THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 31.05.2013

\+ ITR 49-50/1996

COMMISSIONER OF INCOME TAX ..... Appellant

versus

M/S DELHI PRESS PATRA PRAKASHAN LTD ..… Respondent

\+ ITA 151/2002

COMMISSIONER OF INCOME TAX-IV ..... Appellant

versus

DELHI PRESS PATRA PRAKASHAN LTD ..... Respondent

\+ ITA 302/2002

COMMISSIONER OF INCOME TAX-IV ..... Appellant

versus

DELHI PRESS PATRA PRAKASHAN LTD ..... Respondent

\+ ITA 480/2005

COMMISSIONER OF INCOME TAX-IV ..... Appellant

versus

DELHI PRESS PATRA PRAKASHAN LTD ..... Respondent

Advocates who appeared in this case:
For the Appellant : Mr N.P. Sahni.
For the Respondent : Mr O.P. Dua, Sr. Adv. with Ms Babita

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These are three appeals and a reference which involve similar issues and thus have been taken up together. ITR Nos. 49-50/1996 are cross references, one made by the assessee and the other preferred on behalf of the revenue against the order of the Income Tax Appellate Tribunal dated 26.04.1995. ITA No. 151/2002, ITA No. 302/2002 and ITA No. 480/2005 are appeals filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") filed on behalf of the revenue, *inter alia*, challenging the orders passed by the Income Tax Appellate Tribunal wherein the assessee has been allowed the benefit of deductions under Section 80-I of the Act. Whereas ITR No. 49-50/1996 relates to the assessment year 1991-92, ITA Nos.151/2002, 302/2002 and 480/2005 are with respect to previous years relevant to the assessment years 1992-93, 1993-94 and 1994-95 respectively.

2. In ITR 49-50/1996 the following questions were framed by the Tribunal and have been referred for our consideration:-

> "1. Whether on facts and in the circumstances of the case, the ITAT was right in holding that requisite conditions of sec. 80-I are to be satisfied not only in first or the initial year but in all the assessment years in which the deduction under sect. 80-I is claimed by the assessee?"
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> "2. Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that Unit Nos. 2 & 3 are industrial undertakings for purposes of Sec. 80-I of the IT Act, 1961?"

Whereas the first question has been referred on behalf of the assessee. The second question has been referred at the instance of the revenue.

3. The questions framed in ITA no.151/2002 and ITA no.480/2005 are similarly worded. The question framed in the said two appeals is as under:-

> "Whether on the facts and in the circumstances of the case the Tribunal was correct in law in holding that the activity of printing carried out by the assessee in its Units no.2 & 3 constituted profits and gains derived by the assessee from an industrial undertaking within the meaning of section 80-I of the Income Tax Act, 1961?"

4. The question framed in ITA No. 302/2004 also relates to the question whether the assessee is entitled to the deduction under Section 80-I of the Act and is to the same effect as the question framed in ITA no. 151/2002 and ITA no. 480/2005.

5. The assessee is a company and is engaged in printing and publishing newspapers and periodicals in English, Hindi, Marathi and Kannada. The assessee company was set up sometime in 1973 and has its head office situated in New Delhi. The assessee company established a Unit in Sahibabad, District Ghaziabad, (U.P.) namely Unit No. 2 for carrying on the work of high speed printing. Unit No. 2 was set up during the year ending 30.09.1985 relevant to the assessment year 1986-87. Unit No. 2 consisted of a printing press which was imported by the assessee. During the first year of the operation, there was a loss and no deduction under Section 80-I of the Act was allowed to the assessee with respect to Unit No. 2 and the return filed by the assessee was processed under section 143(1) of the Act on 13.05.1989.

6. The assessee filed a return for the subsequent assessment year, i.e., AY 1988-89, claiming a sum of ₹13,50,000/- as deduction under Section 80-I of the Act. The return filed by the assessee was taken up for scrutiny. During the assessment proceeding, the Assessing Officer examined the claim of the assessee

with respect to deduction under Section 80-I of the Act which was recomputed at ₹12,80,044/- as against the initial deduction of ₹13,50,000/- claimed by the assessee. The relevant extract from the assessment order dated 28.02.1990 for the assessment year 1988-89 is quoted below:-

> "Deduction u/s 80-I has been claimed in the computation chart at ₹13,50,000/-. When confronted about the correctness of the claim, the assessee has filed a revised chart according to which the deduction under Section 80-I works out to ₹12,88,044/-. This deduction shall be allowed because it pertains to Unit No. 2, the profit of which works out to ₹1,80,43,064/-."

7. The assessee claimed a deduction of ₹18,45,800/- under Section 80-I of the Act for the assessment year 1989-90 with respect to Unit No. 2 as well as Unit No. 3 which was established in 1987 and housed in the building adjacent to the building where Unit No. 2 had been set up earlier. The return filed by the assessee was taken up for scrutiny and an assessment order dated 31.01.1991 was framed by the Assessing Officer allowing deduction under Section 80-I of the Act.

8. The assessee filed a return for the subsequent assessment year AY 1990-91 wherein the assessee claimed a deduction of ₹38,02,747/- under Section 80-I with respect to the profits from Unit 2 & 3. The claim of the assessee was examined by the Assessing Officer who passed the assessment order dated 31.01.1992 allowing the deduction under Section 80-I of the Act, but computing the same at ₹37,82,816/-. The relevant extract from the assessment order dated 31.01.1992 is quoted below:-

> "The assessee has claimed a sum of Rs.38,02,747/- u/s 80-I of the I.T. Act. The deduction u/s 80-I has been claimed in r/o Unit-2 and Unit-3 receipts against which have been shown at

> Rs.1,54,96,624/- and Rs.1,33,04,340/-. After appropriating expenses under various heads profits from these Units has been shown at Rs.1,31,77,889/- and Rs.20,33,099/- respectively. The receipts from these two Units do not include interest income or misc. Income. However, the assessee has not appropriated expenses such as paper, printing and binding, magazine contribution, postage and forwarding charges', contribution to Provident Fund etc. The assessee has vide its letter dt. 31.1.91 submitted that Unit-I in r/o of which deduction u/s 80-I is not allowable, is mainly engaged in this publication of magazines, whereas the other Units are doing printing work as veb fed offset processes. The assessee has further submitted that the abovesaid expenses are entirely attributable to Unit-I only as it is engaged in the publication of magazines. Assessee's plea is tenable with regard to these expenses except the expenses pertaining to contribution to provident fund as the assessee has appropriated expenses under the head salary and bonus to Unit-2 and Unit-3 also. Out of total expenses of Rs.1,67,946/- a sum of Rs.79,774/- will be appropriated against the profits of Unit-2 and Unit-3 in proposition of the expenses attributed to these Units under the head salary. Deduction u/s 80-I will be worked out to Rs.37,82,816/- on total profits of Rs.1,51,31264/- from new industrial units."

9. For the previous year ended 1991 relevant to the assessment year 1991-92, the assessee company furnished a return of income of ₹ 44,44,203/-. The assessee also claimed deduction of ₹ 44,58,681/- under Section 80-I of the Act being 25% of the profits from Unit Nos. 2 & 3 disclosed by the assessee.

10. The Unit No. 2 comprises of a computerized four colour heat set web offset printing machine which has the capacity to print on both sides of paper simultaneously at a speed of 35,000 sheets per hour. The said Unit included an oven for drying ink and a chiller to cool the printed paper and coat silicon on paper before folding the paper in the specified combination as required. In addition to the colour printing machine, Unit No. 2 also has other machines such as plate processing, exposing, not heat set web offset to perform non-colour

printing. Unit No. 3 consists of a colour heatset offset printing press which has the capacity to print 40,000 sheets per hour. The printing press is coated with alcohol dumping system to improve the colour printing quality and also to provide sheen to the ink. Unit No. 3 also consisted of several other machines like scanner, densitometer, metal halide unit to supplement the work of the offset printing press.

11. Both the Units, namely Unit Nos. 2 & 3 were established in Sahibabad in separate buildings situated adjacent to one another. The electricity connection, telephone connections as well as senior managerial staff were common for both the Units. The assessee contended that Unit Nos. 2 & 3 were independent printing houses and the income of these Units was accounted on the basis of printing done by them at specified rates.

12. The Assessing Officer framed an assessment order dated 25.03.1994 for the Assessment year 1991-92 wherein the claim of the assessee for deduction under Section 80-I of the Act with respect to Unit Nos. 2 & 3 was disallowed. The Assessing officer observed that printing machines were highly sophisticated and computerized and could be operated and managed without employing more than two or three persons. The expenses incurred by the assessee with regard to Unit Nos. 2 & 3 were mainly payments made for purchase of ink and consumables. The workers employed in operating Unit Nos. 2 & 3 were employees of another company Vinapur (P) Ltd. which was a sister concern of the assessee company. Vinapur (P) Ltd. did not carry on any other business but was involved solely in engaging workers for the assessee. The Assessing Officer concluded that the assessee company did not qualify for a deduction under Section 80-I of the Act with respect to Unit Nos. 2 & 3 for the following reasons:-

(A) Unit Nos. 2 & 3 did not employ any person in the manufacturing process as the persons engaged in the printing press were not employees of Unit Nos. 2 & 3 but of another company which was distinctly different from Unit Nos. 2 & 3.

(B) Unit Nos. 2 & 3 were not manufacturing any article or thing as printing on paper could not be construed to be manufacturing.

(C) Unit Nos. 2 & 3 had sophisticated computerized printing machines which did not require more than 2 or 3 persons to operate the press and hence, the condition under Section 80-I(2)(iv) of the Act which required that the industrial undertaking employ 10 or more persons was not satisfied.

(D) Unit Nos. 2 & 3 were only carrying on job work and were not selling any goods. The said Units were also not paying any sales tax for the job work charged.

(E) Publication of a magazine could be termed as manufacture, however, the magazines were being published by Unit No.1 of the assessee company and not exclusively by Unit Nos. 2 & 3. The assessee, as a company would be eligible to claim deduction under Section 80-I of the Act since it was engaged in publishing magazines. However, since the assessee company was established in 1973 and eight years had elapsed, deduction under Section 80-I of the Act was not available for the relevant assessment year.

13. Aggrieved by the assessment order dated 25.03.1994, the assessee preferred an appeal before CIT (Appeals). It was contended on behalf of the

assessee before CIT (Appeals) that the claim for deduction under Section 80-I of the Act had been examined by the Assessing Officer and had been allowed in the earlier years and thus, the same could not be denied to the assessee for the assessment year 1991-92. The assessee also contested the findings of the Assessing Officer that Unit Nos. 2 & 3 did not employ more than 10 workers. While the CIT (Appeals) accepted the contention of the assessee that it employed more than 10 workers in Unit Nos. 2 & 3, the CIT (Appeals) nonetheless upheld the decision of the Assessing Officer that deduction under Section 80-I of the Act was not allowable to the assessee as Unit Nos. 2 & 3 could not be construed as separate Units but were wholly dependent on Unit No. 1. The CIT(Appeals) upheld the decision of the Assessing Officer that Units Nos. 1, 2 & 3 were together engaged in publishing and printing and since the assessee company was more than 8 years old, deduction under Section 80-I of the Act would not be available to the assessee company. Whilst the CIT (Appeals) did not accept the contention of the assessee that Unit Nos. 2 and 3 were industrial undertakings independent of Unit No.1, the CIT(Appeals) accepted the contention that Unit Nos. 2 & 3 did produce `articles' or `things' as the printed material was different from the raw material used in producing them, namely, paper and ink. Thus, the condition that an industrial undertaking should manufacture or produce an article or thing was held to be satisfied.

14. The assessee preferred an appeal against the order dated 19.09.1994 passed by the CIT (Appeals) before the Income Tax Appellate Tribunal. Cross objections were also filed on behalf of the revenue against the finding of the CIT (Appeals) that Unit Nos.2 & 3 of the assessee company satisfied the condition of manufacturing an article or thing. The assessee also urged before the Tribunal that the question relating to the satisfaction of the conditions of section 80-I of the Act were to be examined in the initial year and once the claim of the assessee

under Section 80-I of the Act has been examined and allowed, it would not be open for the Assessing Officer to revisit the same during the subsequent years. The assessee also assailed the decision of the CIT (Appeals) that Unit Nos. 1, 2 & 3 were inter-dependent Units and thus could not be considered as separate industrial undertakings. The entire company was liable to be treated as one undertaking and not separate Units.

15. The Tribunal rejected the contention of the assessee that once the deduction under Section 80-I of the Act had been allowed to the assessee the same could not be examined in subsequent years. The Tribunal held that the principle of estoppel and *res judicata* were not applicable to the assessment proceedings under the Act and although Income Tax Authorities should be consistent in their approach and analysis but since the claim regarding eligibility of Unit No. 2 & 3 had not been examined earlier, the same could be examined in later years. The Tribunal held that the conditions of eligibility for claiming deductions under Section 80-I of the Act were required to be satisfied, not only for the first or initial year but were also required to be satisfied for subsequent years as well. Accordingly, the Tribunal rejected the contention of the assessee that claim for deduction under section 80-I of the Act could not be denied to the assessee on the ground of consistency. The Tribunal accepted the contention of the assessee that Unit Nos.2 & 3 were separate industrial undertakings and further held that although Unit Nos.2 & 3 were carrying on the printing activity for Unit No.1 these units could also exist independent of Unit No.1 and could carry on printing activity for other persons also. The Tribunal thus set aside the finding of the CIT (Appeals) that Unit Nos. 2 & 3 could not be treated as separate industrial undertakings.

16. The challenge on behalf of the revenue, to the conclusion of CIT

(Appeals) that the Unit Nos. 2 & 3 complied with the condition of Section 80-I in respect of carrying on manufacturing activity, was rejected by the Tribunal and the decision of the CIT (Appeals) in this respect was upheld.

17. In regard to the question of the number of workers employed by the Unit Nos. 2 or 3, the Tribunal accepted the contention of the assessee that employees of the sister concern M/s Vinapur (P) Ltd. who were directly employed in operating Units Nos.2 & 3 and were working permanently for carrying on the activities of Unit nos.2 and 3, were required to be taken into consideration as persons employed in the industrial undertaking for the purposes of qualifying for deduction under Section 80-I of the Act. However, since, there was no finding by the Assessing Officer in respect of the number of workers who were permanently employed in operating Unit Nos.2 and 3, the Tribunal remanded the matter to the Assessing Officer for the limited purposes of making the necessary enquiries to determine the number of persons who were directly employed in carrying on the activities of Unit Nos.2 and 3 irrespective of whether the workers were employees on the rolls of the assessee or on the rolls of M/s Vinapur (P) Ltd.

18. Pursuant to the directions of the Tribunal, the Assessing Officer made the necessary enquiries as to the number of workers employed in Unit Nos.2 & 3 for the purpose of Section 80-I of the Act and concluded that more than 10 workers were engaged in Unit Nos.2 & 3 of the assessee. Accordingly, the Assessing Officer passed an order dated 29.12.1995 under Section 254 of the Act re-computing the taxable income and allowing the assessee, deduction under Section 80-I of the Act in respect of profits of Unit Nos. 2 & 3.

19. The question whether the profits from Unit Nos.2 & 3 qualify for

deduction under Section 80-I of the Act continued to be the subject matter of the proceedings for the subsequent three assessment years also. While, the Assessing Officer rejected the claim of deduction made by the assessee, the Tribunal following its earlier decision in ITA No.6698/Del/94 relating to Assessment Year 1991-92 has held that the deduction under Section 80-I of the Act would be available to the assessee in respect to the profits of Unit nos. 2 and 3.

20. It is contended by Mr Sahni, appearing on behalf of the revenue, that the assessee is not entitled to claim any deduction under section 80-I of the Act in respect of Unit Nos.2 & 3 as the said Units did not fulfill the conditions as specified under Section 80-I(2) of the Act. It is contended that Unit nos. 2 & 3 do not qualify as Industrial undertakings to which Section 80-I of the Act applies for the following reasons:

A. It is contended that the assessee did not employ 10 or more workers on its rolls who were involved in the activity of the newly established printing Units. Although, it is admitted that more than 10 workers were directly engaged in carrying out the operation of Unit Nos.2 & 3, admittedly, the said employees were not on the rolls of the assessee but were on the rolls of another concern. It is, thus, contended that the condition as contemplated in Section 80-I(2)(iv) of the Act would not be satisfied.

B. It is contended that the Unit Nos.2 & 3 established by the assessee were not independent Units and were doing job work for Unit No.1. It is contended that undertakings which perform only job works would not qualify for deduction under Section 80-I of the Act.

C. It is contended that the activity being carried on in Unit Nos.2 & 3 was merely printing of paper and printing did not alter the character of paper so as to constitute manufacture or production. In order to qualify for deduction under Section 80-I of the Act, it is necessary that the industrial undertaking "manufacture or produce any article or thing." According to Mr Sahni, the manufacturing activity was carried out by Unit No.1 who published the periodicals and newspapers which were the final products. It is contended that although periodicals could be stated to be manufactured by the assessee, the same were the products manufactured by the assessee as a cohesive Unit and not by Unit Nos.2 or 3. It was submitted that the magazines published by the assessee would be a new commodity distinct from the paper on which it was printed and this product could not be stated to be manufactured by Unit Nos.2 & 3 but by the assessee which included Unit No.1 also. It was strongly urged that Unit Nos.2 & 3 were merely printing paper and further activities such as binding and cutting were not carried out by Unit Nos.2 & 3 and hence Unit Nos. 2 or 3 could not be considered as manufacturing any article or thing.

D. Unit No.1 was established much earlier and was engaged in publishing as well as printing periodicals in the portfolio of the assessee. It is contended that as Unit Nos.2 & 3 carried on the same activity which is performed by Unit No.1, the same would amount to splitting up of the existing business of the assessee and thus would disqualify the assessee from claiming any benefit under Section 80-I of the Act in respect of Unit nos.2 & 3.

21. Mr Sahni has relied on the judgment of the Supreme Court in the case of

Union of India v. Delhi Cloth & General Mills **: 1963 SCR Supplementary (1) 586**. Mr Sahni has drawn our attention to page No.596 wherein it had been held that the word "manufacture" is understood to mean brining into existence a new substance and not merely to produce some change in the substance. It was contended on behalf of the revenue that the paper processed by Unit Nos. 2 & 3 by carrying on printing upon it would not result in a substance which is known in the market as a substance different from paper. It was, thus, contended that Unit Nos.2 & 3 were not involved in manufacturing or producing any article or thing.

22. Mr Sahni has also contended that the decision of the Gujarat High Court in the case of ***CIT v. Ajay Printers Pvt. Ltd*****: (1965) 58 ITR 811 (Guj),** which was relied upon by the assessee before the Tribunal, was inapplicable on the facts of the present case as in that case the Court was considering whether the business carried out by the assessee of printing balance sheets, profit & loss accounts, dividend, pamphlets, share certificates, etc., would be a business which consists wholly of manufacture. It was argued that the facts of the said case were distinguishable from the facts of the present case as balance sheets, profit & loss accounts, dividend, pamphlets and share certificates could be considered as final products but printed periodical without binding would not be a marketable product.

23. Mr Sahni relied strongly on the decision of the Calcutta High Court in the case of ***Additional Commissioner of Income Tax v. A. Mukherjee and Co. Pvt. Ltd*****: (1978) 113 ITR 718 (Cal)** and has drawn our attention to the following passage:-

> "10. In order that a publisher of books should be a manufacturer of books it is wholly unnecessary for him either to be an owner of a printing press or to be a book-binder

himself. A paper is not a book, though it is printed on papers. A publisher may get the books printed from any printer but the printer is not the manufacturer but a mere contractor. The findings of the Tribunal in our opinion conclusively show that the assessee was carrying on the activity of manufacturing and also of processing of books which are also goods.

11. The argument, namely, that the assessee was not mainly carrying on manufacturing or processing activities in view of the Tribunal's finding that " the assessee's activity cannot be called purely a trading activity " does not appeal to us. The assessee did not purchase any books from market or sell them at a profit. The assessee published books and sold them in the market.

We also agree with the finding of the Tribunal that the assessee was also carrying on the processing activity inasmuch as the assessee had to do many things as stated in its order."

24. Mr Sahni submitted, that since the publisher of books is held to be a manufacturer, the same would mean that the printer could not be considered to be a manufacturer. Since it is admitted that Unit Nos. 2 & 3 were only carrying on the job of printing, by this analogy they could not be considered to have satisfied the condition as specified in Section 80-I (2)(iii) of the Act.

25. Mr Dua appearing on behalf of the assessee has contested the contentions raised on behalf of the revenue. It has been argued on behalf of the assessee that there is now no dispute that the number of workers employed in Unit 2 & 3 exceed 10 and thus the condition as laid down in Section 80-I of the Act is met. Section 80-I(2)(iv) of the Act does not specify whether the workers to be employed in industrial undertaking must necessarily be on the rolls of the assessee.

26. It is also contended on behalf of the assessee, printing activity carried on

in Unit Nos.2 & 3 does produce a distinct and different article. A printed periodical is completely different and distinct from the raw materials used namely paper and ink. In order to support his contention, Mr Dua has cited the decision of the Supreme Court in the case of ***CIT v. Oracle Software India Ltd.*****: (2010) 320 ITR 546 (SC)** wherein the Supreme Court has held that the process of duplicating computer discs which involve recording software on a blank disc would amount to 'manufacture'. A recorded CD where upon a software had been embedded would be an article completely distinct from a blank Disc. Using the same analogy, the learned counsel has contended that a printed paper on which periodical has been printed could not be equated with blank paper and was a new article or thing which is different from the raw material from which it is manufactured or produced.

27. Mr Dua has also disputed the contention on behalf of the revenue that since binding of printed material was not done by Unit Nos. 2 & 3 in all cases, the printed material would not be a product which was marketable. Mr Dua handed over the products resulting from the activity carried on by Unit Nos.2 & 3. Some of the printed material only required to be stapled along the line of centre fold and the same were ready to be dispatched to the subscribers or sold in the market. These periodicals were stapled by Unit Nos.2 & 3 and were complete in all respects. However in the case of certain other magazines, the printed paper required to be bound and binding of such magazines was carried out by an another independent third party. In either case, it was contended that the printed material was distinct from the raw material. It is further contended on behalf of the assessee that even industrial undertakings, where intermediatory products are manufactured or produced, qualify for deduction under Section 80-I of the Act. In support of this contention, the learned counsel for the assessee has cited the decision of full Bench of Kerala High Court in the case of ***Midas Polymar***

***Compounds Pvt. Ltd. v. Assistant Commissioner of Income Tax*: (2011) 331 ITR 68 (Ker) [FB]**.

28. The learned counsel for the assessee has also cited the decisions in the cases of ***CIT v. Hindustan Times Ltd.*: (2000) 241 ITR 509 (Del)**, ***CIT v. Balaji Hotels & Enterprises Ltd.*: (2009) 311 ITR 389 (Mad)**, and ***Ajay Printers*** *(supra)*. In support of the contention that an industrial undertaking carrying on printing activity would qualify as an industrial undertaking which "manufactures or produces any article or thing".

29. It was also contended on behalf of the assessee that Unit Nos. 2 & 3 were independent industrial undertakings. Whereas Unit No. 1 is a publishing house, Unit Nos. 2 & 3 were printing houses. It was further submitted that the contention on behalf of the revenue that Unit Nos. 2 & 3 had been formed by splitting up of businesses was erroneous and had not been urged before either the CIT(Appeals) or the Tribunal. It was pointed out that it is an admitted case that no machinery or equipment had been transferred from Unit nos. 1 to Unit Nos.2 & 3. Unit Nos. 2 & 3 had been established by importing new machinery from overseas and were in addition to the facilities already existing in Unit No.1. The learned counsel for the assessee relied on the decision of the Supreme Court in the case of ***Textile Machinery Corporation Ltd. v. CIT*: (1977) 107 ITR 195 (SC)** in support of his contention that in order for a new industrial undertaking to be established, there must be an emergence of a physically separate industrial Unit which may exist on its own as a viable Unit. It was submitted that this condition was fulfilled as Unit Nos.2 & 3 were capable to carry on their activity independent of Unit No. 1.

30. In the present case, it is not disputed that operations in Unit No.1

continued even after Unit Nos.2 & 3 were established. It is contended that in these circumstances, it could not be said that Unit Nos. 2 & 3 had been formed by splitting up of business of the assessee, so as to disqualify the assessee claiming benefit under Section 80-I of the Act. The learned counsel for the assessee has also cited the decision of the Supreme Court in the cases of ***CIT v. Orient Paper Mills Ltd.*: (1989) 176 ITR 110 (SC)** and ***CIT v. Indian Aluminium Co. Ltd.*: (1977) 108 ITR 367 (SC)** in support of his contention.

31. The next contention urged on behalf of the assessee was in respect of the principle of consistency. It was contended that the Assessing Officer once having accepted that Unit Nos. 2 & 3 were eligible for deduction under Section 80-I of the Act could not disallow the same in subsequent years. In this regard, Mr Dua has cited the decisions in the cases of ***Radhasoami Satsang v. CIT*: (1992) 193 ITR 321 (SC)**, ***CIT v. Lagan Kala Upwan*: (2003) 259 ITR 489 (Del), *Saurashtra Cement & Chemical Industries v. CIT*: (1980) 123 ITR 669 (Guj), *Commissioner of Income Tax v. Paul Brothers:* (1995) 216 ITR 548 (Bom)** and ***Commissioner of Income Tax v. Modi Industries Limited*: [2010] 327 ITR 570.**

32. We have heard the counsel for the parties at length.

33. Before proceeding to address the questions that have been raised, it would be relevant to examine the provisions of Section 80-I of the Act. The relevant extract of Section 80-I of the Act is quoted below:-

> **"80-I - Deduction in respect of profits and gains from industrial undertakings after a certain date, etc.-** (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going

vessels or other powered craft to which this section applies, 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 of an amount equal to twenty per cent thereof:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words “twenty per cent”, the words “twenty-five per cent” had been substituted."

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"(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:

(i) it is not formed by the splitting up, or the reconstruction, of a business already in existence;

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

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India, and begins to manufacture or produce articles or things or to operate such plant or plants, at any time within the period of ten years next following the 31st day of March, 1981, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power:"

xxxxx xxxxx xxxxx xxxxx

> "(5) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning or the company commences work by way of repairs to ocean-going vessels or other powered craft (such assessment year being hereafter in this section referred to as the initial assessment year) and each of the seven assessment years immediately succeeding the initial assessment year:"
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> xxxxx xxxxx xxxxx xxxxx

34. The first controversy to be addressed is whether the assessee could claim deduction under Section 80-I of the Act in respect of Unit Nos. 2 & 3, even though it did not employ 10 or more workers on its rolls.

35. The condition that an industrial undertaking must employ 10 or more workers in the manufacturing process carried on with the power is specified in section 80-I(2)(iv) of the Act. In order to qualify as a new industrial undertaking in respect of which deduction is available under Section 80-I of the Act, an industrial undertaking must fulfill the condition of employing "10 or more workers in a manufacturing process carried on with the aid of power".

36. A plain reading of the language of Section 80-I (2)(iv) of the Act indicates that the qualification of employing of 10 or more workers is not used in the context of persons employed by an assessee but in the context of the manufacturing process. This clearly means that the manufacturing process, which is carried on by an industrial undertaking, with the aid of power, must employ 10 or more workers to carry on the manufacturing process. The word 'employs' has not been used in the context of an employer and employee relationship between the assessee and the workers carrying on the manufacturing

process, but in the sense of quantifying the number of persons to be deployed in the manufacturing process.

37. The expression "workers" is not defined in the Act and there is no reason to limit the expression "workers" as occurring in section 80-I(2)(iv) of the Act to only mean such workers as are employed directly by the assessee and ignore the workers who are engaged in the manufacturing process carried on by the industrial undertaking albeit employed through another agency. In the case of ***Commissioner v. Nanda Mint and Pine Chemicals Ltd.***: **(2012) 345 ITR 60 (Del)** this court has, while considering the question of qualification as to the number of workers to be employed for availing deduction under section 80-IB of the Act, held that casual and contractual workers are to be included while calculating the number of employees who are engaged in an Industrial undertaking. While deciding the controversy, this court adopted the reasoning of the Bombay High Court in the case of ***CIT v. Jyoti Plastic Works Pvt. Ltd.*: (2011) 339 ITR 491 (Bom)** and reproduced the following passage from the said decision.

> "The expression 'worker' is neither defined under section 2 of the Act nor under section 80-IB(2)(iv) of the Act. As per Black's Law Dictionary, the expression 'worker' means a person employed to do work for another. Under section 2(l) of the Factories Act, 1948, the expression 'worker' means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process, or in any other kind or work incidental to or connected with the manufacturing process. Therefore, in the absence of the expression 'worker' defined under the Act, it would be reasonable to hold that the expression 'worker' in section 80-IB(2)(iv) of the Act is referable to the persons employed by the assessee directly or by or through any agency (including a contractor) in the manufacturing activity carried on by the assessee. In the present case, though the workers

> employed by the assessee directly were less than ten, it is not in dispute that the total number of workers employed by the assessee directly or hired through a contractor for carrying on the manufacturing activity exceeded ten and, therefore, the Tribunal was justified in holding that the assessee complied with the condition set out in section 80-IB(2)(iv) of the Act."

38. In the case of ***Nanda Mint and Pine Chemicals*** *(supra)*, this court has held that an undertaking employs a worker when it has control over him not only with regard to the work done by him but also over the manner in which work is performed. In the present case, it is an admitted position that more than 10 workers were permanently involved in carrying on the activities in Unit Nos. 2 & 3. We are, thus, unable to accept the contention on behalf of the revenue that Unit Nos. 2 & 3 did not fulfill the criteria as set out in Section 80-I(2)(iv) of the Act merely because the persons who were deployed in carrying out the activities of Unit Nos. 2 & 3 were engaged through the sister concern of the assessee.

39. In our view, the Tribunal was correct in not accepting the contention of the revenue that the workers in an industrial undertaking must be on the rolls of assessee for availing the benefit under Section 80-I of the Act.

40. The next issue that needs to be considered is whether Unit Nos.2 & 3 are engaged in manufacture or production of an article or thing. The contention on behalf of the revenue is that Unit Nos.2 & 3 cannot be stated to manufacture or produce any article or thing as the said Units were completely dependent upon Unit No.1. It is further contended that printing carried on by Unit Nos.2 & 3 of the assessee company only amounted to processing and the same could not be equated to manufacturing as manufacturing required that the product of the manufacturing process be a marketable product distinct from the raw materials used. It is also contended on behalf of the revenue that Unit Nos.2 & 3 were

involved merely in job work and this according to the counsel for the revenue, did not amount to manufacture.

41. The arguments urged on behalf of the revenue with regard to Unit Nos.2 & 3 fulfilling the condition as specified in Section 80-I(2)(iii) of the Act are two-fold. The first contention being that Unit Nos.2 & 3 are involved in job work and, therefore, the said Units cannot be considered as industrial undertakings which are involved in manufacture or production of articles or things. The second aspect is that the resultant printed material is required to be subjected to further process of binding in order for the same to be marketed and sold and, therefore, the printing process does not amount to manufacture as contemplated in section 80-I(2)(iii) of the Act.

42. We are unable to appreciate the contention that the industrial undertaking which undertakes job work would not be entitled to claim deduction under Section 80-I of the Act. The language of Section 80-I(2) of the Act does not indicate in any manner that an industrial undertaking which instead of purchasing raw material, acquires raw material from a third party in order to subject it to the activity carried on by the industrial undertaking and sends the resultant product back to the entity from which the raw material had been procured, would be disqualified from availing benefits under Section 80-I of the Act. There is nothing in the language of Section 80-I(2)(iii) of the Act to suggest that the assessee claiming the benefit of Section 80-I of the Act must structure his business in any particular form. Carrying on job work is only a method of structuring one's business. An assessee owning an industrial undertaking may either choose to purchase raw material on its own and process the same or it may acquire raw material on job work basis and utilize the same for carrying on the industrial activity. In either event so long as the industrial undertaking owned by

the assessee fulfills the conditions as specified under Section 80-I(2) of the Act, the benefit of Section 80-I of the Act cannot be denied to the assessee.

43. It is settled law that a statute must be construed as per the plain meaning of the language. In the case of ***Polestar Electronic P. Ltd. v. Additional Commissioner, Sales Tax*****: AIR 1978 SC 897** it has been held as under:

> "A statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."

44. The rule of literal construction has been followed by courts in various decisions and the language of a section is the best guide for its interpretation. In the case of ***Assessing Authority-cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd*****.: [1981] 48 STC 239,** the Supreme Court held as under:-

> "A statute must be construed according to its plain language and neither should anything be added nor should anything be subtracted unless there are adequate grounds to justify the inference that the Legislature clearly so intended."

45. We are unable to read the condition that an industrial undertaking must not carry on the manufacturing process on job work basis in order to avail the benefit of section 80-I of the Act in the language of 80-I(2) of the Act.

46. The reliance placed by the revenue on the decision of the Calcutta High Court in the case of ***A. Mukherjee & Co.*** *(supra)* is also, in our view, misplaced. In the said case, the question before the Court was whether a publisher was carrying on manufacturing activity. In that case, it was contended on behalf of the revenue that the assessee did not own a printing press and the job of printing

had been outsourced, the job of binding the books was also outsourced to a third party and therefore a publisher would not qualify as a manufacturer. The Court analyzed the business carried on by the assessee which included getting the manuscript for publication, deciding on a suitable format for the book for printing and thereafter, sell the publication in the market. The assessee played an active role in coordinating all activities from the stage of the acquisition of the manuscript to the stage of marketing the books. The Court held that the activities of the assessee amounted to carrying on the activity of manufacturing and also processing of books. It is in this context that the Court observed that the publisher was a manufacturer and the printer was a contractor. We do not think that we can read in this observation of the Calcutta High Court, a decision that printing activity carried on by a press does not amount to manufacturing or producing an article or thing. The fact that activities carried on by a publishing house may amount to manufacture does not i*pso facto* exclude the activity of printing from the scope of the expression "manufacture or produce an article or thing" as occurring in Section 80-I(2)(iii) of the Act. The contention of Mr Sahni that an assessee who is engaged on job work basis cannot be considered as a manufacturer is also premised on the observations made by the Calcutta High Court in the case of ***A. Mukherjee & Co.****(supra)* and as stated earlier, we do not find that the language of Section 80-I of the Act supports this contention.

47. This Court has in the case of ***CIT v. Sadhu Forging Ltd.*****: (2011) 336 ITR 444 (Del)** considered the issue whether deduction under Section 80-IB of the Act would be available to an assessee who was carrying on job work. The conditions as specified in Section 80-I(2)(iii) of the Act are identical with the language of Section 80-IB(2)(iii) of the Act. In that case, the court was concerned with an industrial undertaking which was carrying on the activity of providing heat treatment to metal parts for toughening the parts to be used in automobiles, on a

job work basis. This Court held as under:-

> "9. .....The issue was also that the assessee was doing these works on job basis for other undertakings, by getting the raw material from them. When the assessee was entitled to claim exemption in respect of income derived from such processes doing for itself, we do not see any reason as to why he would not be entitled to so merely because the raw material component was being supplied by other customers and for whom the assessee was doing the job. In fact, deduction under section 80IB is given on the profits derived from the manufacturing process, being undertaken by the assessee which qualify for deduction.
>
> 10. The heat treatment is one of the processes through which the forgings are given the desired temperature and then cooled in a different manner which results in changing the mechanical properties desired by the customers. We are given to understand that there are various industrial undertakings which are specialized only in the heat treatment processes. Learned counsel for the assessee informed us, without refutation from the Revenue, that the forging involves heating to a desired temperature and then soaking the material at that temperature until the structure become uniform throughout the section and then cooled in a different manner to achieve the desired mechanical and molecular bonding properties. The cooling of the material at some predetermined rates causes the formation of desired structure within the metal for the desired properties with the aim (i) to improve the mechanical property such as tensile strength, hardness, deductibility, shock resistance, etc., (ii) improve machinability, (iii) increase resistance to heat and corrosion (iv) relieve stresses developed due to hot and cold working, (v) modify electrical, magnetic and molecular bonding properties, etc. The heat treatment toughens the forged part for being used as automobile parts. The process of heat treatment is absolutely essential for rendering them marketable. Without the heat treatment, the material is not fit for automobile industry. The learned counsel relied upon CIT v. Tamil Nadu Heat Treatment and Fetting Services (P) Ltd. (No. 2) [1999] 238 ITR 540 (Mad) wherein the activity carried out by the assessee consisted of receiving from its clients untreated crankshafts, forgings, castings, etc., and subjecting them to heat treatment in

order to toughen them to the requisite standards, so that they could be sold in the market. The activity was held to be manufacturing and entitled to claim deductions. Similarly in the case of CIT v. Tamil Nadu Heat Treatment and Fetting Services (P) Ltd. (No. 1) [1999] 238 ITR 529 (Mad), it was held that the process of heat treatment to crankshaft, etc., were absolutely essential for rendering it marketable. Automobile parts, as crankshafts, need to be subjected to heat treatment to increase the wear and tear resistance to remove the inordinate stress and increased tensile strength. The raw untreated crankshafts and the like can never be used in an automobile industry. Thus, in the crankshafts subjected to the process of heat treatment, etc., a qualitative change is effected, to be fit for use in automobiles, although there is no physical change in them. In such state of affairs, it cannot at all be stated that the crankshaft, subjected to heat treatment, etc., cannot at all change the status of new products of different quality for a different purpose altogether. In this view of the matter, the activities of the assessee in relation to raw or untreated crankshafts being subjected to heat treatment, etc., is definitely a "manufacturing activity" entitling it to claim "investment allowance" under section 32A."

(emphasis supplied)

48. In the case of ***Midas Polymer Compounds P. Ltd.*** *(supra)* a full bench of the Kerala High Court held that an assessee who was engaged in mixing rubber with chemicals, process oil etc. to make compound rubber for tyre manufacturing companies on job work basis was entitled to deduction under section 80-IB of the Act.

49. The idea that carrying on job work necessarily excludes carrying on an activity of manufacture or production is in our view without any basis. The ratio of the decision in the case of ***Forging Ltd.*** *(supra)* is applicable to the facts of the present case and we accordingly hold that carrying on job work does not disentitle Unit Nos.2 & 3 from being considered as industrial undertaking for the purposes of section 80-I of the Act.

50. The next aspect which has been addressed at length by the counsel for the parties is whether Unit Nos.2 & 3 would fulfill the conditions as specified in Section 80-I(2)(iii) of the Act. It has been contended on behalf of the revenue that printing does not alter the character of raw materials and cannot constitute manufacture. It has been further contended that as the printed material which results from the activities carried on in Unit Nos. 2 and 3 is also not known to the market as a distinct product as the same cannot be dealt with without subjecting the printed material to a binding process which is not carried on by Unit Nos.2 & 3.

51. Mr Sahni has relied strongly on the decision of the Supreme Court in the case of ***Delhi Cloth & General Mills*** *(supra)* in support of his contention. We do not think that the decision is of much assistance in the facts of the present case. In that case, the respondents were engaged in manufacturing "vanaspati" and had challenged the levy of excise duty on the manufacture of vanaspati from raw oil. The Excise Authorities had levied excise on manufacture of vanaspati as "vegetable non-essential, oils, all sorts or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". The Court examined the processes carried on in conversion of raw oils to vanaspati and held that the same do not amount to manufacture. The Court held that the word manufacture is understood to mean bringing into existence a new substance. The Court drew a distinction between processing and manufacturing and held that whereas manufacture implied a change, every change could not be construed as manufacture. The relevant extract from the said decision in the case of ***Delhi Cloth & General Mills*** *(supra)* is quoted below:-

> "According to the learned counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate

> "processing" to "manufacture "and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however, minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrase. Vol.26 from an American judgment. The passage runs thus"- 'Manufacture' implies a change but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.

52. In the present case, Unit Nos.2 & 3 are engaged in printing. The raw materials used are paper, ink and other consumables which are completely distinct from the printed paper that results from the activity on in Unit Nos.2 & 3. We are unable to accept the contention that the printing does not alter the character of the paper used and there is no distinction between the raw paper and the resultant product. The purpose and usage of a blank paper is completely different from the use and purpose of a printed magazine or periodical. Once the blank paper undergoes a process of printing, the character of blank paper changes completely and the content of the printed material now becomes the identity of a printed paper. No one can say that blank paper and printed article are one and the same and in our opinion it can hardly be said that printing carried out in an industrial undertaking would not amount to manufacturing. A printed magazine or periodical even if it is not bound has a definite identity and its usage is completely different from a blank paper on which it is printed.

53. Having stated above we must add that the expression used in Section 80-I (2)(iii) of the Act is "manufacture or produce any article or thing". The word 'produce' has wider meaning than the word "manufacture". The meaning of the

word 'produce' is similar to the word "production" and it has been held by the Supreme Court in the case of ***CIT v. N.C. Budharaja & Co.*: (1993) 204 ITR 412 (SC)** that while every manufacture can be characterized as production, every production need not amount to manufacture. The quoted passage from the said decision of the Supreme Court is as under:

> "The word 'production' has a wider connotation than the word 'manufacture'. While every manufacture can be characterized as production, every production need not amount to manufacture……..
>
> The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods".

54. The expression used in Section 80-I(2)(iii) of the Act is much wider and, thus, would take in its sweep any article that may be manufactured or produced. The house of lords in the case of ***Long Hurst v. Gild Ford Godalming & District, Wider Board*: [1961] 3 AIIER 545** had held that water in filter beds is an article. The Court in that case was considering the definition of factory which was defined to mean "any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely: (a) the making of any article or of part of any article; or (b) the altering, repairing, ornamenting, finishing, cleaning, or washing, or the breaking-up or demolition of any article; or (c) the adapting for sale of any article; being premises in which, or within the close or curtilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control".

55. The Shorter Oxford English Dictionary defines 'article' to mean "A particular material thing (of a specified class); a commodity; a piece of goods or property". The meaning of the word "thing" is wider and the meanings ascribed to the word "thing" by the shorter Oxford English Dictionary includes "an inanimate material object", "a material substance", "That which one possesses: property, wealth".

56. It is apparent that the expression "article or thing" is extremely wide. The question thus arises is whether the printed paper which is produced in Unit Nos.2 & 3 falls within the sweep of the expression 'article' or 'thing'. We are unable to think of any reason to exclude the printed paper produced by the assessee in Unit Nos.2 & 3 from the ambit of the expression 'article' or 'thing'. The language of Section 80-I (2)(iii) of the Act, thus clearly, indicates that Unit Nos.2 & 3 do "manufacture or produce an article or thing".

57. The Supreme Court in the case of ***Commissioner of Income Tax v. SESA Goa Limited***: **(2004) 271 ITR 331 (SC)** considered the question whether extraction and processing of iron ore amounted to manufacture or not in the context of availability of investment allowance under section 32(A) of the Act in respect of machinery used in the mining activity. In that case, revenue contended that processing of iron ore did not produce any new product and thus the benefit of Section 32(A) of the Act was not available to the assessee. As per section 32(A)(2)(b)(iii) of the Act, deduction on account of investment allowance is available to the assessee in respect of a plant owned by the assessee which is wholly used for the purpose of assessee's business in an industrial undertaking for the purposes of the business of "construction or manufacture or production of any article or thing". The Supreme Court noted that the meaning of the word production was defined only in the Oxford English Dictionary as "amongst other

things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort" and this definition has been accepted by the Supreme Court in an earlier decision in the case of ***Chrestian Mica Industries Ltd. v. State of Bihar***: **[1961] 12 STC 150**. The Court further held that the definition of the word 'production' was wide enough to include the production of mineral ores and ores would fall within the expression "a thing". Having held that the word "production" was much wider than manufacture, the Supreme Court felt that it was not necessary to examine the question whether the mined ore was commercially a new product. In the present context also, although we have held that in the facts of this case producing printed paper does amount to manufacture as a new article or a thing known to market comes into existence. It is not necessary that an industrial undertaking must manufacture a commercially new product in order to fulfill the condition as specified in Section 80-I(2)(iii) of the Act. Since, in any event production of any article or thing by an industrial undertaking would be sufficient to entitle the industrial undertaking to claim that the condition under Section 80-I(2)(iii) of the Act was fulfilled. Indisputably, printed paper falls within the meaning of the expression "an article or thing" and whether the same is marketable as new product is not relevant. The Supreme Court has also held in the case of ***N. C. Budharaja & Co.*** *(supra)* that by products, intermediate products and residual products that emerge in the case of manufacture are also to be included in the word 'production' or 'produce'. Thus, even if the printed material as produced by Unit Nos.2 & 3 is taken as an intermediate product which requires to be further bound for making it marketable, the word produce occurring in Section 80-I(2)(iii) of the Act would include it within its ambit.

58. The decision of the Supreme Court in the case of ***N. C. Budharaja & Co.*** *(supra)* and ***Sesa Goa Limited*** *(supra)* have been followed by the Supreme Court

in the later decision of ***India Cine Agencies v. Commissioner of Income Tax***: **(2009) 308 ITR 98**. In this case the Supreme Court accepted that the meaning of the word "production" or "produce" was wide enough to include conversion of jumbo rolls of photographic films into small flats and rolls in the desired sizes and held that the benefits of section 80-I of the Act would be available in respect of an industrial undertaking engaged in such activity.

59. We, accordingly, reject the contention of the revenue that Unit Nos.2 & 3 fail to fulfill the conditions as specified in Section 80-I(2)(iii) of the Act.

60. The next issue which has been raised on behalf of the revenue is that the benefit of Section 80-I of the Act should be denied to the assessee as Unit Nos.2 & 3 have been formed by splitting up of the business of the assessee and thus, the condition under Section 80-I(2)(i) of the Act has not been met.

61. The contention that Unit Nos.2 & 3 do not qualify the condition under Section 80-I(2)(i) of the Act has not been urged before any of the authorities and has been argued for the first time before us. However, we find that before the CIT (Appeals) and the Tribunal it was urged on behalf of the revenue that Unit Nos.2 & 3 were not independent Units and were functioning cohesively with the Unit No. 1 as the raw material of paper was procured by Unit No.1 which was given on job work to Unit Nos.2 & 3 for carrying on the printing activity. The other activities were carried on by Unit No.1 and the binding of periodicals was outsourced to another concern. On the basis of this it was contended on behalf of the revenue that Unit Nos.2 & 3 could not be considered as industrial undertakings on account of the interdependence on Unit No.1.

62. Mr Sahni has cited the decision of this Court in the case of ***Commissioner of Income Tax v. Hindustan General Industries Limited*: [1982] 137 ITR 0851**

and drawn our attention to the following passage from the said judgment in support of his contention that since Unit No.1 also carried out printing activity and Unit Nos.2 & 3 also carrying on same activity for Unit No.1, the duly established industrial undertaking failed the condition as specified under Section 80-I(2)(i) of the Act:-

> "This leaves us with the question as to whether the new undertaking can be said to have been formed by splitting up or the reconstruction of a busi-ness already in existence. We do not think that the present case comes within the words, "splitting up of the business already in existence." This expression indicates a case where the integrity of a business earlier in existence is broken up and different sections of the activities previously conducted are carried on independently. In the present case, there is no finding that the Unity and integrity of the business or undertaking which had been established at Qutab Road factory suffered in any manner as a result of the establishment of the new Unit."

63. We are unable to accept the contention as raised on behalf of the revenue that there is no material to indicate that the integrity of the business carried out by Unit No.1 or the integrity of Unit had been broken in any manner. Admittedly, Unit No.1 continues to function and carry on the business even after Unit Nos.2 & 3 were established. As stated earlier, it is not disputed that Unit Nos.2 & 3 were established in addition to the existing Unit and were not formed by transfer of any asset from Unit No.1. Unit Nos.2 & 3 contained highly sophisticated machines capable of carrying on printing at enormous speeds. This facility of high speed printing of the quality and the kind of which Unit Nos.2 & 3 are capable of were not available in Unit No.1. Unit No. 1was mainly engaged in publication and also carried on the job of composing, processing and printing of sheet fed presses. Merely, because the activity of printing was carried on by Unit No.1 also and the Unit No.1 was utilising the capabilities of Unit Nos.2 & 3 by getting job work done from them does not lead to the conclusion that Unit

Nos.2 & 3 had been formed by splitting of the business of Unit No.1. The test whether industrial undertaking fulfills the condition as imposed under Section 80-I(2)(i)of the Act is not whether some part of the business of an assessee is carried on by the newly established undertaking but whether the newly established undertakings are formed by splitting up or reconstruction of the business of the existing Unit.

64. In the case of ***Textile Machinery Corporation Ltd.*** (supra), the Supreme Court held that the answer whether a new industrial undertaking was stated to be formed by splitting up or reconstruction of the existing business would depend upon the facts of each case. In that case, the Supreme Court was considering the exemption from tax liabilities as available to an assessee under Section 15C of the Income Tax Act, 1922. The condition imposed under Section 15C(2)(i) of the Income Tax Act, 1922 is similar to the language of Section 80-I2(i) of the Act. The Section 15C of the Income Tax Act, 1922, *inter alia,* applied to industrial undertakings which were "not formed by splitting up, or reconstruction of, business already in existence or by transfer to a new business of building, machinery of plant previously used in any other business ." In the said case the Supreme Court has held as under:-

> "There is great scope for expansion of trade and industry. The fact that an assessee by establishment of a new industrial undertaking expands his existing business, which he certainly does, would not, on that score, deprive him of the benefit under Section 15-C. Every new creation in business is some kind of expansion and advancement. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under Section 15-C or not. In order that the new undertaking can be said to be not formed out

of the already existing business, there must be a new emergence of a physically separate industrial Unit which may exist on its own as a viable Unit."

65. The Supreme Court further held that if the new industrial undertaking could survive even after cessation of the principal business of the assessee the same cannot be but new separate industrial undertakings which would qualify for an appropriate exemption under Section 15C of the Income Tax Act, 1922. Whether the new industrial undertaking produces the same commodities or different ones or whether the products of the new industrial undertakings were consumed by the assessee in the old business was not considered by the Court as relevant. The essential test that was laid down was whether the new industrial Unit in the true sense represented industrial undertakings independent from the existing one inasmuch as they can independently stand and function as separate Units. The relevant extract from the decision of the Supreme Court in the case of ***Textile Machinery Corporation Ltd.*** (supra) is quoted below:-

"Section 15-C partially exempts from tax a new industrial Unit which is separate physically from the old one, the capital of which and the profits thereon are ascertainable. There is no difficulty to hold that Section 15-C is applicable to an absolutely new undertaking for the first time started by an assessee. The cases which give rise to controversy are those where the old business is being carried on by the assessee and a new activity is launched by him by establishing new plants and machinery by investing substantial funds. The new activity may produce the same commodities of the old business or it may produce some other distinct marketable products, even commodities which may feed the old business. These products may be consumed by the assessee in his old business or may be sold in the open market. One thing is certain that the new under-taking must be an integrated Unit by itself wherein articles are produced and at least" a minimum of ten persons with the aid of power and a minimum of twenty persons without the aid of power have been employed. Such a new

> industrially recognisable Unit of an assessee cannot be said to be reconstruction of his old business since there is no transfer of any assets of the old business to the new undertaking which takes place when there is reconstruction of the old business. For the purpose of Section 15-C the industrial Unite set up must be new in the sense that new plants and machinery are erected for producing either the same commodities or some distinct commodities."

66. In the case of ***Indian Aluminium Co. Ltd.*** (supra)**,** the Supreme court was considering the case of an assessee who was engaged in producing aluminum ingots from ore at four different manufacturing centres. During the relevant previous year, the assessee established another manufacturing centre at a different location and further undertook expansion of the existing centres by setting up additional undertakings at two of the existing centres adjacent to the existing Units. The Supreme Court upheld the decision of the Tribunal in allowing the benefit of section 15C of the Income Tax Act, 1922 by applying their decision in the case of ***Textile Machinery Corporation Ltd.*** (supra). Thus, even in cases where an assessee augments its capacities by establishing new industrial undertakings to carry on the same business, the benefit of section 80-I of the Act would be available to the assessee in respect of the newly established undertakings.

67. Keeping in view the ratio of the aforementioned, we are unable to find any material from the records to support the contention that Unit Nos.2 & 3 have been formed by splitting up of the business of the assessee and thus, the condition under Section 80-I(2)(i) of the Act has not been met. It is recorded in the assessment order that the assessee had explained that Unit No.1 (for which deduction under Section 80-I of the Act has not been claimed) is "primarily engaged in publishing of magazines/newspapers as well as in printing on sheet

fed presses, composing and processing". Admittedly, the activities being carried on by the assessee in Unit No.1 have not been discontinued and the Unit Nos.2 & 3 were established in addition to Unit No.1. It has been admitted before us that neither any machinery nor any equipment were transferred from Unit No. 1 to Unit Nos.2 & 3.

68. In order to qualify under Section 80-I(2)(i) of the Act, the newly established industrial undertaking should not be formed by splitting, or reconstruction of a business already in existence. The key word in the condition imposed under section 80-I(2)(i) of the Act is "formed". Thus, what is to be considered is whether formation of new industrial undertaking was a result of splitting up of business. We are unable to agree that a new undertaking would be disqualified under section 80-I(2)(i) of the Act simply for the reason that the activity carried on in a new undertaking was of a similar nature to one of the activities being carried on in the existing undertaking even though the new industrial undertaking is established in addition to the existing one without transfer of any assets to the newly formed undertaking. In our view, the test to be applied is whether the new undertaking has been formed as an undertaking independent of the existing undertaking and is capable of carrying on its activity independent of the existing Unit. In this regard, we agree with the view taken by the Tribunal that the test of whether Unit Nos.2 & 3 were independent undertakings or not is not to be adjudged on the basis whether the said Units were carrying on printing work for Unit No.1 but whether the Units were capable of independently carrying on the business for which they were formed. The assessee had contended that whereas Unit No.1 was publishing house Unit Nos.2 & 3 were printing houses and the work of printing carried out by through high speed printing machines was a business which could be carried out independent of Unit No.1. The assessee had also been given examples of entities who were

engaged in carrying on the printing activity on a standalone basis and were not involved in publication. Indisputably, printing activity can be carried out by an entity for any person who may have a requirement for the same and it is not necessary that every person who engages in the business of printing should necessarily also be involved in publishing. In view of the same, we are not inclined to entertain the contention raised on behalf of the revenue that Unit Nos.2 & 3 fail to fulfill the condition under Section 80-I(2)(i) of the Act.

69. The next controversy that needs to be addressed is whether it was open for the Assessing Officer to deny the benefit of Section 80-I of the Act to the assessee having allowed benefit to the assessee in the preceding three years. It is contended on behalf of the assessee that it was necessary for the Assessing Officer to be consistent with the assessment for the earlier years. The question as to the qualification of Unit Nos. 2 & 3 as industrial undertakings arose in the earlier years and the Assessing Officer had accepted that Unit Nos.2 & 3 qualified for a deduction under Section 80-I of the Act in the earlier years. By virtue of section 80-I(5) of the Act deduction under section 80-I of the Act was available to an assessee in the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things (such assessment year being the initial assessment year) and each of the seven assessment years immediately succeeding the initial assessment year. This necessarily implied once the issue as to eligibility under section 80-I of the Act was examined and allowed in the initial assessment, the same was allowable in the subsequent years also unless there was any material change in the succeeding years.

70. It is well settled law that the principles of *res judicata* do not apply to income tax proceedings and assessment for each year is an independent

proceeding. It is now equally well established that issues that have been settled and accepted over a period of time should not be revisited in subsequent assessment years in absence of any material change which would justify the change in view.

71. The Supreme Court in the case of ***Radhasoami Satsang*** (supra) has held that unless there is a material change in justifying the revenue to take a different view the earlier view which has been settled and accepted of a several years should not be disturbed. The relevant extract from the said judgment is quoted below:-

> "We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a Unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.
>
> On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter- and if there was not change it was in support of the assessee- we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-Tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under ss. 11 and 12 of the Income Tax Act of 1961."

72. The decision of the Supreme Court in the case ***Radhasoami Satsang*** (supra) was on the facts where the question as to the entitlement for exemption

under Section 4(3)(i) of the Income Tax Act, 1922 had not been granted for the assessment year 1939-40. The assessee had challenged the assessment order which was accepted by the Appellate Assistant Commissioner who upheld the assessee's claim for exemption. This view was consistently followed by the successive Assessing Officers till 1963-64. In these circumstances, the Supreme Court held that the view that had been settled and accepted over a period of years should not be allowed to be disturbed.

73. This court in the case of ***CIT v. Lagan Kala Upvan*** *(supra),* following the decision of the Supreme Court in the case of ***Radhasoami Satsang*** *(supra)* has also held that where a particular view has been accepted by the Assessing Officer to several years the same cannot be permitted to be departed from unless there is some material facts that justified such a change. Similar view has been expressed by this court in the case of ***Modi Industries Limited*** *(supra)*. In this case, while considering a claim of deduction made by an assessee under section 80J of the Act, this High Court held as under:-

> "The second question relates to the claim of the assessee for deduction under Section 80J of the Income Tax Act in respect of its new unit namely 10 ton Furnance Division and Steel Unit 'B'. This case pertains to the assessment year 1976-77. A perusal of the order of the Assessing Officer would reveal that for the first time, claim under Section 80J of the Act was made by the assessee in the assessment year 1973-74. The assessee was denied that claim by the Assessing Officer. For this reason, the Assessing Officer denied the claim in this assessment year as well, taking note of the fact that the matter pertaining to 1973-74 was pending before the Income Tax Tribunal.
>
> It is a matter of record that the appeal filed by the assessee for the assessment year 1973-74 was allowed by the Income Tax Appellate Tribunal. The effect thereof was that

> the assessee was granted the requisite deduction under Section 80J of the Act for the assessment year 1973-74. The Department has sought reference under Section 256(1) of the Act which reference application was also rejected by the Tribunal. Likewise, for the assessment years 1974-75 and 1975-76, the claims of the assessee were allowed. The assessee, once given the deduction under Section 80J of the Act is entitled to such a deduction for a period of 5 years. If the assessee has been allowed the benefit of Section 80J in the last three preceding years, there is no reason to deny the same for the instant assessment year. We, therefore, answer this issue also in favour of the assessee and against the revenue."

74. In the present case, the claim of the assessee under section 80-I of the Act was examined and allowed by the Assessing officer for three years preceding the assessment year 1991-1992. It is relevant to note that assessments in the earlier years i.e relating to assessment years 1988-89, 1989-1990 and 1990-1991 has not been disturbed by the Assessing Officer and there has been no change that could justify the Assessing officer adopting a different view in the assessment years 1991-92 and thereafter. As stated hereinbefore, in certain cases where the issues involved have attained finality on account of the subject matter of dispute having been finally adjudicated, the question of reopening and revisiting the same issue again in subsequent years would not arise. This is based on the principle that there should be finality in all legal proceedings. The Supreme Court in the case of ***Parashuram Pottery Works Co. Ltd. v. ITO*****: [1977] 106 ITR 1** had held as under:-

> "that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

75. In the facts of the present case, where although the Assessing officer has

allowed the assessee deduction under section 80-I of the Act in the preceding years, one may still have certain reservations as to whether the issue of eligibility of Unit nos. 2 and 3 fulfilling the conditions has been finally settled, since the question has not been a subject matter of any appellate proceedings in the years preceding the assessment year 1991-92. However, there is yet another aspect which needs to be considered. By virtue of section 80-I(5) of the Act, deduction under section 80-I of the Act is available to an assessee in respect of the assessment year (referred to as the initial assessment year) relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning or the company commences work by way of repairs to ocean-going vessels or other powered craft. Such deduction is also available for the seven assessment years immediately succeeding the initial assessment year. Surely in cases where an assessee is held to be eligible for deduction in the initial assessment year, the same cannot be denied in the subsequent assessment years on the ground of ineligibility since the set of facts which enable an assessee to claim to be eligible for deduction under section 80-I of the Act occur in the previous year relevant to the initial assessment year and have to be examined in the initial assessment year. In such cases, where the facts on the basis of which the deductions are claimed are subject matter of an earlier assessment year and do not arise in the current assessment year, it would not be possible for an Assessing Officer to take a different view in the current assessment year without altering or reopening the assessment proceedings in which the eligibility to claim the deduction has been established.

76. In cases where deduction is granted under Section 80-I of the Act, the applicability of the Section is determined in the year in which the new industrial

undertaking is established. The qualification as to whether any industrial undertaking fulfills the condition as specified under Section 80-I of the Act has to be determined in the year in which the new industrial undertaking is established. Although the deduction under Section 80-I of the Act is available for the assessment years succeeding the initial assessment year, the conditions for availing the benefit are inextricably linked with the previous year relevant to the assessment year in which the new undertaking was formed. In such circumstances, it would not be possible for an Assessing Officer to reject the claim of an assessee for deduction under Section 80-I of the Act on the ground that the industrial undertaking in respect of which deduction is claimed did not fulfill the conditions as specified in Section 80-I(2) of the Act, without undermining the basis on which the deduction was granted to the assessee in the initial assessment year. This in our view would not be permissible unless the past assessments are also disturbed.

77. The Assessing Officers over a period of three years being assessment years 1988-89, 1989-1990 and 1990-1991 have consistently accepted the claim of the assessee for deduction under 80-I of the Act and it would not be open for the Assessing Officer to deny the deduction under Section 80-I of the Act on the ground of non fulfillment of the conditions under 80-I(2) of the Act without disturbing the assessment for the assessment years relevant to the previous year in which the Unit Nos.2 & 3 were established.

78. This view has also been accepted by a Division Bench of Gujarat High Court in the case of ***Saurashtra Cement & Chemical Industries*** *(supra).* In that case, the Gujarat High Court held that where relief of a tax holiday had been granted to an assessee in an initial assessment year in which the conditions for grant of tax holiday had to be examined, denial of relief in the subsequent years

would not be permissible without disturbing the assessment in the initial assessment year. The relevant extract from the decision of the Gujarat High Court in ***Saurashtra Cement & Chemical Industries*** *(supra)* is quoted below:-

> "The next question to which the Tribunal addressed itself, and no our opinion rightly, was whether the Tribunal was justified in refusing to continue the relief of tax holiday granted to the assessee-company for the assessment year 1968-69, in the assessment year under reference, that is, 1969-70, without disturbing the relief granted for the initial year. It should be stated that there is no provision in the scheme of s. 80J similar to the one which we find in the case of development rebate which could be withdrawn in subsequent years for breach of certain conditions. No doubt, the relief of tax holiday under s. 80J can be withheld or discontinued provided the relief granted in the initial year of assessment is disturbed or changed on valid grounds. But without disturbing the relief granted in the initial year, the ITO cannot examine the question again and decide to withhold or withdraw the relief which has been already once granted."

79. The Division Bench of the Bombay High Court in the case of ***Paul Brothers*** *(supra)* has also adopted the view expressed by the Gujarat High Court in the case of ***Saurashtra Cement & Chemical Industries*** *(supra)***.**

80. Following the aforesaid decisions, we hold that in facts of the present case Unit Nos. 2 & 3 cannot be stated to have been formed by splitting up or in reconstruction of existing business.

81. For the reasons stated above, we answer the first question referred in ITR Nos.49-50/1996 in the negative and against the revenue. The second question in ITR Nos.49-50/1996 as well as the questions framed in ITA Nos.151/2002, 480/2005 and 302/2004 are answered in the affirmative and in favour of the assessee. ITR Nos.49-50/1996 are disposed of as above and the appeals preferred

on behalf of the revenue in ITA Nos.151/2002, 302/2004 and 480/2005 are dismissed. No order as to costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

MAY 31, 2013
MK/RK

HIGH COURT OF DELHI
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