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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA Nos.20 to 24, 31 to 37 of 2015; 1,6,7, 9,10,14,15,20,23,24,25,27,35,44,45,50, 61, 62,69, 70 of 2016; and 2,3,5,7,8,17, 19, 20,21,22,25 & 26 of 2017

Reserved on : November 14, 2017

Date of Decision : November 28, 2017

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1. ITA No.20/2015

   M/s Stovekraft India ....Appellant.

   Versus

   Commissioner of Income Tax ...Respondent.

2. ITA No.21/2015

   M/s Stovekraft India ....Appellant.

   Versus

   Commissioner of Income Tax ...Respondent.

3. ITA No.22/2015

   Cutting Edge Technologies ....Appellant.

   Versus

   Commissioner of Income Tax ...Respondent.

4. ITA No.23/2015

   M/s Cutting Edge Technologies ....Appellant.

   Versus

   Commissioner of Income Tax ...Respondent.

5. ITA No.24/2015

   M/s Hycron Electronics ....Appellant.

   Versus

   Commissioner of Income Tax ...Respondent.

6. ITA No.31/2015

   M/s Super LPS Appliances ....Appellant.

   Versus

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Commissioner of Income Tax ...Respondent.

7. ITA No.32/2015

Rakesh Verma ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

8. ITA No.33/2015

Mahesh T. Prasana ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

9. ITA No.34/2015

M/s Sansui Electronics ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

10. ITA No.35/2015

M/s Sansui Electronics ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

11. ITA No.36/2015

M/s Shrishti Technology ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

12. ITA No.37/2015

M/s Haripur Paper Company ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

13. ITA No.1/2016

M/s Digital System ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

14. ITA No.6/2016

Sunil Kumar Chandok ....Appellant.

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Versus

Commissioner of Income Tax ...Respondent.

15. ITA No.7/2016

M/s Mahabir Industries ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

16. ITA No.9/2016

Smt. Bhupinder Kaur Purewal ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

17. ITA No.10/2016

M/s Mahabir Industries ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

18. ITA No.14/2016

M/s Vanser Metallics ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

19. ITA No.15/2016

M/s Vanser Metallics ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

20. ITA No.20/2016

M/s Vipan Gupta ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

21. ITA No.23/2016

M/s Shree Dhanwantri Herbals ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

22. ITA No.24/2016

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M/s Aerowin International Village ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

23\. ITA No.25/2016

M/s Yash International ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

24\. ITA No.27/2016

M/s UPS Invertor.com ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

25\. ITA No.35/2016

M/s Lyon DC ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

26\. ITA No.44/2016

M/s Lyon DC ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

27\. ITA No.45/2016

Optek Disc Manufacturing Co. ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

28\. ITA No.50/2016

Smt. Bhupinder Kaur Purewal ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

29\. ITA No.61/2016

M/s Classic Binding Industries ....Appellant.

Versus

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30. <u>ITA No.62/2016</u>

M/s Classic Binding Industries ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

31. <u>ITA No.69/2016</u>

M/s Aarham Softronics ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

32. <u>ITA No.70/2016</u>

Globe Precision Ind. Pvt. Ltd. ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

33. <u>ITA No.2/2017</u>

M/s Cutting Edge Technology ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

34. <u>ITA No.3/2017</u>

M/s Zee Laboratories ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

35. <u>ITA No.5/2017</u>

M/s Zee Laboratories ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

36. <u>ITA No.7/2017</u>

M/s Zee Laboratories ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

37. <u>ITA No.8/2017</u>

M/s Digital System Inc ....Appellant.

Versus

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Commissioner of Income Tax ...Respondent.

38. ITA No.17/2017

M/s Cutting Edge Technologies ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

39. ITA No.19/2017

M/s Usaka Electricals ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

40. ITA No.20/2017

M/s Amit Engineers ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

41. ITA No.21/2017

M/s Amit Engineers ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

42. ITA No.22/2017

M/s Classic Binding Industries ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

43. ITA No.25/2017

Smt. Bhupinder Kaur Purewal ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

44. ITA No.26/2017

M/s Crystal Global Industries ....Appellant.

Versus

Commissioner of Income Tax ...Respondent.

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Coram:

The Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice.

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting? Yes.

For the Appellants	:	Mr. Bishwajit Bhattacharyya, Senior Advocate, with Mr. Gaurav Jain, Mr. Vishal Mohan, Mr. C.N. Singh, Mr. Rakesh Kumar Thakur, Mr. Gaurav Sharma, and Mr. Anuj Nag, Advocates.
For the Respondents	:	Mr. Vinay Kuthiala, Senior Advocate, with Ms Vandana Kuthiala & Mr. Diwan Singh Negi, Advocates.

Sanjay Karol, Acting Chief Justice

The moot issue involved in these appeals, *inter alia*, is as to whether an "undertaking or an enterprise" (hereinafter referred to as the Unit), established after 7th January, 2003, carrying out "substantial expansion" within the specified window period, i.e. between 7.1.2003 and 1.4.2012, would be entitled to deduction on profits @ 100%, under Section 80-IC of the Income Tax Act. Also, if so, then for what period.

2. Since it is a legal issue, by consent, only brief facts of ITA No.20 of 2015, titled as *M/s Stovekraft India v. Commissioner of Income Tax,* are being referred to.

3. Appellant M/s Stovekraft India (hereinafter referred to as the assessee) started its business activity/

Whether reporters of the local papers may be allowed to see the judgment?

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came into operation with effect from 6.1.2005 and treating the Financial Year 2005-2006 (Assessment Year 2006-2007), as initial assessment year, claimed deduction on profits @ 100% under Section 80-IC of the Income Tax Act, 1961 (hereinafter referred to as the Act). Sometime in the Financial Year 2009-2010, the assessee carried out "substantial expansion" of the "Unit" and by treating the said Financial Year to be the "initial assessment year", further claimed deduction @ 100%, instead of 25%, under Section 80-IC of the Act.

4. We need not deal with the factual aspect any further, save and except that the assessee's contention of further claim of deduction @ 100% with effect from Financial Year 2009-2010 after undertaking "substantial expansion", so carried out in the year 2009-2010, did not find favour with the Assessing Officer, who vide order dated 23.12.2013 (Annexure A-1)(Page-29), disallowed the claim, holding the assessee entitled to deductions not @ 100% but on reduced basis @ 25%, as provided under Section 80-IC.

5. Significantly, the said Authority framed the following questions for its adjudication:

"a. What is Substantial Expansion? (Page-31)
b. Who all can carry out Substantial Expansion? (Page-31)
c. What is Initial Assessment Year?"(Page-33)

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6. For answering as to what is "substantial expansion", the Authority referred to and relied upon the definition clause [8(ix)] of Section 80-IC.

7. While answering Question (b), seeking support of Circular No.7 of 2003, Notification No.49/2003, issued by the Central Excise Department and Notification dated 8.1.2003 that of Government of India, Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) and circulars of the parent department, the Authority concluded that only such of those units, existing prior to incorporation of Section 80-IC in the statute, i.e. 7.1.2003, could undertake substantial expansion and units established subsequent to the said date being termed as "new industrial units" were ineligible for exemption under Section 80-IC, even though they may have carried out any expansion, substantial or otherwise.

8. In answering Question (c), by referring to and relying upon clause (v) of sub-section (8) of Section 80-IC, the Authority concluded by holding that, for the purpose of claiming benefits under Section 80-IC, the assessee can have only one 'initial assessment year'.

9. Vide order dated 14.8.2014 (Page-43), the Commissioner of Income Tax (Appeals), Shimla, Himachal

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Pradesh (hereinafter referred to as the Appellate Authority), concurred with the findings of the Assessing Officer.

10. The Income Tax Appellate Tribunal vide order dated 27.5.2015 (Annexure A-3, Page 60) not only affirmed such findings but also supplemented the reasons, by holding that the assessee's claim being allowed would only render the provisions of sub-section (6) of Section 80-IC of the Act to be otiose.

11. Assessee lays challenge to such findings, by filing the present appeal, under Section 260A of the Act, which stands admitted on the following substantial questions of law:

> "i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that benefit of deduction under Section 80IC @100% of profit was not available to units set up after 7.1.2003, on undertaking substantial expansion from the year of completion of substantial expansion?
>
> ii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that units set up after 7.1.2003 would not be entitled to enlarged deduction under Section 80IC of the Act @100% of profit, even on undertaking substantial expansion within the specified period?
>
> iii) Whether on the facts and in the circumstances of the case, the Tribunal erred in disallowing the benefit of substantial expansion under Section 80IC

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to the units that came into existence after 7.1.2003 by stating that initial assessment year cannot be re-fixed for such units?

iv) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in not following the decision of the coordinate benches of the Tribunal, without referring the matter to the larger bench?"

12. At this juncture, we deem it appropriate to deal with the relevant statutory provisions.

13. Chapter-VI-A, Part-C of the Act deals with deductions in respect of certain income.

14. Section 80-IA was inserted by the Finance (No.2) Act, 1991, with effect from 1.4.1991. By virtue of said Section, the gross total income (profits and gains) of an assessee derived from any business of an industrial undertaking, so specified therein, was entitled to certain deductions for a period commencing from 1.4.1993.

15. With effect from 1.4.2000, the said provision was bifurcated with the insertion of another Section, i.e. 80-IB, dealing with "certain industrial undertakings other than infrastructure development undertakings". What is relevant is that by virtue of sub-section (4) of this newly inserted Section, in the case of an industrial undertaking established in an industrially backward State, specified in the Eighth Schedule, was entitled to deduction to the extent of 100%

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of the profits and gains derived from such industrial undertaking for five assessment years beginning from the initial assessment year, and thereafter @ 25%, subject to the total period of deduction not exceeding ten consecutive assessment years.

16. Thereafter, the Legislators, in their wisdom, enacted a special provision, in respect of "units" established in certain special category States. Thus, Section 80-IC came to be inserted by virtue of Finance Act, 2003, applicable with effect from 1.4.2004. At this point, it be only noticed that correspondingly certain provisions of Section 80-IB were also amended/repealed. Deductions under the said Section were discontinued for the Assessment Years commencing from 1.4.2004. (Sub-section (4) of Section 80-IB)

17. For the purpose of ready reference, and proper understanding of the issue, we deem it appropriate to reproduce the relevant clauses of Section 80-IC, itself, which read as under:

> "80IC. Special provisions in respect of certain undertakings or enterprises in certain special category States :- (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), <u>there shall, in accordance with and subject to the provisions of this section, be</u>

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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,-

....

(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 operation 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 profits and gains for five assessment

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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 the re-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

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under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten 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,-

....

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

....

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

....

(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;"

(Emphasis supplied)

18. The Section applies to an undertaking or an enterprise. What is an "undertaking" or an "enterprise" (already referred to as Unit) is not defined under the Section/Act and we need not dwell thereupon, for it is not

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an issue before us. However, what is of importance is the stipulation under sub-clause (ii) of clause (b) of sub-section 2 of Section 80-IC, insofar as State of Himachal Pradesh is concerned. If between 7.1.2003 and 1.4.2012, a "Unit" has "begun" or "begins" to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation "and undertakes substantial expansion" during the said period, then by virtue of sub-section (3), it shall be entitled to deduction at the rate of 100% of profits and gains for five assessment years, commencing from "initial assessment year" and thereafter at the rate of 25% of the profits and gains. The only restriction being that such substantial expansion is not formed by splitting up, or reconstruction, of the business already in existence. At this stage, we may note under sub-section (6) of Section 80-IC, there is a cap with regard to the total period for which a "Unit" is entitled to such deduction.

19. Sub-section (1) of Section 80-IC entitles a unit for deduction; sub-section (2) lays down eligibility criteria; sub-section (3) specifies the extent of entitlement. Sub-section (3), in turn, is controlled by sub-section (8), in case of substantial expansion of a unit.

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20. Language of the statute is clear, simple and unambiguous. To our mind, there cannot be any two views or interpretations about the same. If an undertaking or an enterprise ("Unit"), which has "begun" or "begins" to manufacture/produce/commence operation of any article or thing specified in the Fourteenth Schedule and carries out/undertakes substantial expansion during the prescribed period, then it is entitled to the benefits of deduction for such percentage, as is provided under sub-section (3) of Section 80-IC.

21. Can there be more than one "initial assessment year", as the authorities below have held it not to be so? Clause (v) of sub-section (8) of Section 80-IC, defines what is an "initial assessment year". It is only for the purpose of this Section. Now, "initial assessment year" has been held to mean the assessment year relevant to the previous year in which the "Unit" begins to manufacture or produce article or thing or commences operation or completes substantial expansion. Significantly, the Act does not stipulate that only units established prior to 7.1.2003 shall be entitled to the benefits under Section 80-IC. The definition of "initial assessment year" is disjunctive and not conjunctive. The initial assessment year has to be

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subsequent to the year in which the "Unit" completes substantial expansion or commences manufacturing etc., as the case may be.

22. A bare look at Explanation (b) of Section 80-IB (11C) and Section 80-IB(14)(c) would reflect that, earlier [till Section 80-IC was inserted w.e.f. 1.4.2004], "substantial expansion" was not included in the definition of "initial assessment year". Earlier definition had used words "starts functioning", "company is approved", "commences production", "begins business", "starts operating", "begins to provide services". But Section 80-IC (8)(v) changed wordings [of "initial assessment year"] to "begins to manufacture", "commences operation", or "completes substantial expansion". Thus, legislature consciously extended the benefit of "initial assessment year" to a unit that completed substantial expansion.

23. This is absolutely in conjunction and harmony with clause (b) of sub-section (2) of Section 80-IC, which postulates two things – (a) an undertaking or an enterprise has "begun", it is in the past tense or (b) "begins", which is in presenti. Significantly, what is important is the word "and" prefixed to the words "undertakes substantial expansion" during the period 7.1.2003 to 1.4.2012.

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24. Words "commencing with the initial Assessment Year" are relevant. It is the trigger point for entitling the unit, subject to the fulfillment of its eligibility for deduction @ 100%, for had it not been so, there was no purpose or object of having inserted the said words in the Section. If the intent was only to give 100% deduction for the first five years and thereafter at the rate of 25% for next five years, the Legislatures would not have inserted the said words. They would have plainly said, 'for the first initial five years a unit would be entitled to deduction at the rate of 100% and for the remaining five years at the rate of 25%'.

25. Thus, the question, which further arises for consideration, is as to whether, it is open for a "Unit" to claim deduction for a period of ten years @ 100% or not. To our mind, it is legally permissible. The statute provides for the same.

26. Significantly, Section does not restrict grant of deduction @ 100% only for a period of five years. It does not provide that deduction(s) have to be in one stretch or in continuity, ending or succeeding with each Financial Year/Initial Financial Year. It does not state that ten assessment years have to be in continuity. All that it provides for is that no deduction shall be allowed to a

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"Unit", either under Section 80-IC or 80-IB or 10-C, for a period exceeding ten assessment years. This Section does not curtail the percentage of exemption, to which a "Unit" may be entitled for a period of ten assessment years.

27. Also, in our considered view, "substantial expansion" can be on more than one occasion. Meaning of expression "substantial expansion" is defined in clause [8(ix)] of Section 80-IC and with each such endeavour, if the assessee fulfills the criteria then there cannot be any prohibition with regard thereto. For what is important, in our considered view, is not the number of expansions, but the period within which such expansions can be carried out within the window period [7.1.2003 to 1.4.2012], and it is here we find the words "begun" or "begins" and "undertakes substantial expansion" during the said period, as stipulated under clause (b) sub-section 2 of Section 80-IC, to be of significance. The only rider imposed is by virtue of sub-section (6) of Section 80-IA, which caps the deduction with respect to Assessment Years to which a unit is entitled to.

28. Of course, one thing is certain. Also, we are clear that under no circumstances, an assessee can claim deductions, be it under Section 80-IC, 80-IB or 10-C of the

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Act, for a period exceeding ten years, as is sought to be urged by some of the assessees.

29. What was the intent and the object sought to be achieved by the Legislature by inserting the new Section. To our mind, it was to promote and enhance activities envisaged under the Fourteenth Schedule, which could also be by carrying out substantial expansion of the "Unit". It is to give incentives to "Units" for setting up or expanding in special category States.

30. It is a settled principle of law that exigibility to tax is different from the concept of exemption/ concession. [*Padinjarekkara Agencies Ltd. vs. State of Kerala,* (2008) 3 SCC 597 (Two Judges)]

31. It is also a settled principle of law that doubt, if any, in the construction of provisions of a taxing statute must be resolved in favour of the assessee. [*The Indian Aluminium Co. Ltd. vs. The C.I.T., West Bengal, Calcutta,* (1972) 2 SCC 150 (Five Judges); *Star Industries vs. Commissioner of Customs (Imports), Raigad,* (2016) 2 SCC 362 (Two Judges); and *Eveready Industries India Limited vs. State of Karanataka,* (2016) 12 SCC 551 (Two Judges)].

32. It is also a settled principle of law that exemption being an exception has to be respected regard

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being had to its nature and purpose. [*State of Haryana and others vs. Bharti Teletech Limited,* (2014) 3 SCC 556 (Three Judges)].

33. While arguing that Fiscal Statute has to be interpreted on the basis of the language used therein, Mr. Kuthiala, learned Senior Counsel, invites our attention to the decision rendered by the Apex Court in *Orissa State Warehousing Corporation v. Commissioner of Income Tax,* (1999) 4 SCC 197. There cannot be any dispute with regard to such proposition, but however, with profit, we may reproduce the observations made by the Apex Court on the issue, as under:

> "40. In fine thus, a fiscal statute shall have to be interpreted on the basis of the language used therein and not de hors the same. No words ought to be added and only the language used ought to be considered so as to ascertain the proper meaning and intent of the legislation. The Court is to ascribe natural and ordinary meaning to the words used by the legislature and the Court ought not, under any circumstances, to substitute its own impression and ideas in place of the legislative intent as is available from a plain reading of the statutory provisions."

34. Mr. Kuthiala further invites our attention to the principle of law laid down by the Apex Court in *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and others,* (2003) 5 SCC 622. We notice the Court to have observed as under:

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> "50. Basic rule of interpretation of statute is that the court shall not go beyond the statute unless it is absolutely necessary so to do. Rule of "purposive construction" would be resorted to only when the statute to observe or when read literally it leads to manifest injustice or absurdity."

35. The Court was dealing with the provisions of laws relating to urban development, unlike the taxing statute, in relation to which the Apex Court, in another Report, has held that equity and taxation are often strangers and if construction results in equity rather than injustice, then such construction should be preferred to the literal construction. (*Commissioner of Income Tax v. J.H. Gotla,* (1985) 4 SCC 343).

36. Further, Mr. Kuthiala invites our attention to another Report, which we find profitable to reproduce the following observations made by the Apex Court in *State of W.B. v. Kesoram Indjustries Ltd. and others,* (2004) 10 SCC 201:

> "138.It is well settled that it is for the legislature to draft a piece of legislation by making the choicest selection of words so as to give expression to its intention. The ordinary rule of interpretation is that the words used by the legislature shall be given such meaning as the legislature has chosen to in absence thereof the words would be given such meaning as they are susceptible of in ordinary parlance, maybe, by having recourse to dictionaries. However, still, the interpretation is the exclusive privilege of the legislation avoiding absurdity, unreasonableness, incongruity and conflict. As is with the words

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used so is with the language employed in drafting a piece of legislation.........."

37. In *Bajaj* Tempo *Ltd., Bombay v. Commissioner of Income Tax, Bombay City-III, Bombay,* (1992) 3 SCC 78, the Apex Court observed that:

> "A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally. Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it. It is necessary to resort to a construction which is reasonable and purposive to make the provision meaningful."
>
> (Emphasis supplied)

38. In *Bhim Singh, Maharao of Kota v. Commissioner of Income Tax, Rajasthan-II, Jaipur,* (2017)1 SCC 554, the Apex Court observed:

> "It is a settled rule of interpretation that if two statutes dealing with the same subject use different language then it is not permissible to apply the language of one statute to other while interpreting such statutes. Similarly, once the assessee is able to fulfil the conditions specified in the section for claiming exemption under the Act then provisions dealing with grant of exemption should be construed liberally because the exemptions are for the benefit of assessee."
>
> (Emphasis supplied)

39. In *Southern Motors v. State of Karnataka and others,* (2017) 3 SCC 467, the Apex Court observed:

> "Further, if the taxpayer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of

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the notification or by necessary implication therefrom, the matter is different but that is not the case here.”

31. ....*The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity." We can do no better than repeat the famous words of Judge Learned Hand when he laid:*

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

(Emphasis laid by underlining the portion)

40. In our considered view, circulars are no more than external aids in interpretation of a statute. Insofar as interpreting the statute is concerned, we are not obliged to even look into the same, for language of the Section is simple, clear and unambiguous.

41. We may notice that the Act does not create distinction between the old units, i.e the units which stand

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established prior to 7.1.2003 (the cutoff date), and the new units established thereafter.

42. Artificial distinction sought to be inserted by the Revenue, in our considered view, only results into discrimination. The object, intent and purpose of enactment of the Section in question is only to provide incentive for economic development, industrialization and enhanced employment opportunities. The continued benefit of deduction at higher rates is available only to such of those units, which fulfill such object by carrying out "substantial expansion".

43. While supporting the view taken by the authorities below, Revenue seeks reliance upon the provisions of sub-clauses (i) & (iii) of clause (b) of sub-section (2) of Section 80-IC, which provide for benefit of deduction @ 100% for ten assessment years. We do not comprehend as to how would that make any difference. This provision deals with the establishments established within the State of Sikkim or North Eastern States of India.

44. In our considered view, though Section 80-IC deals with certain special category States, but however, the Legislators in their wisdom drew distinction and classified the State of Sikkim and other North Eastern States in one

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and State like Himachal Pradesh in another category. Taking into consideration the peculiar attending circumstances of the State of Sikkim and other North Eastern States, these States would constitute a class in itself, which classification is based on intelligible differentia and cannot be compared with other States, like the State of Himachal Pradesh. Thus, a unit established in the North Eastern States after 7.1.2003, regardless whether it carries out substantial expansion or not, is entitled to deduction @ 100% for ten assessment years, unlike the State of Himachal Pradesh, wherein a "Unit" established after 7.1.2003 will have to undertake substantial expansion before 1.4.2012, for further claiming deduction @ 100% for next five years, subject to over all cap of ten years.

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

46. The moment "substantial expansion" is completed as per Section 80-IC (8)(ix), the statutory

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

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

48. Applying the aforesaid interpretation, we find there can be different fact situations, some of which, we have tried to illustrate; (i) a "Unit" established prior to 7.1.2003, claiming deduction under Section 80-IB, post insertion of Section 80-IC carries out substantial expansion, would be entitled to deduction only under Section 80-IC, at the admissible percentage, for the remaining period, which in any case when combined, cannot exceed ten years, (ii) just as in the case of the present assessee, a unit established after 7.1.2003, carries out substantial expansion only in the 8th year of its establishment, for the

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first five years would have already claimed deduction @ 100%; for the 6th and 7th years @ 25%, and then for the period post substantial expansion, in our considered view, the initial year of assessment being in the 8th year, would be entitled for deduction @ 100%, subject to the cap of ten assessment years, (iii) the assessee establishes a unit after January 2003, say in the year 2005-06 and claims deduction under Section 80-IC for the first time in the assessment year 2006-2007 @ 100% of its profits. Thereafter, substantially expands the Unit in the year 2009-10, relevant to Assessment Year 2010-11 can claim deduction @ 100% for next five years subject to the cap of ten assessment years, (iv) an existing unit not claiming any deduction under Section 80-IA, 80-IB or 80-IC substantially expands in the year 2003 and claims deduction under Section 80-IC first time in Assessment Year 2004-2005 and then substantially expands in the year 2007-2008, can claim deduction @ 100% w.e.f. Assessment Year 2008-2009 for next five years, (v) the assessee sets up its unit in the year 2000-2001, claiming deduction under Section 80-IB till the Assessment Year 2003-2004 and thereafter under Section 80-IC as per law. Carrying out Substantial expansion in the Assessment Year 2004-2005, now claims deduction @ 100% w.e.f.

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Assessment Year 2004-05 again substantially expands in the Assessment Year 2008-2009 can claim 100% deduction w.e.f. 2008-2009, (vi) the assessee sets up a unit in the year 2005-2006 and does not undergo substantial expansion at all can claim deduction under Section 80-IC.

49. In view of above discussion, we do not find the impugned orders to be sustainable in law.

50. Facts are not in dispute. The assessee established its “Unit” after 7.1.2003. In fact, it was established in the Financial Year 2005-2006, and since then, in terms of Section 80-IC, claimed and was allowed deduction @ 100% for five years and thereafter at the rate of 25%.

51. Sometime in the year 2008, assessee carried out certain expansions, which it termed to be “substantial expansion”. The fact that such expansion is in fact “substantial expansion”, in terms of clause (ix) of sub-section (8) of Section 80-IC, cannot be disputed, for there is increase in the investment in the plant and machinery by at least 50% of the Book Value of the plant and machinery than the first day of the previous year in which such investment was made. Eligibility of benefits to the unit under Section 80-IC is not in dispute.

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52. Both the Assessing Officer as well as the Appellate Authority(s)/Tribunal erred in not appreciating as to what was the intent and purpose of insertion of Section 80 IC.

53. In fact, we find that the conclusions arrived at by the Assessing Officer as well as the Appellate Authority/ Tribunal are not based on correct appreciation and interpretation of the statutory provisions. While arriving at their respective conclusions, in interpreting Section 80 IC, they have relied upon Notifications under the Central Excise Laws as well as Ministry of Commerce and Industry (Department of Industrial Policy and Promotion), Government of India and Department of Income Tax. While doing so, the said authorities erred in not appreciating that Section 80 IC of the Act is a self contained and a complete code in itself, which, for the purpose of its interpretation, did not require assistance of any Notification(s), much less that of other Department.

54. In fact, we find the said Authorities to have erred in creating an artificial distinction between the "Units" set up before 7.1.2003 and after 7.1.2003 while holding that such of the "Units", which were set up after 7.1.2003, were not entitled to deduction @ 100% even if they

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undertook substantial expansion between the period 7.1.2003 and 1.4.2012. The distinction created by the said Authorities is not borne out from the provisions of Section 80 IC. In other words, there is no prohibition that a Unit set up after 7.1.2003, having claimed deduction for first five years, cannot again claim deduction at such percentage within the prescribed period after undertaking substantial expansion. This we say so with a sense of conviction. Plain reading of the Statute demonstrates that there is no such bar in the statute as stands held by the authorities below. We further find that in fact both the authorities have misconstrued the definition of "Initial Assessment Year". The Assessment Officer as well as the Appellate Authority have held that there cannot be two "Initial Assessment Years" between 07.01.2003 and 01.04.2012, which conclusion, in our considered view, is totally perverse. We reiterate that Sub clause (v) of Sub section (8) of Section 80 IC itself contemplates more than one "Initial Assessment Years". The said Clause envisages that for a "Unit", which begins to manufacture or produce any article or things or commences operation, the Initial Assessment Year means Assessment Year relevant to the previous year, in which, it begins to manufacture and produce article or thing or

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commences operation and for a "Unit", which completes substantial expansion, Initial Assessment Year means Assessment Year relevant to the previous year, in which it completes substantial expansion. This very important aspect of the matter has been completely overlooked by the Assessment Officer as well as the Appellate Authority. Therefore, the conclusion arrived at by all the authorities below, that new industrial Units cannot carry out substantial expansion to claim benefits envisaged under Section 80 IC is perverse and not sustainable in law.

55. Thus, in view of the above discussion, these appeals are allowed and orders passed by the Assessment Officer as well as the Appellate Authority and the Tribunal, in the case of each one of the assessees, are quashed and set aside, holding as under:

(a) Such of those undertakings or enterprises which were established, became operational and functional prior to 7.1.2003 and have undertaken substantial expansion between 7.1.2003 upto 1.4.2012, should be entitled to benefit of Section 80-IC of the Act, for the period for which they were not entitled to the benefit of deduction under Section 80-IB.

(b) Such of those units which have commenced production after 7.1.2003 and carried out substantial expansion prior to 1.4.2012, would also be entitled to benefit of

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deduction at different rates of percentage stipulated under Section 80-IC.

(c) Substantial expansion cannot be confined to one expansion. As long as requirement of Section 80-IC(8)(ix) is met, there can be number of multiple substantial expansions.

(d) Correspondingly, there can be more than one initial Assessment Years.

(e) Within the window period of 7.1.20013 upto 1.4.2012, an undertaking or an enterprise can be entitled to deduction @ 100% for a period of more than five years.

(f) All this, of course, is subject to a cap of ten years. [Section 80-IC(6)].

(g) Units claiming deduction under Section 80-IC shall not be entitled to deduction under any other Section, contained in Chapter VI-A or Section 10A or 10B of the Act [Section 80-IB(5)].

56. Substantial questions of law are answered accordingly.

57. No other point is urged.

58. On facts, we may clarify that the Revenue has not disputed, (a) the units having carried out substantial expansion within the definition of the Section, (b) their entitlement and extent of deduction would be dependent upon interpretation of the relevant provisions.

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59. As such, we direct that with respect to each one of the appellants, the Assessing Officer shall carry out fresh assessment and pass appropriate orders on the returns filed by each one of the assessees.

Pending application(s), if any, stand disposed of.

(Sanjay Karol),
Acting Chief Justice

(Ajay Mohan Goel),
Judge.

November 28, 2017(sd)

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