditure is incurred by the assessee. The moot point to be considered is as to whether is there any arrangement between the assessee and the sister concerns for obtaining of technical know-how and for the use of trade mark/trade name. The ascertainment of the aforesaid arrangement is essential so as to gauge whether any business has been transacted between the assessee and sister concerns within the meaning of section 80IA(10) and which produces to the assessee more than the ordinary profits which might be expected to arise in such business.

13. Having examined the orders of the lower authorities and the material on record, we find no evidence to support that there is any arrangement or a business transacted between the assessee and the sister concerns with respect to obtaining of technical know-how or use of trade mark/trade name owned by the sister concern. The assertion of the Assessing Officer that the assessee has obtained the use of technical know-how and use of trade mark/trade name from its sister concerns without any consideration, is a bald assertion. Ostensibly, there is no proof of

obtaining any technical know-how or the use of trade mark/trade name from the sister concerns. Even in the face of denial by the assessee and absence of any documentary evidence, the Assessing Officer has proceeded to merely disbelieve the assessee on presumptions without even examining the sister concerns on this aspect. In fact, the assessee pointed out to the Assessing Officer that it had employed engineers for the manufacture of finished products and the process undertaken does not require any special technology or technical know-how. The assessee also explained that no expenditure has been incurred on development and acquisition of technical know-how. The assessee contended that it has not used the trade mark/trade name "Lambda", as made out by the Assessing Officer. The assessee also contended before the Assessing Officer that it has not used any business connection of the sister concerns and sale and purchase have been independently carried out. In our considered opinion, there is nothing on record to controvert the submissions made by the assessee, which have been duly noted by the Assessing Officer in the assessment order. In response to the replies of the assessee made during the assessment proceedings, the Assessing Officer observed that the technical know-how was transferred to the assessee through the Directors of the sister concerns, who were also the partners of the assessee firm. The Assessing Officer further observed that the sister concerns have demanded nothing for the same. This, according to the Assessing Officer, it has resulted in more profits to the assessee and, therefore, he has invoked section 80IA(10) of the Act. In fact, the approach of the Assessing Officer is contradictory and has to fail on its own weight. Firstly, it is only on conjectures, the Assessing Officer infers that the technical know-how has been transferred by the sister concerns to the assessee or that the trade mark of the sister concern has been used by the assessee. In fact, there is no evidence of any trade mark/trade name "Lambda" being owned by any of the sister concerns of the assessee. At the same time, the Assessing Officer also infers that the sister concerns have not demanded any compensation from the assessee for use of the same. All the above inferences of the Assessing Officer are based on conjectures and surmises without any corroborative evidence. Considering the circumstances and the material on record, it has to

be held that the Assessing Officer has failed to establish that any course of business between the assessee and the sister concerns has been so arranged, which produces to the assessee more than the ordinary profits in the eligible business. In fact, in the absence of any transaction of business between the assessee and sister concerns, the application of section 80IA(10) has to fail. There is no evidence found by the Assessing Officer of business having been transacted between the assessee and sister concerns, so as to justify the invoking of section 80IA(10) of the Act. The inference of the Assessing Officer regarding the existence of an agreement or arrangement between the assessee and sister concerns in terms of which the assessee used technical know-how and the trade name of the sister concern and in turn did not incur any costs, in our opinion, is merely based on conjectures and not on any evidence or material on record. Clearly, section 80IA(10) read with section 80IC(7) does not empower the Assessing Officer to proceed on mere presumption but it requires existence of a "business transacted" between the assessee and the sister concerns. The existence of an arrangement for transacting business, which produces more than the ordinary profits to the assessee, is to be factually established and such arrangement or transaction of business cannot be presumed. Therefore, in the aforesaid light, we find that the Assessing Officer was not justified in invoking the provisions of section 80IA(10) read with section 80IC(7) of the Act to disregard the profits declared by the assessee from its eligible industrial undertaking for the purposes of computing deduction u/s 80IC of the Act. Accordingly, the order of the Commissioner of Income-tax (A) is set aside and the Assessing Officer is directed to delete the impugned addition".

5. In the present case, the Assessing Officer has not found any evidence to support his proposition that there is any arrangement or any business transacted between the assessee and the sister concern with respect to obtaining of technical know-how, customer base or goodwill owned by the sister concern and therefore, the assertion of the Assessing Officer that the assessee has obtained the use of aforesaid items without incurring of any expenditure, is only a bald assertion based on surmises and conjectures. It is quite clear that there is no proof of

> assessee having obtained any technical know-how, customer base or goodwill from the sister concern. In these circumstances, the decision of the Tribunal in the case of Lambda Microwaves Technologies (supra) clearly supports the case of the assessee and accordingly, assessee succeeds on Ground No. 1 in as much as the invoking of Section 80IA(10) read with Section 80IC(7) by the Assessing Officer is hereby set aside.
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> 6. In view of the above decision, the action of the lower authorities in estimating the net profit of 10% of the turn-over is also set aside. The said action was sustained by the CIT(Appeals) consequent to her decision of upholding the invoking of Section 80IA(10) read with Section 80IC(7) of the Act, which has since been set aside by us in the earlier Ground. Therefore, on Ground No. 2 also, assessee succeeds."

6. The facts of the present case are similar to the facts of the case of Shree Dhanwantri Herbal, Solan Vs. ITO (supra). Respectfully, following the order of the Tribunal referred to above, we allow both the grounds of appeal and delete the impugned additions.

7. In the result, the appeal is allowed.

ITA No. 502/Chd/2015

8. This appeal filed by the assessee is directed against the order of CIT(A,) Shimla dated 9.2.2015 relating to assessment year 2011-12.

9. Ground No.1 of the appeal reads as under:-

> *1. The Id. CIT(A) is wrong in disallowing the benefit of substantial expansion u/s 80IC(2) and confirming the deduction u/s 80IC only to the extent of 25% as against 100% by holding that benefit of substantial expansion is allowable only to the undertaking which were existing prior to 07/01/2003*
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> > *i. Ld. CIT(A) ignored the findings of Hon'ble Advance Ruling Authority in the case of 'Sh. Abhishek Bhargava' by stating that facts of the case are not identical with the assessee's case whereas in the Ruling it was held that an industrial unit which has commenced production*

in the F.Y. 2009-10 will be entitled to the benefit of substantial expansion if it starts commercial production in the substantially expanded unit before 01.04.2012.

ii. Ld. CIT(A} ignored the findings of Hon'ble Delhi Bench in the case of Tirupati LPG Industries Ltd. vs DCIT in which it was held that existing unit availing 80IC can also undertake substantial expansion and the year of substantial expansion will be the initial year.

10. Briefly stated the facts of the case are that assessee firm started its business activity / operation on 25.7.2005 and initial assessment year for claim of deduction u/s 80IC of the Act was 2006-07. The assessee claimed that it has made substantial expansion during the financial year 2010-11 and claimed 100% deduction u/s 80IC from assessment year 2011-12 re-fixing it as initial assessment year. According to Assessing officer, the assessee has already claimed this deduction to the extent of 100% of the eligible profit for 5 years period from assessment year 2006-07 to 2010-11. Thus, the Assessing officer noticed that assessee firm again claimed deduction u/s 80IC @ 100% against eligible profit for this assessment year which is sixth year of production of the firm. The Assessing officer disallowed the claim of 100% deduction u/s 80IC and restricted it to 25% of profits of the business thereby disallowing a sum of Rs. 1,55,55,717/-.

11. On appeal, the CIT(A) upheld the order of Assessing officer and hence the assessee is in appeal before the Tribunal.

12. At the very outset Shri Rakesh Gupta, Ld. Counsel for the assessee pointed out that the issue involved in the above ground is squarely covered against the assessee by the decision of ITAT, Chandigarh Benches in the case of Hycron Electronics, Baddi, Solan v ITO & Others in ITA No. 798/Chd/2012 relating to assessment year 2009-10 & others. The Tribunal vide its order dated 27.5.2015 (para 22 to 49) has held as under:-

"22. We have considered the rival submissions including written submissions in the light of material on record, as well as judgments cited by the parties. Before we consider the relevant provisions which are required to be interpreted, it will be useful to deal with the various principles of interpretation as enunciated by various Courts.

23. It is settled that if the language of a particular Statute is clear then only literal meaning has to be given to such language as long the same does not result in absurdity or unintended consequences. Therefore, if the language of a particular Statute is clear then the same cannot be changed by applying different principles of interpretations. This is clear from the observations made by 'Hon'ble Apex Court' in the case of Orissa State Warehousing Corporation Vs. CIT 237 ITR 607 wherein it has been observed at page 604 & 605 of the report as under:-

> *"Let us, however, at this juncture, consider some of the oft cited decisions pertaining to the interpretation of the fiscal statutes being the focal point of consideration in these appeals. Lord Halsbury as early as 1901, in Cooke v. Charles A. Vogeler Company [1901] AC 102 (HL) stated the law in the manner following:*
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> > *"a court of law, has nothing to do with the reasonableness or unreasonableness of a provision of a statute except so far as it may h old it in interpreting what the Legislature has said.* ***If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should not lead to absurd or mischievous results.*** *If the language of this sub-section be not controlled by some of the other provisions of the statute. It must, since, its language is plain and unambiguous, be enforced and your Lordships' House sitting judicially is not concerned with the question whether the policy it embodies is wise or unwise, or whether it leads to consequences just or unjust, beneficial or mischievous."*
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> *The oft-quoted observations of Rowlattt J. in the case of Cape Brandy Syndicate v. IRC [1921] 1 KB 64 ought also to be noticed at this juncture. The learned judge observed (page 71):*
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> > *". . . in a taxing statute 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."

The observations of Rowlatt J. as above stand accepted and approved by the House of Lords in a later decision, in the case of Canadian Eagle Oil also in a manner similar in IRC v. Ros and Coulter (Bladnoch Distillery Co. Ltd. v. The King [1946] Hon'ble Apex Court 119; [1945] 2 All ER 499. Lord Thankerton also in a manner similar in IRC v. Ross and Coulter (Bladnoch Distillery Co. Ltd. [1984] 1 All ER 616 at page 625 observe:

"If the meaning of the provision is reasonably clear, the courts have no jurisdiction to mitigate such harshness."

The decision of this court in Keshavji Ravji and Co. v. CIT[1990] 183 ITR 1 also lends concurrence to the views expressed above. This court observed (page 9):

"As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used. It is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature…

Artificial and unduly latidudinarian rules of construction, which with their general tendency to 'give the taxpayer the breaks', are out of place where the legislation has a fiscal mission."

Be it noted that individual cases of hardship and injustice do not and cannot have any bearing for rejecting the natural construction by attributing normal meaning to the words used since "hard cases do not make bad laws".

However, if some ambiguity is there in the language of a particular statute because of various reasons, the same is required to be construed so as to find out the real intention of the Legislature and then every possible material should be considered to find out the real intention of the Legislature. In this regard, the observation of the Hon'ble Supreme

Court in the celebrated judgement of K.P. Vergese 131 ITR 598 (supra) are relevant. We extract the Head note which reads as under:-

> *"A statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. 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.*
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> *LUKE V. IRC [1963] HON'BLE APEX COURT 557; [1964] 54 ITR 692 (HL) followed.*
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> *Speeches made by the members of the legislature on the floor of the House when the Bill is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the mover of the Bill explaining the reason for its introduction can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted.* ***This is an accord with the recent trend in juristic thought not only in western countries but also in India, that the interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.***
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> *The marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or to show what the section is dealing with. It cannot control the interpretation of the words of a section, particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section."*

The highlighted portion clearly shows that every material which is logically relevant should be taken into account for ascertaining the true meaning of a particular provision. The same view was taken by Hon'ble Karnataka High Court in the case of CIT v N.K. Vaidya 224 ITR 186 (supra) and observations contained in the head note reads asunder:-

> *"The legislative history of a fiscal statute could be traced and considered to understand its scope. The courts are permitted to travel beyond the words used in a statute, to find out the purpose for which a particular provision is enacted; for this purpose, even the speech of the Finance Minister, while introducing the particular fiscal legislation could be looked into. The Circulars issued by the Central Board of Direct Taxes are not only binding on the Income-tax Department but are also in the nature of*

> *contemporanea exposition furnishing legitimate aid in the construction of a provision."*

24. The Ld. counsel of the assessee had referred to the decision of Hon'ble Karnataka High Court in the case of Dinakar Ullal Vs. CIT (supra) and decision of Hon'ble Supreme court in the case of Commissioner of Central Excise Vs. M/s Rattan Melting & Wire (supra) for the proposition that since circulars are not binding on the Courts, therefore, the same should not be considered for interpretation of a particular provision. As far as the decision in the case of Commissioner of Central Excise Vs. M/s Rattan Melting & Wire (supra) is concerned, this does not support the proposition made by the Ld. Counsel for the assessee. In that case the question was whether a circular issued by the Department which is generally binding on the authorities would take precedence over the interpretation made by the Supreme Court or High Court in respect of particular provision. The Para 6 of this judgment make this point absolutely clear and reads as under:-

> *"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at form another angel, a circular which is contrary to the statutory provisions has really no existence in law."*

The above shows that circulars are not binding on the Court but the Court has right to look at the Circular and ultimately meaning of a provision as interpreted by the Court would prevail in comparison to the interpretation given in the circular. Therefore, if Circular is contrary to a provision as interpreted by the Court then the opinion of the Court would prevail. This decision nowhere lays down that circulars cannot be considered for interpretation of a particular provision.

25. In the case of Dinakar Ullal vs CIT 323 ITR 452(Karnataka), the assessee was a Civil contractor and had filed belated return declaring income of Rs. 50,240/- and was claiming refund of Rs. 2,14,505/- on account of tax deducted at source. The last date of filing the return was 31.3.1997 but the return was filed late on 8th September 1997. The assessee sought condonation of delay by an application filed on 21st Sept, 1998 by invoking section 119(2)(b) of the Act which was initially rejected. However, on a writ petition the order for rejection was quashed by a

single judge and remitted the matter back for fresh consideration. On remand, the Commissioner who was vested with the jurisdiction under Instruction No.13 of 2006 in respect of claim upto Rs. 10 lakhs accepted the cause shown for delay in filing the return but denied interest on refund amount in view of the condition set out in Circular No. 670 dated 26th Oct 1993. Therefore, question before the Court was whether these instructions were contrary to the provision of section 244A of the Act which provided for payment of interest on refunds. This becomes absolutely clear from the question framed by Hon'ble Court which is contained at placitum 6 and reads as under:-

> *"(i) Whether the condition to deny interest on refund amount due to an assessee under the Act, while admitting an application to condone the delay in making a claim for belated refund under section 237 of the Act, as contained in Instruction No. 12 of 2003 dated October 30,2003 and 13 of 2006 dated January 22,2006, of the Board, is inconsistent with sub-section (2) of section 244A of the Act?*
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> *(ii) Whether in the facts and circumstances, the respondent was justified in denying interest on belated refund claimed for the assessment year 1995-96, by the order impugned."*

26. The Hon'ble Court discussed the matter and ultimately held that assessee was entitled to interest u/s 244A and Circular No. 670 was contrary to the provisions of section 244A. The court also observed that circular could be issued to clarify the provisions for removing the difficulties. Therefore, it is clear that question whether a circular can be considered in interpretation of a particular provision was never before the Court and therefore, in our opinion, this judgement does not support the proposition that circular cannot be considered for the purpose of interpreting the particular provision.

27. It will be useful to state another very well settled principle of interpretation i.e. whenever the particular provision is required to be interpreted, it should be interpreted after reading the whole provision and not the parts of a particular section. However, a provision has to be read in context of the overall scheme of the Act. It is also well settled that no provision can be interpreted in such a way which would render parts of the section otiose or meaningless.

28. Having considered the principles of interpretation above, let us consider the provision of section 80IC in the light of the above principles laid down by the Hon'ble Supreme Court. Section 80IC reads as under:-

> ***Section 80IC***
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> *"80-IC (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and*

subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section(3).

(2) This section applies to any undertaking or enterprise,-

(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning.

(i) on the 23rd day of December, 2002 and ending before the 1st day of April, [2007], in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Sikkim; or

(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal; or

(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;

(b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operations specified in that Schedule and undertakes substantial expansion during the period beginning-

(i) *on the 23rd day of December, 2002 and ending before the 1st day of April, [2007], in the State of Sikkim; or*

(ii) *on the 7th day of January, 2003 and ending before the 1st day of April 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or*

(iii) *on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.*

(3) The deduction referred to in sub-section (1) shall be –

(i) *in the case of any undertaking or enterprise referred to in sub-clauses (i) and (iii) of clause (a) or sub-clauses (i) and (iii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for ten assessment years commencing with the initial assessment year;*

(ii) *in the case of any undertaking or enterprise referred to in sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b), of sub-section (2),one hundred per cent of such profit and gains for five assessment years commencing 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.*

(4) This section applies to any undertaking or enterprise which fulfils all the following conditions, namely:-

(i) *it is not formed by splitting up, or the reconstruction, of a business already in existence:*
Provided that this condition shall not apply in respect of an undertaking which is formed as a result of there-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) *it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.*

Explanation.- The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.

(5) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10A or section 10B, in relation to the profits and gains of the undertaking or enterprise.

(6) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds the assessment years.

(7) The provisions contained in sub-section (5) and sub-sections(7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section.

(8) For the purposes of this section,-

(i) "Industrial Area" means such areas, which the Board, may, be notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(ii) "Industrial Estate" means such estates, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government.

(iii) "Industrial Growth Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(iv) "Industrial Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;

(v) "Initial assessment year" means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufactures or produce articles or things, or commences operation or completes substantial expansion;

(vi) "Integrated Infrastructure Development Centre" means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government

(vii) " North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura;

(viii) " Software Technology Park" means any park set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry;

(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;

(x) "Theme Park" means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government.

29. Sub section (1) of the above provision is a general provision and does not require any interpretation. Sub Section [2] is the enabling provision which provides for the types of undertakings and circumstances where deduction under section 80IC would be allowed. It allows deduction to various undertakings which have either begun or begins manufacturing of any article or things not being any article or thing specified in Schedule xiii and also undertakes substantial expansion. These deductions were available in different states during different window periods which have been referred to in clause (i), (ii) & (iii) of this sub section. The contention on behalf of the assessee is that since deduction is available to the undertaking which undertakes substantial expansion and since there is no restriction in this sub section itself, therefore, the deduction was available on substantial expansion by old undertakings as well as new undertakings during the window period. However, there is no force in this interpretation. Sub section (2) begins with the expression "this section applies to any undertaking or enterprise which has begun or begins" this itself shows that provision made even the existing undertakings entitled for the deduction because the expression 'begun' would refer to the undertaking which were already existing and began the manufacture before the window period mentioned in the sub section. The last line of the sub section reads "and undertakes substantial expansion during the

period beginning……..". This would naturally refer to the undertaking which were already existing. If it is read the way the Ld. counsel of the assessee would like us to read then the provision would become unworkable because if there is an undertaking which is established during the window period then the same cannot possibly undertakes substantial expansion also simultaneously. The expression 'and" would refer to the cumulative condition that is both parts of the conditions need to be complied. The expression 'and' can be joined only with the expression 'begun'. This is because 'begun' refers to something which has already started in the past whereas 'begins' connotes something which would commence in the present. Therefore, the expression 'and' can be correlated only with existing unit because as we have already seen a new unit which has been set up and begins production cannot simultaneously undergo substantial expansion also so as to become eligible for deduction under this section.

30. At this stage, it can be said that section has some confusion and some effort is required to understand the correct intention of the Legislature by keeping various principles of interpretation. Therefore, various principles of interpretation needs to be looked into. This provision was brought into the statute indisputably in the light of the "incentive package" announced by the Union Cabinet. Through this incentive package not only income tax concession but excise concessions and some subsidies like transport subsidy and capital subsidy were also provided to various industries in the hilly stated comprising states of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern states to boost the economies of these hilly states. Circular No.7 was issued by the CBDT on 5.9.2003 in this respect and the Circular reads as under:-

"Circular No. 7/2003 dated 05.09.2003

> *49. New provisions allowing a ten years tax holiday in respect of certain undertakings in the States of Himachal Pradesh, Sikkim, Uttaranchal and North-Eastern States.*
>
> *49.1 The Union Cabinet has announced a package of Fiscal and non-fiscal concessions for the special category States of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States, in order to give boost to the economy in these States.* ***With a view to give effect to these new packages a new section 80-IC has been inserted to allow a deduction for ten years from the profits of new undertaking or enterprise or existing undertakings or enterprises on their substantial expansion, in the States of Himachal Pradesh, Uttaranchal, Sikkim and North-Eastern States****. For this purpose, substantial expansion is defined as 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 on the first day of the previous year in which the substantial expansion is undertaken.*

49.2 The section provides that the deduction shall be available to such undertakings or enterprises which manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule and which commence operation in any Export Processing Zone, or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate, or Industrial Park, or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with rules prescribed in this regard. Similar deduction shall be available to thrust sector industries, as specified in the Fourteenth Schedule.

49.3 The amount of deduction in case of undertakings or enterprises in the States of Sikkim, and the North-Eastern States shall be one hundred per cent of the profits of the undertaking for ten assessment years. The amount of deduction in case of undertakings or enterprises in the States of Uttaranchal, Himachal Pradesh shall be one hundred per cent of the profits of the undertaking for five assessment years, and thereafter twenty-five per cent (thirty per cent for companies) for the next five assessment years.

49.4 The section also provides that no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section or under section 80-IB or under section 10C, as the case may be, exceeds ten assessment years. Further, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10A or 10B, in relation to the profits and gains of the undertaking or enterprise.

49.5 A new Thirteenth Schedule has been inserted in the Income-tax Act to specify the list of articles and things, which are ineligible for the purpose of deduction under section 80-IC. Further, a new Fourteenth Schedule has also been inserted, which specifies the list of articles and things, being thrust sector industries, which are eligible for the purposes of availing deduction under this section. Consequent to theses amendments, the provisions of section 10C and sub-section(4) of section 80-IB have been made inoperative in respect of the undertakings or enterprises in the State of Himachal Pradesh or in North-Eastern region including Sikkim, with effect from the 1st day of April, 2004.

49.6 These amendments will take effect from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-05 and subsequent years.

31. The circular makes it clear that section 80IC was inserted to give effect to the new package announced by the Union Cabinet. The Circular further clarifies that this section provides for deduction for a period of 10 years from the profits of new undertaking or enterprise or existing

undertaking or enterprise on their substantial expansion (see highlighted portion of the circular). The contention of the Ld. Counsel of the assessee was that word 'existing' qualifies only the undertaking or enterprises and does not mention any particular date for carrying out substantial expansion. We find no merit in this contention. The word 'existing is defined in the dictionaries are as under:-

32. Black Law Dictionary – 6th Edition:-

> ***Exist :*** *To live,*
>
> *To have life or animation*
>
> ***To be in present force****,*
>
> *Activity, or effect at a given time, as in speaking of "existing" contracts, creditors debts, laws, rights or liens.*

*For us relevant meaning would be '**To be in present force**'*

> *As per Oxford Dictionary 'exist' is defined as under*
>
> ***Exist :***
>
> *1 (not used in the progressive tenses) to be real; **to be present in a place or situation**: Does life exist on other planets? The problem only exists in your head, Jane. Few of these monkeys still exist in the wild. On his retirement the post will cease to exist. The charity exists to support victims of crime. 2- (on sth) to live, especially in a difficult situation or with very little money: We existed on a diet of rice. They can't exist on the money he's earning*

The above definition clearly shows that 'exist' would refer to something which is in force presently. 'Exist' would generally and in common sense refers to something which is already there. With reference to this provision, this would refer to an undertaking which was already present on the date when this provision was introduced. In any case the notification issued by the Govt. of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion which is published in the Gazette of India removed all the doubts. This notification is relevant because this was issued with reference to same package announced by the Union Cabinet of India for the development of the hilly states. Section 5, reads as under;-

> *"Definitions:*
>
> *(a) …..*
> *(b) …..*
> *(c) Existing Industrial Unit' means an industrial unit existing as on 7th January 2003.*
> *(d) …….*
> *(e) ……..*
> *(f) …"*

Thus the definition given above makes it clear that existing Industrial Unit would mean an unit which existed on 7.1.2003.

33. Even if the above controversy is ignored regarding existing unit, the intention of the Legislature become absolutely clear when sub section (2) is read alongwith sub-section (3) of section 80IC. As noted earlier, sub section (2) is enabling provision which provides for deduction in certain kind of undertakings, i.e. new unit set up or the existing units which carries out substantial expansion during the particular window period which are given in clauses (i), (ii) & (iii) of sub section (2). The sub section (3) provides for rates of deduction. It is useful to note that clause (i) of sub section (3) provides for 100% deduction for a period of 10 assessment years in cases covered by sub clause (i) & (iii) of clause (a) and sub clause (i) & (iii) of clause (b). Now sub clause (i) and (iii) of clause (a) of sub section (2) refers to the window period in case of State of Sikkim, North-Eastern States whereas sub clause (ii) refers to the window period in case of State of Himachal Pradesh and State of Uttaranchal. Similarly, sub clause (i) & (iii) of clause (b) refers to window period in case of State of Sikkim and North-Easter States whereas sub clause (ii) refers to the window period in case of State of Himachal Pradesh and Uttaranchal. Now clause (ii) of sub section (3) provides for 100% deduction on such profits for five assessment years commencing with initial assessment year and thereafter 25% (or 30% where the assessee is a company) of the profits and gains. Therefore, it is absolutely clear that in case of state of Sikkim and North-Eastern states, Legislature was very clear that in case of new undertaking or in case of substantial expanded undertaking deduction is to be allowed @ 100% for whole of the ten years whereas in case of State of Himachal Pradesh and Uttaranchal the deduction was to be allowed @ 100% only for first five years and thereafter it was only 25%. If the Legislature wanted to extend the benefit in the case of substantial expansion separately then the rate of deduction in the clause (i) & (ii) of sub section (3) would not have been different i.e. 100% for whole of the 10 years in case of State of Sikkim & North-Eastern states under sub clause (i) and for the state of Himachal Pradesh & Uttaranchal under sub clause (ii) 100% for first five years and thereafter 25% for next five years. The concept of substantial expansion remains same under sub section (2) for both types of states i.e state of Sikkim and North-Eastern states and State of Himachal Pradesh and Uttranchal. If the extended benefit of substantial expansion was to be separately allowed in case of State of Himachal Pradesh and State of Uttaranchal, then meaning of substantial expansion as given under sub section (2) which is same for the state of Sikkim and North-Eastern states become redundant. As noted earlier, the provision cannot be interpreted in such a way that part of the section becomes redundant or otiose. Therefore, whatever doubts may be there in sub section (2) when it is read with sub section (3), those doubts are totally removed and it become absolutely clear that rate of deduction has to be 100% for first 5 years and 25% thereafter.

34. There is a force in the contention of Ld. CIT/DR that if the interpretation contended on behalf of the assessee was to be adopted then Sub Section (4) of Section 80IC would also become redundant. Sub Section (4) clearly provides that the deduction is available to any undertaking or enterprise which is not formed by splitting or reconstruction of the business already in existence or it is not formed by transfer to new business of machinery or plant previously used for any purpose. Further the explanation to this Sub Section makes it clear that Explanation 1 & 2 of Sub Section (3) of Section 80IA are applicable in this respect. Explanation 2 of Sub Section (3) of Section 80 IA reads as under:

> *"Explanation 2- Where in the case of an [undertaking], any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with."*

From the above it becomes clear that if 20% of the Machinery from the old unit was used in the new unit then such unit would not be eligible for deduction under this Section that is section 80IC. Now for carrying out substantial expansion the investment in Plant & Machinery is required to be made by atleast 50%. So if 50% fresh machinery is added to the new unit then it will violate Sub Section (4) of Section 80IC, therefore, interpretation canvassed on behalf of the assessee is not possible because Section 80IC(4) would become redundant and such an interpretation is not possible.

35. Further, sub section (6) provides that in no case the total period of deduction could exceed the period of 10 years including deduction availed under sub section (4) of section 80IB and section 10A and 10B. It was contended before us that since there is no restriction in carrying out of substantial expansion in the new units and as such substantial expansion can be carried out any number of times. If this interpretation is accepted then sub section (6) would be rendered otiose or meaningless because if a unit was set up on the commencement of this section and the same claims deduction @ 100% and later on every five years a substantial expansion is carried out then according to the interpretation canvassed on behalf of the assessee, such unit would again become entitled to 100% deduction for another five years and further block of five years every time substantial expansion is carried out. If this interpretation is adopted then deduction would become almost perceptual as long as the assessee has carried out substantial expansion but in that case sub section (6) would loose its meaning. Such an unlimited period of deduction would not be in consonance of law. At the cost of repetition, we would like to emphasize that no principle of interpretation can be adopted which leads to a situation where a particular part of the section becomes totally redundant. In fact though it was contended that in the present case (i.e.

in case of Hycron Electronics) deduction has been claimed only of 10 years but on the date of hearing some other appeals were also listed wherein the deduction was claimed for more than 10 years adopting the same contention which has been made before us. In case of M/s Mahavir Industries (ITA No. 127/Chd/2011 and ITA No. 791/Chd/2012) though those cases were adjourned because some other issues were also there but in those two cases assessee had commenced the operation on 8.5.1997 and claimed deduction u/s 80IB from assessment years 1998-99 to 2005-06. Later on, substantial expansion was carried out in assessment year 2005-06 and on the basis of the contention that assessee is allowed to carry out any number of expansions, deduction was claimed for the 12th year for assessment year 2009-10 (We may clarify that reference to these cases is made because of particular contention and we are not expressing any opinion on the merits of these appeals here). Therefore, the contention of the assessee that any number of expansions are allowed is not possible in view of the restriction given in section 80IC(6).

36. The above situation as pointed by the Revenue also becomes clear if the provision of section 80IC is compared to the provision of section 80IB(4). Relevant provision of Section 80IB (4) reads as under:-

> *"(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial 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 such industrial undertaking:*
>
> *Provided that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assesee is a company-operative society) subject to fulfillment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the Ist day of April, 1993 and ending on the 31st day of March, [2004]:*
>
> *Provided further that in the case of such industries in the North-Eastern Region, as may be notified by the Central Government, the amount of deduction shall be hundred per cent of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years:*
>
> *Provided also that no deduction under this sub-section shall be allowed for the assessment year beginning on the 1st day of April, 2004 or any subsequent year to any undertaking or enterprise referred to in sub-section (2) of section 80-IC."*

37. The careful perusal of the above provision would show that before the introduction of section 80IC which is before us for consideration, the deduction to the backward states was available in terms of section 80IB(4). The third proviso makes it clear that after 31.3.2004, this deduction will be available only u/s 80IC. The sub section further makes it clear that deduction would be @ 100% for the first five years and thereafter @ 25%. Further, the first proviso makes it clear that deduction will not exceed 10 consecutive assessment years. The second proviso further makes it clear that in the case of states of North-Eastern regions, the deduction would be @ 100% for all the 10 years. Thus, even in the earlier provision only in case of North-Easter states, the deduction of 100% was allowable for 10 years whereas in the case of states of Himachal Pradesh, the deduction was allowable @ 100% for first five years and 25% for next five years.

38. Further, it should be noted that sub section (6) starts with non obstante clause and therefore, in no case the deduction could be for period exceeding 10 years and in this regard we may note that even the Ld. authors in their Commentary of Income Tax Laws By Chaturvedi & Pithisaria's - Sixth Edition has expressed the same opinion. The relevant extract at pages 6351 of the commentary reads as under;-

> *"No deduction possible for more than 10 assessment years.- Section 80-IC(6) also opens with a non obstante clause " Notwithstanding anything contained in",and provides that no deduction shall be allowed to any undertaking or enterprise under section 80-IC, - where the total period of deduction inclusive of the period of deduction –*
>
> *- under section 80-IC, or*
>
> *- under the second proviso to section 80-IB(4) or*
>
> *- under section 10C*
>
> *as the case may be, exceeds 10 assessment years."*

39. Lastly, it was contended that initial assessment year as defined in clause (v) of sub section (8) of section 80IC uses the expression 'or' therefore, it can be construed that it relates to both situations separately i.e. for new unit and substantial expanded unit. We find no force in this contention. The initial assessment year has been defined and the expression 'or' has been used in respect of new units by stating 'commences operation' or 'complete substantial expansion'. Here the expression 'or' is to be read as a mutually exclusive expression which refers to a particular situation by excluding the other situation. Therefore, initial assessment year would clearly commence either on commencement of operation or at completion of substantial expansion of existing unit. In any case the word 'initial' cannot be used twice by referring to series of events. This can be understood with a very simple example. Let us say a person 'A' passes out his examination of LLB and get employed as Legal Officer in an organization. Later on, he quits the

job and starts the practice in legal profession and ultimately he is elevated as a Judge. Then in such a situation it cannot be said that initially 'A' was working in a organization and then initially he was in the profession and then elevated as a Judge. Initially can be used only once as a matter of usage of English language. Therefore, reading of the above provision clearly shows that intention of the legislature was very clear to allow 100% for first five years in case of units situated in the State of Himachal Pradesh (since all the cases before us are situated in the State of Himachal Pradesh) and thereafter 25% deduction for another five years on the new units or the existing units where substantial expansion was carried out.

40. It has also been contended that incentive provision should be construed liberally. Further, it was contended with reference to the decision of M/s Novapan India Ltd vs Collector of Central Excise and Customs (supra) by the Revenue is not correct because that provision was rendered under Indirect Tax Act. We find no force in these submissions. Every decision of the Hon'ble Supreme Court or for that matter of any High Court has to be seen for the ratio laid down in a particular decision and it does not matter under which particular Act such principles has been decided. No doubt the incentive provisions are required to be interpreted liberally but in case of M/s Novapan India Ltd v Collector of Central Excise and Customs (supra), it was observed as under:-

> *" The learned counsel for the appellant then contended that since there is an ambiguity about the meaning and purport of item-6 of the table appended to the Exemption Notification, the benefit of such ambiguity should go to the assessee manufacturer and the entry must be construed as taking in the MFPBs as well.* ***It is not possible to agree with this submission.***
>
> *In Mangalore Chemicals& Fertilizers Ltd.. v. Deputy Commissioner of Commercial Taxes & Ors., [1992) Suppl. 1 S.C.C, 21, a Bench of this Court comprising M.N. Venkatachaliah, J. (as the learned Chief Justice then was) and S.C Agrawal, J. stated the relevant principle in the following words:*
>
> *"Shri Narasimhamurty again relied on certain observations in CCE v. Parle Exports (P)Ltd. [1989] 1 SCC 345, in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other un-exempted class of tax payers and should be construed against the subject in case of ambiguity.* ***It is an equally well known principle that a person who claims an exemption has to establish his case.*** *Indeed, in the very case of Parle Exports (P) Ltd. relied upon by Shri Narasimhamurthy, it was observed.*
>
> *"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is*

done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. It the words are plain and clear and directly convey the meaning, there is not need for any interpretation."

"We are, however, of the opinion that, on principle, the decision of the Court in Mangalore Chemicals – and in Union of India v. Wood Papers, referred to therein – represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee – assuming that the said principle is good and sound- does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of its must go to the State".

The Hon'ble Supreme Court in Orissa State Warehousing Corporation's case (supra) has laid down that "While it is true that in the event of there being any doubt in the matter of interpretation of a fiscal statute, the same goes in favour of the assessee, but the fact remains and the law is well-settled on this score that in the matter of interpretation of the taxing statutes the law courts would not be justified in introducing some other expressions which the legislature thought fit to omit. In the present context, there is no doubt as to the meaning of the words used in the section by reason of the language used, neither there is any difficulty in ascertaining the statutory intent. Incidentally, it cannot but be said that an exemption is an exception to the general rule and since the same is opposed to the natural tenor of the statute, the entitlement for exemption, therefore, ought not to be read with any latitude to the tax-payer or even with a wider connotation."

41. Therefore, it becomes clear that liberal interpretation of an incentive provision is possible if there is any doubt. As we have seen above that if various sub sections of section 80IC are read carefully it leaves no doubt that deduction was meant only for new units or in case of old units if substantial expansion was carried out in such old units and deduction was available only for a period of 10 years. Therefore, there is no question of giving any interpretation much less liberal interpretation to section 80IC when the reading of whole section makes the provision very clear. As observed in case of M/s Novapan India Ltd v Collector of Central Excise and Customs (supra) the burden was on the assessee to show under which clause he was entitled to the deduction but assessee is simply asserting before us that there is no restriction for deduction in

case of substantial expansion of new units. In our opinion, that is not enough because absence of restriction does not mean that particular deduction was allowable.

42. We also find force in the submissions of Ld. CIT-DR that if interpretation given by the assessee is to be accepted, the provision would become discriminatory for two classes of undertakings i.e. new units and old units. Because the old units would be entitled to 100% deduction on expansion for first five years and 25% thereafter whereas the new units would become entitled to deduction for 100% for first five years and again @ 100% on substantial expansion. Such discriminatory intention cannot be imputed to the Legislature.

43. Before us, reliance was also placed on the decision of Delhi Bench of the Tribunal in the case of Triputi LPG Industries Limited Vs. DCIT(supra). In this decision, the Bench has simply observed that main dispute is on the definition of 'initial assessment year'. The provisions of sub section (2) and sub section (3) as discussed in detail above have been totally ignored and, therefore, this decision, in our opinion, is per inquerim and cannot be followed.

44. The Ld. counsel has also relied on the decision in the case of S.R. Paryavaran Engineers Pvt Ltd (supra) of the Chandigarh Bench. The facts in that case are that assessee has claimed deduction u/s 80IB in assessment year 1999-2000 @ 100% . The deduction was claimed @ 100% for five years and then deduction was claimed @ 30% on the profits in the next year. The assessee undertook substantial expansion in financial years 2004-05 & 2005-06 and claimed deduction at the rate of 100% on the basis of such substantial expansion in assessment year 2006-07. However, the deduction was wrongly claimed u/s 80IB instead of section 80IC. The CIT(A) allowed the deduction by observing that deduction could not be denied simply because assessee has quoted a wrong section. On the appeal filed by Revenue, the deduction was held to be allowable because substantial expansion was carried out in a unit which was already in existence as on 7.1.2003. Therefore, in our opinion, this decision does not provide any assistance to the case of the assessee.

45. The Ld. Counsel has also relied on the decision of Abhishek Bhargav AAR No. 1097 of 2011 (supra). The facts in that case are that a partnership firm namely M/s. Himachal Power Products was formed on 23.05.2009. The firm commenced commercial production in March, 2010. Shri Abhishek Bhargav while planning to join the firm as partner by acquiring 20% share of profit and enhancing additional manufacturing facility by undertaking substantial expansion sought advance ruling on the issue whether the introduction of new partner would be treated as reconstruction of the existing business or the firm will be entitled to the benefit of substantial expansion as per the provisions of section 80IC(2)(a)(ii) if it starts commercial production before 01.04.2012. The Authority held that the assessee was entitled to the benefit of substantial expansion in terms of and to the extent provided by section 80IC of the Act if it starts commercial production in the substantially expanded unit before 01.04.2012. In this case the assesse shall be entitled to deduction

of 100% of its profits upto A.Y. 2014-15 since the initial assessment year was A.Y. 2010-11 and claim of deduction cannot be denied merely on the ground of expansion of manufacturing capacity so long it is not a case of restructuring of business already in existence. However, the question whether the assessee shall be entitled to deduction of 100% of its profit even after A.Y. 2014-15 i.e. for 2 more years beyond A.Y. 2014-15 is left open and not decided by the AAR. Therefore this decision is totally distinguishable and does not help the case of the assessee.

46. The last decision relied on was in the case of Sintex Industries Ltd v CIT (supra). In this case the deduction u/s 80IC was allowed by the Assessing Officer but later on a revisionary order was passed u/s 263 of the Act. The Bench mainly dealt with the provision of section 263 and in view of the decision of Hon'ble Supreme Court in the case of Malabar Industries Co Ltd v CIT 243 ITR 83 (SC) held that since view taken by the Assessing Officer is also possible view, therefore, assessment order was not erroneous. In fact the Bench referred to the decision of Delhi Bench in the case of Triputi LPG Industries Limited Vs. DCIT (supra) without considering the provision of section 80IC in detail for reaching the conclusion that it is one of the possible view. Since we have already discussed the decision of Triputi LPG Industries Limited Vs. DCIT (supra) and found that all the provisions of the section were not discussed in that section and that is per inquerim, therefore, in our opinion, this order does not help the case of the assessee.

47. The last argument was in respect of column in Form No. 10CCB. The column 25 of Form No. 10CCB reads as under:-

"25 (i) Whether the undertaking or enterprise is located in an

area notified by the Board for the purposes of section 80-IC :---Yes ---No

(ii) If yes please indicate,-

a. Name of the Export Processing Zone / Integrated Infrastructure Development Centre / Industrial

Growth Centre/Industrial Park/Estate/Software

Technology Park/Industrial Area/Theme Park and

the District/State in which located :----------

(b) Khasra No. of the undertaking or enterprise :----------

(Also indicate the Board's Notification No.)

(c) If the eligible business is new, please give the date

of commencement of production or manufacture of

article or thing. :----------

(d) If the existing business has undertaken substantial

expansion, please specify,- :----------

(i) The date of substantial expansion

(ii) The total book value of plant and machinery (before taking depreciation in any year)as on first day of the previous year in which sub-stantial expansion took place. :----------

(iii) Value of increase in the plant and machinery in the year of substantial expansion. :----------

(e) Does the undertaking or enterprise manufacture or produce any article or thing specified in the Thirteenth Schedule.

:---Yes ---No

(If yes, please specify the article or thing) :----------

(f) Does the undertaking or enterprise manufacture or Produce any article or thing specified in the Fourteenth Schedule.

:---Yes ---No

(If yes, please specify the article or thing or operation) :----------"

48. The careful reading of the form in a serial order would clearly show that the assessee is required to inform the location of the Industry and column (c) specifically ask the assessee to state whether business is a new business? Column (d) clearly ask the assessee whether existing business has undertaken substantial expansion, therefore, there are two categories of business and substantial expansion is possible only in case of existing business. In our opinion, the Ld. CIT(A) has correctly adjudicated this issue.

49. In view of the above detailed discussion we hold that the assessee before us i.e. M/s Hycron Electronics in ITA No. 798/Chd/2012 is entitled to only 25% of deduction during the present year because the assessee has already availed the period of full deduction @ 100% in the earlier five years i.e. from assessment years 2004-05 to 2008-09. In this background, we find nothing wrong with the order of Ld. CIT(A) and we uphold the same. Accordingly, assessee's appeal is dismissed."

13. Respectfully following the order of the Tribunal passed in the case of Hycron Electronics, Baddi, Solan v ITO & Others (supra), we dismiss ground No.1 of the appeal.

14. Ground Nos. 2 & 3 of the appeal reads as under:-

> *2. The Id. CJT(A) is wrong in confirming the arbitrary addition of Rs. 44,09,796/- by disallowing deduction u/s 80IC @ 3 % of the turnover on account of non-incurrence of expenditure towards royalty / fee for technical knowhow services.*
>
> *3. The Id. CIT(A} is wrong in confirming the arbitrary addition of Rs. 29,39,864/- by disallowing deduction u/s 80IC @ 2% of the turnover on account of non-incurrence of expenditure towards compensation for use of goodwill or customer base.*

15. It is observed that we have already decided similar issues i.e ground Nos. 1 & 2 in ITA No. 501/Chd/2015. For the detailed reasons given therein, we allow ground Nos. 2 & 3 of the appeal. The findings given therein shall apply with equal force to these grounds of appeal. Resultantly, ground Nos 2 & 3 of the appeal are allowed.

16. Ground No.4 of the appeal reads as under:-

> *4. The Id. CIT(A) is wrong in confirming the taxable income of Rs. 2,16,956/- instead of Rs. 1,82,45,529/- by stating in its order that this ground is consequential in nature ignoring the fact that the A.O. had wrongly computed taxable income of assessee even after considering the additions made by A.O.*

17. Shri Rakesh Gupta, Ld. Counsel for the assessee pointed out that Assessing officer had wrongly computed taxable income of the assessee while framing assessment. We deem it appropriate to direct the Assessing officer to recompute

the income of the assessee after affording a due and reasonable opportunity of being heard to the assessee.

18. In the above terms, the appeal is allowed partly.

Order pronounced in the open court on 08/09/2015

Sd/-	Sd/-
(RANO JAIN)	**(H.L.KARWA)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Dated :08th September, 2015

Rkk

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*