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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 1082/2005**

Reserved on: 4th May, 2017
Decision on: July 20, 2017

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Ashok Manchanda, Senior Standing Counsel and Mr. Raghvendra Singh, Junior Standing Counsel

versus

INTERNATIONAL TRACTORS LTD. .....Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Mr. Dushyant Monocha, Mr. Ashish Gupta and Ms. Bhavita Kumar, Advocates.

\+ **ITA 690/2008**

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Dileep Shivpuri, Senior Standing Counsel and Mr. Sanjay Kumar, Junior Standing Counsel

versus

INTERNATIONAL TRACTORS LTD. .....Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Mr. Dushyant Monocha, Mr. Ashish Gupta and Ms. Bhavita Kumar, Advocates

\+ **ITA 225/2009**

COMMISSIONER OF INCOME TAX .....Appellant

Through: Mr. Ashok Manchanda, Senior Standing Counsel and Mr. Raghvendra Singh, Junior Standing Counsel

versus

INTERNATIONAL TRACTORS LTD. .....Respondent
Through:Mr. Ajay Vohra, Senior Advocate with Mr. Dushyant Monocha, Mr. Ashish Gupta and Ms. Bhavita Kumar, Advocates.

\+ **ITA 1189/2009**

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Ashok Manchanda, Senior Standing Counsel and Mr. Raghvendra Singh, Junior Standing Counsel

versus

INTERNATIONAL TRACTORS LTD. .....Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Mr. Dushyant Monocha, Mr. Ashish Gupta and Ms. Bhavita Kumar, Advocates.

\+ **ITA 251/2010**

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Ashok Manchanda, Senior Standing Counsel and Mr. Raghvendra Singh, Junior Standing Counsel

versus

INTERNATIONAL TRACTORS LTD. .....Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Mr. Dushyant Monocha, Mr. Ashish Gupta and Ms. Bhavita Kumar, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

J U D G M E N T

% **20.07.2017**

Dr. S.Muralidhar, J.

1. These are appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') directed against the various orders of the Income Tax Appellate Tribunal ('ITAT').

Questions of law

2. The questions framed for consideration in each of the appeals (with the corresponding appeal number in the ITAT) read thus:

High Court Appeal Number	Assessment Year	Date of Order	ITAT Number	Questions of law
ITA No. 1189/2009	1998-99	20th June, 2008	ITA No. 4571/Del/2005	1. Whether the ITAT was correct in law in holding that there was no failure on the part of the Assessee to disclose truly and fully all material facts and in thereby concluding that the re-opening of the assessment was not justified in view of the proviso to Section 147 of the Act? 2. Whether the ITAT was correct in law in holding that

				for the purpose of deduction under Section 80-IA of the Act, the Assessee should be a small scale undertaking on the last date of the previous year relating to the initial/first assessment year and that the said requirement need not be satisfied in subsequent years?
ITA No. 225/2009	2000-01	20th June, 2008	ITA No. 4572/Del/2005	Whether the ITAT was correct in holding that for the purpose of deduction under Section 80-IA of the Act the Assessee should be a small scale undertaking on the last day of the previous year relevant to the initial or first Assessment Year and that the said requirement need not be satisfied in the subsequent Assessment Years?
ITA No. 690/2008	2001-02	17th August, 2007	ITA No. 2668/Del/2005	Whether the ITAT was correct in holding that for the purposes of deduction under Section 80-IA of the Act the Assessee should be a small scale undertaking on the last day of the previous year relevant to the initial or the first Assessment Year and that the said requirement need not be satisfied in the subsequent Assessment Years?
ITA No. 1082/2005	2001-02	28th March, 2005	ITA No. 469/Del	1. Whether ITAT was correct in law in holding that the CIT was not justified in

			/2004	invoking the provisions of Section 263 of the Act as the order passed by the Assessing Officer was neither erroneous nor prejudicial to the interest of the Revenue? 2. Whether the ITAT was correct in holding that for purposes of deduction under Section 80-IA of the Act the Assessee should be the small scale undertaking on the last day of the previous year relevant to the initial/first assessment year and that the said requirement need not be satisfied in the subsequent assessment. 3. Whether the ITAT was correct in law in holding that the CIT was not correct in directing the Assessing Officer to make addition on account of differences in valuation of closing stock despite the fact that the selling and administrative expenses of Rs.6,00,222 were neither taxed in the earlier year nor added in the present year by the Assessee? 4. Whether ITAT was correct in law in deleting the addition of Rs.70,00,000

				proposed by CIT being interest receivable on the outstanding despite the fact that the Assessee was adopting mercantile system of accounting?
ITA No. 251/2010	2002-03	5th Septemb er, 2008	ITA No. 89/Del/ 2006	1. Whether the ITAT was correct in law in holding that for the purpose of deduction under Section 80-IA of the Act, the Assessee should be a small scale undertaking on the last date of the previous year relating to the initial/first assessment year and that the said requirement need not be satisfied in subsequent years? 2. Whether ITAT was correct in law in deleting the addition made by the Assessing Officer invoking provisions of Section 40(a)(i) of the Act?

Background facts

3. The background facts are that the Respondent/Assessee was incorporated in 1995 and is engaged in the business of manufacturing and trading agricultural tractors/tractor parts and components. The Assessee commenced its production in the Financial Year ('FY') 1997-98 and treated it as the 'initial assessment year' for the purposes of claiming the benefit of Section 80-IA of the Act. In terms of Notification No. SO 232(E) dated 2nd April, 1991, an industrial

undertaking could be treated as a small scale undertaking under Section 11B of the Industries (Development and Regulation) Act, 1951 ('IDR Act') if its total investment in fixed assets i.e., Plant & Machinery ('P&M') did not exceed Rs. 60 lakhs. The notification was operative up to 9th December, 1997.

4. During the AY 1997-98, the total investment in fixed assets worked out to Rs. 1.07 crores. The stand of the Revenue was, therefore, that in the initial year the Assessee was not a small scale industrial undertaking and was not entitled to the deduction under Section 80-IA of the Act. While the Assessee claimed this deduction in the original return filed for AY 1997-98, it did not make any such claim in its revised return. Further, no such deduction was allowed by the AO for the AY 1997-98.

5. A fresh notification dated 9th December, 1997 was issued by the Central Government under Section 11B of the IDR Act. The limit of investment by a Small Scale Industry ('SSI') in fixed assets in the form of P&M was raised from Rs. 60 lakhs to Rs. 3 crores. This notification became operative from 10th December, 1997. In terms of Schedule 4 to the Audit Report, the total investment made by the Assessee as on 31st March, 1998 in fixed assets i.e., in P&M (including cost of material handling equipment, electric fittings, generators and computers etc.) worked out to Rs. 3.37 crores. The Assessee also applied to the Ministry of Industries for being registered as a Medium Scale Unit and it, in fact, got registered as a Medium Scale Industry ('MSI').

6. By a subsequent notification dated 24th December, 1999 issued by the Central Government, the limit of investment in fixed assets in P&M by an SSI got reduced from Rs. 3 crores to Rs. 1 crore. This became effective from 25th December, 1999. The case of the Revenue is that this notification also applied to the Assessee since it never obtained a permanent registration as an SSI unit. Further, as on 31st March, 1999, the Assessee's total investment in P&M worked out to more than Rs. 6.42 crores. This increased to Rs. 19.82 crores as on 31st March, 2000 and approximately Rs. 23 crores as on 31st March, 2001. The case of the Revenue, therefore, is that the Assessee was never an SSI.

7. The case of the Assessee, on the other hand, was that it was an SSI in the initial year i.e., AY 1997-98 as was evident from the SSI registration certificate issued in its favour. Its investment in P&M in terms of notification dated 1st January, 1993 under the IDR Act was well below the stipulated limit of Rs. 60 lakhs. It was after going through all the details that the Assessing Officer ('AO') dealt with the issue of deduction under Section 80-IA of the Act. A total deduction of Rs. 1,01,50,131 was claimed by the Assessee but the AO allowed only an amount of Rs. 95,59,064.

Facts relevant for AYs 1998-99 to 2000-2001

8. It transpires that for the AY 1999-00, after the AO allowed the deduction under Section 80-IA of the Act, the Commissioner of Income Tax ['CIT'] exercised jurisdiction under Section 263 of the Act. It was held by the CIT by an order dated 11th July, 2003 that the deduction under Section 80-IA of the Act ought not to have been granted to the

Assessee as it was, in fact, a medium scale or large scale industrial undertaking during the AY in question. The CIT opined that the allowing of the deduction would go against the legislative intent. The CIT observed that: "Obviously, the legislature did not intend to give the benefit of deduction under Section 80-IA to these units continuously for 10 years as that would adversely affect the interests of SSIs in the competitive market." The CIT, accordingly, directed the AO to withdraw the deduction allowed under Section 80-IA of the Act and enhance the taxable income of the Assessee for AY 1999-00 by Rs. 3.61 crores.

9. Within three days thereafter, on 14th July, 2003, the AO issued a notice to the Assessee under Section 148 of the Act seeking to re-open the assessment for the AY 1998-99. This has given rise to the first question framed in the appeal relevant to this AY.

10. The facts relevant to the AY 2000-01 (ITA No. 225/2009) are that the return was filed by the Assessee for this AY on 30th November, 2000. Initially, no deduction under Section 80-IA of the Act was claimed. A revised return was filed on 12th October, 2001 claiming deduction of Rs. 6.40 crores under Section 80-IA of the Act. The case was taken up for scrutiny and the assessment was completed by the AO on 29th January, 2001 by restricting the deduction under Section 80-IA of the Act at Rs. 95,59,064. The Assessee challenged the assessment order before the CIT (A) who partly allowed the appeal by the order dated 4th March, 2002. The deduction under Section 80-IA of the Act was allowed to the extent of Rs. 1,03,31,268.

11. On the basis of the order passed by the CIT under Section 263 of the Act for the AY 1999-00 on 11th July, 2003, the AO issued a notice under Section 148 of the Act seeking to re-open the assessment on the ground of wrongful claim of deduction by the Assessee under Section 80-IA of the Act. This notice was issued on 14th July, 2003. In response thereto, the Assessee filed a return on 13th August, 2003 declaring the same income as per the revised return. A notice was issued to the Assessee on 13th May, 2004 under Section 142 (1) of the Act requiring it to submit the details of P&M in terms of Section 11B of the IDR Act. The AO held that the total investment as per these details worked out to Rs. 9,27,11,983 whereas the ceiling as per the notification dated 24th December, 1999 for an SSI was Rs. 1 crore only. By the assessment order dated 28th February, 2005, the above deduction was disallowed and added to the taxable income of the Assessee.

12. By the re-assessment order dated 14th July, 2003 for AY 1998-99, the AO re-calculated the opening value of P&M for the preceding year as Rs. 75,24,787/- and after adding it to the investments in P&M during the AY, calculated the total value of P&M as Rs. 3,03,07,705/-. It was held that since on the last date of the previous financial year i.e., as on 31st March, 2000, the investment in P&M was more than the limit prescribed for SSIs, the deductions under Section 80-IA of the Act were not allowable. The taxable income from the business was computed at Rs. 3,44,40,345/-, income from other sources at Rs. 42,87,350/- and the total taxable income at Rs. 3,87,27,695/-. It must be recalled that this re-assessment order was under Section 148/143(3) of the Act.

13. Feeling aggrieved, the Assessee went in appeal before the CIT(A) which by the order dated 9th September, 2005 held that the action under Section 263 of the Act was not warranted. The order passed thereunder was quashed. Further, since the ITAT had for the subsequent AY i.e., 1999-00 held that the Assessee was entitled to deduction under Section 80-IA of the Act, it was held that the Assessee was entitled to the said deduction for the AY in question i.e., 1998-99. The proceeding initiated under Section 147 of the Act was held to be *void ab initio*.

14. Meanwhile, as already noticed, for AY 1999-00, the ITAT allowed the Assessee's appeal by order dated 1st March, 2004. Incidentally, that order is also under challenge by the Revenue in this Court by way of ITA No. 497/2004. Since that appeal involved an additional point regarding the impugned order not having been signed by both the members of the ITAT before one of them retired, it has been kept for hearing on a separate date.

15. As far as AY 2000-01 is concerned, an assessment order was passed on 28th February, 2005 under Section 143(3)/263 of the Act disallowing the deduction under Section 80-IA on the ground that the investment made in P&M up to 31st March, 2000 was more than the prescribed limit. By the order dated 1st September 2005, the CIT(A) allowed the Assessee's appeal thereby allowing the deduction.

16. Against the orders of the CIT(A) dated 9th September, 2005 for AY 1998-99 and 1st September, 2005 for AY 2000-01, the Revenue filed ITA Nos. 4571/De1./2005 and ITA No. 4572/De1/2005 respectively.

By a common order dated 20th June, 2008, the ITAT dismissed both the appeals of the Revenue and held that the Assessee was entitled to deduction under Section 80-IA of the Act.

Facts relevant for AY 2001-02

17. Turning now to AY 2001-02, by the assessment order dated 7th May, 2004 under Section 143 (3) read with Section 263 of the Act, the AO disallowed the deductions under Section 80-IA of the Act. The appeal filed by the Assessee against the said order was allowed by the CIT (A) by an order dated 24th March, 2005. Against the said order, ITA No. 2668/Del/2005 was filed by the Revenue before the ITAT. In the said appeal for AY 2001-02, the Assessee also filed cross objections which the Assessee subsequently withdrew as dismissed. The ITAT by the order dated 17th August, 2007 dismissed the Revenue's appeal and held that the Assessee was entitled to the deduction under Section 80-IA of the Act.

18. Against the said order, the appeal filed by the Revenue in this Court is ITA No. 690/2008. The Revenue filed a separate ITA No. 1082/2005 against the same order. By order dated 28th March, 2005, the ITAT allowed the Assessee's appeal being ITA No. 469/Del/2004 challenging the order passed by the CIT on 5th December, 2003 under Section 263 of the Act. The ITAT agreed with the Assessee that the CIT was not justified in invoking Section 263 of the Act.

19. Consequently, ITA Nos. 690/2008 and 1082/2005 were filed by the Revenue in this Court pertaining to the same AY i.e., 2001-02. While

the question of law pertaining to ITA No. 690/2008 concerns Section 80-IA of the Act, the question of law in ITA No. 1082/2005 pertains essentially to Section 263 of the Act. They are also concerned with the directions given by the CIT to the AO to make additions on account of the difference in valuation of the closing stocks and interest receivable on outstanding balance.

Facts relevant for AY 2002-03

20. Turning now to AY 2002-03, the AO by an order dated 28th March, 2005 declined to allow deductions under Section 80-IA of the Act after noticing that under Notification dated 24th December, 1999, the ceiling for investment in SSIs was Rs. 1 crore whereas on the last date of the previous year i.e., 31st March, 2002, the investment for P&M was to the tune of Rs. 24.02 crores. Additionally, the AO also made additions under Section 40(a)(i) of the Act for failure by the Assessee to deduct tax at source in regard to the payments made to a French company as miscellaneous expenses and salary to foreign personnel under a Technical Collaboration Agreement.

21. The Assessee's appeal was allowed by the CIT(A) by an order dated 25th October, 2005. Relying upon the orders passed by the ITAT for AYs 1999-00 and 2001-02, the deduction under Section 80-IA of the Act was allowed. Further, as regards Section 40(a)(i) of the Act, the CIT(A) observed that the payment was only a re-imbursement of the expenditure and not payment of royalty and, therefore, the said provision was not applicable. Hence, the said addition was deleted.

22. The Revenue's appeal (ITA No. 89/Del/2006) was dismissed by the ITAT by order dated 5th September, 2008 following its orders dated 20th June, 2008 for AYs 1998-99 and 2000-01.

Submissions of counsel for the Revenue

23. Mr Ashok Manchanda, learned Senior Standing counsel appearing for the Revenue, submitted as under:

(i) The Assessee was not a small scale industry in the 'initial assessment year' i.e., AY 1997-98 as the investment in P&M was above Rs. 60 lacs, which was beyond the permissible limit. Even for the AY 1999-00, the investment in P&M was Rs. 6.42 crores which was more than double the specified limit of Rs. 3 crores. In the first/initial year i.e., 1997-98, the deduction under Section 80-IA was neither claimed by the Assessee nor allowed. Therefore, there was no occasion for the AO to examine if the Assessee fulfilled the requisite pre-conditions for claiming deduction under Section 80-IA of the Act for AY 1997-98. Even for AYs 1999-00, 2000-01, 2001-02, 2002-03, the Assessee had not claimed deduction under Section 80-IA of the Act in its returns initially. The deductions were claimed only in the revised returns. In none of the abovementioned AYs or statutory Tax Audits Reports furnished by the Assessee along with the Returns of Incomes was it specified or certified that that Assessee was eligible for deduction under Section 80-IA. This was the same even as per the Assessee's own auditor.

(ii) The certificate issued to the Assessee on 24th February, 1997 by Project Manager of the District Industries Centre, Hoshiarpur under which the Assessee was registered as an SSI for 'Assembling of Tractors' provided that an Undertaking would stop enjoying the status of an SSI as and when the total machinery exceeded the prescribed limit. In each year, the claim was always being made by attaching only an Income Calculation Sheet signed by a representative of the Assessee and being submitted along with the revised returns.

(iii) Section 80-IA (12) (f) uses the term 'previous year' and not 'initial investment year'. The Assessee claimed deduction for AY 1999-00 under Section 80-IA despite the fact that the investment in P&M in the previous year was Rs. 6.75 crores which exceeded the prescribed limit. Relying on the decision of this Court in ***CIT v. Natraj Stationery Products Pvt. Ltd. (2009) 312 ITR 22 (Del)*** and ***Praveen Soni v. CIT (2011) 241 CTR 542 (Del)***, it is submitted that the correct interpretation of Section 80-IA(12)(f) was to examine if, on the last date of the previous year relating to the concerned AY in which the claim under Section 80-IA was being made, the investment by the Assessee in the P&M was within the prescribed limit for being recognized as an SSI unit. Though the words 'previous year' had been used in Sections 3, 4 and 5 of the Act, they were hardly used in the whole of Sections 80-IA and 80-IB of the Act. However, in Section 80-IA(12)(f) there was a specific reference to the 'previous year' in the context of the definition of an SSI. Therefore, the SSI status of an

industrial unit had to be necessarily determined on the last date of each previous year and not just the one relevant to the initial investment year. An industry started in the latter part of a year could be so managed and arranged to qualify the criteria for an SSI unit even if it was a mega industry. If the interpretation adopted by the CIT(A) and the ITAT were to be accepted, then even big industrial houses would become eligible for deductions and that would defeat the very objective of providing the deduction.

(iv) As far as Section 263 of the Act is concerned, although this was not a question framed for AYs 1999-00, 2002-03 or even 1998-99 and 2000-01, the Court should, in the interests of justice, permit the Revenue to urge that question as it had been inadvertently omitted to be framed for the said years. It is submitted that the wrong claim made by the Assessee justified the re-opening ordered by the CIT under Section 263 of the Act. Revenue was placed reliance on the decisions in ***CIT v. Delhi Press Patra Prakashan Ltd. (2013) 355 ITR 14 (Del)***; ***Saurashtra Cement & Chemical Industries Limited v. CIT (1994) 122 CTR 329 (Guj)***; ***CIT v. Paul Brothers (1995) 216 ITR 548 (Bom)***; ***CIT v. Tata Communications Internet Services Ltd. (2012) 251 CTR 290 (Del); Ace Multi Axes Systems Ltd. v. Deputy CIT (2014) 367 ITR 266 (Kar)*** and ***CIT v. Sunder Forging*** (decision of the Punjab and Haryana High Court in ITA Nos. 242&243/2012 & 92/2014).

(v) It is further submitted that the Circulars issued by the Ministry under the IDR Act are not relevant and binding and, in any event, not applicable to the Assessee. What had to be seen is whether as per the Circulars issued by the CBDT, there were five conditions required to be fulfilled cumulatively if an Assessee was to claim deduction u/s 80-IA(l) of the Act. The first two conditions related to the year of formation of the industrial undertaking. These, therefore, pertained to the initial AY. However, for the other three conditions, they would have to be complied with and fulfilled year after year i.e., in every previous year. All these three conditions had to be fulfilled cumulatively. It was impermissible that out of the three conditions, one or two conditions were fulfilled in a year while the others remained unfulfilled.

24. In addition to the oral submissions, there were three written submissions filed by Mr. Manchanda. The first written submission was dated 10th April, 2017 running into 13 pages. In this written submission, Mr. Manchanda also submitted that in Form No. 10 CCB of the Income Tax Rules, 1962 ('Rules'), the Assessee had failed to disclose the relevant facts fully and truly. In para 18(e) of the said form, information had to be given in terms of 'Yes' or 'No' if the unit was an SSI on the last day of the previous year. Due to the failure on the part of the Assessee to do so for AY 1998-99, the AO was justified in re-opening the assessment under Section 148 of the Act. Likewise, re-opening for AY 2000-01 was also, therefore, justified. Mere furnishing of an SSI certificate was insufficient. It was important that for the purposes of

claiming deductions under Section 80-IA of the Act, the investments made by the Assessee for P&M did not exceed the limit on the last date of previous year.

25. Mr. Manchanda defended the orders passed by the CIT under Section 263 of the Act. He relied on the decision dated 29th November 2011 of this Court in ITA No. 973/2011 (***CIT v. DLF Power Ltd.*); *Thomson Press (India) Ltd. v. CIT (2015) 379 ITR 222 (Del); Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC); CIT v. Electro House (1971) 82 ITR 824 (SC); CIT v. Infosys Technologies Limited (2012) 214 ITR 293 (Kar.); CIT v. Abhishek Industries Limited (2006) 286 ITR 1 (P&H).***

26. Mr. Manchanda gave a second set of written submissions on 1st May, 2017, this time running into 9 pages. Apart from repeating many of the arguments already made earlier, he also referred to a host of decisions of ITAT directly on the point favouring the Revenue. The Court declines to name all of them since in any event such decisions of the ITAT are not binding on it. Mr. Manchanda added one more decision of the Karnataka High Court to this list i.e., ***Sami Labs Ltd. v. ACIT (2011) 239 CTR 510 (Kar.)***. A third set of written submissions by way of rejoinder was filed by Mr. Manchanda on 11th May, 2017 where all of the above submissions were reiterated.

Submissions on behalf of the Assessee

27. Mr. Ajay Vohra, learned Senior Counsel appearing for the Respondent/Assessee, took the Court through the Scheme of Section

80-IA and, in particular, Section 80-IA(7) which categorically stated that the benefit of deduction would be available for every subsequent AY after the 'initial assessment year' although a report had to be filed in the prescribed format in terms of Section 80-IA(8) for each AY. He submitted that once the eligibility condition was satisfied in the 'initial assessment year', then the benefit of deductions would continue for ten successive years. He submitted that the decisions in ***Praveen Soni v. CIT*** (*supra*) and ***CIT v. Natraj Stationery Products Pvt. Ltd.*** (*supra*) in fact supported the Assessee's case.

28. As regards Form 10-CCB, Mr Vohra pointed out that this came about with the bifurcation of Section 80-IA and 80-IB with effect from 1st April, 2000. Correspondingly, Form 10-CCB did not come into force till AY 2003-04. He further submitted that the said form was a composite form for different businesses. Mr. Vohra pointed out that the eligibility limit for being recognized as an SSI in terms of investments made in P&M could vary from year to year. It stood raised from Rs. 60 lacs to Rs. 3 crores for AY 1997-98 and reverted to Rs. 1 crore by notification dated 24th December, 1999. If the interpretation sought to be advanced by the Revenue were to be adopted, then the entire Section would become non-workable. The idea was to ensure that there are incentives for SSIs and to assure them of continuous deductions for at least ten years after the initial assessment year notwithstanding that in the later AYs they may seize to comply with the conditions for recognition as an SSI.

29. As far as the invocation of Section 263 of the Act is concerned, Mr. Vohra submitted that there were two conditions to be fulfilled – one that the order of the AO should have been erroneous, and the second that it should have been prejudicial to the Revenue. Except for these debatable issues, there was no justification for re-opening the assessment. Reliance was placed on ***Commissioner of Income-Tax v. Max India Ltd. (2007) 295 ITR 282 (SC)***. Mr Vohra also relied on the decisions in ***Bajaj Tempo Ltd. v. CIT (1992) 196 ITR 188 (SC); CIT v. Tata Communications Internet Services Ltd.*** (*supra*); ***Saurashtra Cement & Chemical Industries v. CIT*** (*supra*); ***CIT v. Delhi Press Patra Prakashan Ltd*** (*supra*) and ***CIT v. Sunder Forging*** (*supra*) to urge that the interpretation placed on Section 80-IA by the Revenue was untenable and that if in the previous year relating to the initial assessment year, the conditions for eligibility were satisfied, then notwithstanding that the Assessee may not have complied with those conditions of eligibility in the subsequent AYs, the deductions nevertheless should be allowed.

30. Pressing for a liberal construction of a beneficial provision, reliance was placed by Mr Vohra on the decision of ***P.R. Prabhakar v. CIT (2006) 284 ITR 548 (SC)***. He also relied on the principle of consistency and referred to the decision in ***Shasun Chemicals & Drugs Ltd. v. CIT (2016) 388 ITR 1 (SC)*** and the decision of this Court dated 11th January, 2011 in ITA No. 889/2009 (***CIT v. Rajasthan Breweries Limited***) which was upheld by the Supreme Court by dismissal of the Revenue's Special Leave Petition [CC No. 1379/ 2014 (SC)] on 7th February, 2014.

31. On the question of change in the method of valuation of inventory, reliance was placed on the decision of Madras High Court in ***CIT v. Carborundum Universal Ltd. (1984) 149 ITR 759 (Mad.)*** which was upheld by the Supreme Court by the dismissal of the Revenue's SLP in ***CIT v. Carborundum Universal Ltd. (2004) 187 ITR 38 (SC)***. Reliance was also placed on the decision of this Court in ***CIT v. Indo Rama Synthetics Ltd. (2009) 180 Taxman 35 (Del)*** and in ***CIT v. Modi Rubbers Ltd. (No. 2) (1998) 230 ITR 820 (Del)***. On the issue of reimbursement of expenses not being subjected to TDS, reliance was placed on the decision of the Supreme Court in ***DIT v. A.P. Moller Moersk (2017) 392 ITR 186 (SC)***.

32. On the issue of exercise of jurisdictional powers under Section 263 of the Act, reliance was placed on the decision in ***Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC)*** and the decision of Punjab and Haryana High Court in ***CIT v. Max India Limited (2004) 268 ITR 128 (P&H)*** which was upheld by the Supreme Court in ***CIT v. Max India Limited (2007) 295 ITR 282 (SC)***.

Interpretation of Section 80 IA

33.The Court first takes up for consideration the question of interpretation of Section 80-IA of the Act. The said section, provided for "Deductions in respect of profits and gains from industrial undertakings, etc. in certain cases." Sub-section (1) stated that where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking on or after the

1st day of April, 1997 (eligible business), "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 the percentage specified in sub-section (5) and for such number of assessment years as is specified in sub-section (6)." Sub-section (2) set out the conditions which must be fulfilled by an undertaking to be eligible for the deduction.

34. With effect from 1st April, 2000, Section 80-IA has been split into Section 80-IA pertaining to "deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc." and Section 80-IB pertaining to "deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings." In the present case, we are only concerned with Section 80-IA as it stood prior to the above amendment particularly with reference to AY 1998-99, which, according to the Assessee, was the initial year whereas according to the Revenue the initial year should be taken to be AY 1997-98.

35. An examination of Section 80-IA reveals that the following conditions are required to be fulfilled in terms of Section 80-IA. These conditions are that first an industrial undertaking in question:

(i) does not form by splitting up, or the reconstruction, of a business already in existence;

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

(iii) 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.

36. Clause (a) of Sub-Clause (iv) of Sub-Section (2) of Section 80-IA states that in the case of an industrial undertaking not specified in sub-section (b) or sub-section (c), it begins to manufacture or produce articles or things or operate such plant or plants at any time between 1st April, 1991 and 31st March, 1995; Clause (b) of Sub-Clause (iv) of Sub-Section (2) of Section 80-IA states that in the case of an industrial undertaking located in an industrially backward State specified in the Eighth Schedule or set up in any part of India for the generation, or generation and distribution, of power, it begins to manufacture or produce articles or things or operate its cold storage plant or plants to generate power at any time between 1st April, 1993 and 31st March, 2000; Clause (c) of Sub-Clause (iv) of Sub-Section (2) of Section 80-IA states that in the case of an industrial undertaking located in such industrially backward district as the Central Government may specify as an industrially backward district of Category A or an industrially backward district of Category B, and it begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time between 1st April, 1995 and 31st May, 2000; Clause (d) of Sub-Clause (iv) of Sub-Section (2) of Section 80-IA states that in the case of an industrial undertaking being an SSI where it begins to manufacture or produce articles or things at any time during the period beginning on the 1st April, 1995 and ending on 31st March, 2000.

37. A further condition to be satisfied is that the undertaking manufactures or produces articles or things, employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers if it is carried on without the aid of power.

38. Section 80-IA specifies what the extent of deduction available would be. In the context that an undertaking is an SSI, then 25% of the profits and gains derived from such industrial undertaking would be allowed as a deduction. The extent of which deductions would be allowed is specified in Section 80-IA(6)(ii) where the undertaking is not a cooperative society but an SSI unit. The benefit is allowed for ten AYs. This has to be read together with Section 80-IA(1) where it says that "… 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 the percentage specified in sub-section (5) and for such number of assessment years as is specified in sub-section (6)." Therefore, the numbers of AYs for which the benefit is allowed is specified as ten where it is an SSI unit.

39. There is no specific provision which states that the eligibility for availing the deduction should be shown to be fulfilled at the end of each and every previous year relevant to the AY relevant to the ten successive AYs for which the benefit is granted. The context of definition of 'initial assessment year' as contained in Section 80-

IA(12)(c) is relevant. This refers to the AY relevant to the previous year "in which the industrial undertaking begins to manufacture or produce articles or things..." Under Sub-Clause 12(f) of Section 80-IA, an SSI is defined to mean an industrial undertaking which is "as on the last day of the previous year, regarded as a small-scale industrial undertaking under Section 11B of the IDR Act.

40. While Section 80-IA(12)(f) defines an SSI to mean an industrial undertaking that has the status of an SSI on the last day of the previous year (which expression 'previous year' is referable to the previous year relevant to the 'initial assessment year'), it is not meant to refer to a previous year relevant to each of the ten AYs for which benefit under Section 80-IA is availed. The very use of the word 'initial' preceding in the word 'assessment year' and a separate definition for that expression given under Section 80-IA(12)(c) is not without significance. It is only in relation to the 'initial' assessment year in which an undertaking begins to manufacture or produce articles or things that the following nine years are determined.

The ITAT orders

41. There is little dispute on the essential fact that in the present cases. The year in which the undertaking began manufacturing or producing articles and things was during the previous year relevant to AY 1998-99. In the order of the matters decided by the ITAT, the earliest was the order passed on 1st March, 2004 in ITA No. 497/Del/2004. The next in chronological order is the order dated 28th March, 2005 passed by the

ITAT in ITA No. 469/Del/2004 where it followed the previous order dated 1st March, 2004.

42. As already noted hereinbefore, the appeal filed in this Court by the Revenue against the order dated 1st March, 2004 for AY 1999-00 (ITA No. 497/2004) has been kept for hearing on a different date because one question involved in that appeal is that the Vice-President of the ITAT who presided over the Bench which passed that order ceased to be as such by the time the second member signed the order dated 1st March, 2004. Whether such an order could be held to be valid is a question that has been considered in that appeal by this Court. Nevertheless, the said order has been followed in the subsequent orders dated 28th March, 2005 of the ITAT for AY 2001-02, and order dated 17th August, 2007 passed by the ITAT in ITA No. 2668/Del./2005 for same AY i.e., AY 2001-02. These were followed by the orders of the ITAT dated 20th June, 2008 for AYs 1998-99 and 2000-01 in ITA Nos. 4571/Del./2005 and 4572/Del./2005, respectively, and 5th September, 2008 for AY 2002-03 in ITAT No. 89/Del./2006.

43. The ITAT in the said order agreed with the Assessee that Section 80-IA did not contemplate the carrying out of a yearly review to ensure that on the last date of other previous year, of the ten AYs for which the deduction was allowed, the eligibility condition stood fulfilled. As rightly pointed out by Mr. Vohra in the initial AY 1997-98, the Assessee was facing a loss and, therefore, did not make a claim. Nevertheless that continued to remain the initial AY. The Assessee claimed deduction only in regard to the remaining years. The ten years

would begin to be counted from the AY 1997-98 itself although the deduction was not claimed for that AY. It could not have been claimed for AY 1997-98 because under Section 80-IA, the aggregate deduction claimed of the Assessee could not have exceeded its gross total income.

Assessee eligible to claim deduction

44. The question is whether on the last day of the previous relevant to AY 1997-98 the Assessee fulfilled the eligibility condition? It was repeatedly urged by Mr. Manchanda that the investment in P&M on the last date of previous year was above Rs. 60 lacs. He referred to an order dated 11th July, 2003 passed by the CIT under Section 263 of the Act for AY 1999-00. However, relevant to AY 1998-99, the factual determination by the CIT(A) and the ITAT is that the Assessee did fulfil the eligibility condition. The total investment in P&M was worked out to be Rs. 41.19 lacs. This fact has not been controverted by the Revenue.

45. The Auditor's report ended on 31st March, 1997 and was in fact enclosed with the order dated 5th December, 2003 passed by the CIT under Section 263 of the Act for AY 2001-02. This showed the total value of P&M as per Section 11B of IDR Act as Rs. 41,19,373/-. It was explained how certain items had to be excluded as per the notification dated 1st January, 1993 issued under the Act, which included cost of equipments, cost of installation of P&M, cost of research and development, cost of procurement and installation of wires, electrical control panels etc., cost of gas producer plant, transportation charges for indigenous machinery from the place of manufacturing to the

factory site, charges paid for technical know-how for erection of P&M, cost of fire-fighting equipment etc.

46. Clearly, therefore, the CIT was in error in proceeding on the basis that the investment in P&M as on 31st March, 1997 was about Rs. 60 lacs. In any event, this determination of the CIT by the order dated 5th December, 2003 has already been set aside by the ITAT in its order dated 28th March, 2005 in ITA No. 469/Del/2004. There is, therefore, no justification for the Court to proceed on that basis even for the initial year i.e., AY 1997-98.

47. At this stage, it requires to be noted that the purpose of introducing provisions like Section 80-IA, which incidentally is not restricted to providing relief to SSI units but to all kinds of industrial undertakings, was to encourage industrial expansion. The idea was to incentivise investment in industries. Further, the legislative intent was to give, even in the beginning, the benefit for a period of ten years irrespective of whether after the initial year there was an expansion of industrial undertaking by increased investment in P&M that may have taken it outside the ambit and scope of that provision. In other words, it is not expected that the investment for P&M in the initial AYs would remain static for the next ten years. It cannot be expected that if an industry is successful it would not expand. If the idea was to have a yearly review, then the provision would have been very differently worded. For instance, Section 80-HHA(3) which specifically states that "deduction shall not be allowed in computing the total income of any of the ten previous years aforesaid in respect of which the industrial undertaking

is not a small-scale industrial undertaking". In other words, if the legislative intent was that the eligibility condition had to be fulfilled on the last day of the previous year of each of the ten AYs during which the benefit was available, then that provision ought to expressly state to that effect.

48. It is not possible to accept the submission made on behalf of the Revenue that the words 'previous year' occurring in Section 80-IA(12)(f) in the definition of 'small-scale industrial undertaking' refers to the previous year of each of the AYs spoken of in Section 80-IA(6) of the Act. The words, 'previous year' is not prefixed with the word 'relevant'. In that context, therefore, the words 'previous year' occurring in Section 80-IA(12)(f) have to be read as the previous year relevant to the 'initial assessment year' as defined in Section 80-IA(12)(c) and not for any other purpose. This explains why this expression 'previous year' is not used anywhere else in Section 80-IA of the Act. In fact, when the entire section is read as a whole, it becomes very clear that the benefit is to be for ten continuous AYs after the initial AY.

49. It is also in consonance with the changing criteria for recognition of an SSI under the IDR Act. If the eligibility for deduction under Section 80-IA were to be linked to such changing criteria beyond the initial AY, then the section itself would become non-workable. It would simply not be possible under Section 80-IA for the benefit to be extended to 'ten consecutive assessment years' under Section 80-IA(6)(ii) specific to an SSI if these ten years would include the initial assessment year. Even if

these need to be 'consecutive', the benefit must be extended irrespective of whether in the AYs following the initial assessment year an SSI unit seizes to be as such either because of increased investment in P&M or because of the change in eligibility limit in terms of the notification in the IDR Act. Therefore, even from this point of view, the interpretation advanced by the Revenue in this case cannot be accepted.

Discussion of case law

50. Now turning to the case law, in ***Bajaj Tempo Ltd. v. CIT*** (*supra*), the question that arose was whether the Assessee was entitled to claim partial exemption from payment of tax under Section 15C of the Indian Income Tax Act, 1922 on the profits and gains derived from an industrial undertaking established "in a building taken on lease used previously for another business". The Income Tax Officer rejected the claim since the new business was formed by splitting of business already in existence and it was also formed by transfer to the new building and machinery previously used in another business. While interpreting Section 15C of the 1922 Act, the purpose of which was more or less similar to Section 80-IA of the Act i.e., "granting incentives for promoting growth and development", the Supreme Court observed that the provision required to be liberally construed. It was pointed out that adopting a liberal construction in such cases would result in defeating the very purpose of Section 15C. It was observed as under:

> "A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally interpreted liberally, and since a provision 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 provision and not to frustrate it."

51. Turning to the decisions of the High Courts, in ***Saurashtra Cement & Chemical Industries v. CIT*** (*supra*), the question before the Gujarat High Court was whether the Assessee's claim under Section 80J of the Act (corresponding to Section 15C of the 1922 Act) can be discontinued without disturbing the relief granted in the initial year. The Gujarat High Court upheld the view of the ITAT in that case that the relief of tax holiday under Section 80J of the Act having been granted to the Assessee in the initial AY, the Assessee was entitled to continuance of that relief for the subsequent four years notwithstanding that the Assessee did not continue to satisfy the eligibility relief for the years following the initial AYs concerned.

52. In ***CIT v. Paul Brothers*** (*supra*) the question before the Bombay High Court was whether the benefit given to an Assessee under Section 80HH or 80J which was granted for the initial year could be withdrawn for the subsequent years for breach of service conditions. The Court answered the question in the negative following the decision of the Gujarat High Court in ***Saurashtra Cement & Chemical Industries v. CIT*** (*supra*).

53.1 As far as this Court is concerned, the question that arose in ***Praveen Soni v. CIT*** (*supra*) was whether an Assessee which failed to claim the deduction under Section 80-IB of the Act in the initial AY i.e., 1998-99 was disentitled to claim such deductions in the subsequent AY 2004-05 despite the fact that the undertaking fulfilled the

conditions for claiming deductions under Section 80-IB of the Act. The facts were that in the first year of manufacture, the Assessee did not claim the deduction i.e., in AY 1998-99. Therefore, in that AY it could not be examined whether the Assessee fulfilled the conditions prescribed in Section 80-IB of the Act. It also did not claim this benefit in the succeeding years.

53.2 Like Section 80-IA of the Act, even Section 80-IB of the Act provides that the benefit is available for ten successive AYs. Though for the first time, the Assessee claimed benefit for AY 2004-05, it was pointed out that it could claim the benefit up to AY 2007-08. While claiming the benefit, the Assessee filed the requisite documents including Form 10CCB. While the AO agreed with the Assessee that the condition stood fulfilled, he denied it only on the ground that it was not claimed in the initial AY. It was also found that the unit had not been registered as an SSI under the IDR Act.

53.3 Accordingly, two substantial questions of law were framed in the matter by this Court – One was whether the rejection of the claim for deduction under Section 80-IB was valid, and second, whether the Assessee was disentitled to claim deduction on the ground that it had not claimed deduction in the initial AY. The Court answered both the questions in favour of the Assessee by holding that there was no dispute that the Assessee fulfilled the eligibility conditions prescribed under Section 80-IB and was to be regarded as an SSI. The AO was directed to given the benefit of deduction for the AY in question i.e., AY 2004-05.

54. Mr. Manchanda was asked by the Court as to how the above decision was helpful to the case of the Revenue since it, in fact, rather helps the case of the Assessee in the present scenario. Mr. Manchanda submitted that in ***Praveen Soni v. CIT*** (*supra*) this Court had endorsed the Revenue's view point that the Assessee needed to fulfil the SSI conditions "in the year of claim". The Court does not find any such specific finding in the decision in ***Praveen Soni v. CIT*** (*supra*). On the contrary, since it was not in dispute that the Assessee there fulfilled the eligibility condition in the initial AY, the Court held that it could not be denied the benefit for the ten consecutive AYs thereafter i.e., till AY 2007-08. The clear findings in this regard read as under:

> "6. If the assessee fulfils the requirement of small scale industrial undertaking (which aspect shall he dealt while answering other question of law), it is not in dispute that the assessee would have qualified for this deduction from the assessment year 1998-99. Had the assessee claimed this benefit in that year, he would have been allowed this benefit for 10 consecutive years i.e. till assessment year 2007-08. The assessee, thus, becomes entitled to claim the benefit in the assessment year 1998-99. However, merely because of the reason that though the assessee was eligible to claim this benefit, but did not claim in that year would not mean that he would be deprived from claiming this benefit till the assessment year 2007-08, which is the period for which his entitlement would accrue. The provisions contained in section 80-IB of the Income Tax Act, nowhere stipulates any condition that such a claim has to be made in the first year failing which there would be forfeiture of such claim in the remaining years. It is not the case of the assessee that he should be allowed to avail this claim for 10 years from the assessment year 2004-05. The assessee has realized his mistake in not claiming the benefit from the first assessment year 1998-99. At the same time, the assessee foregoes the claim up to the assessment year 2003-04 and is

> making the same only for the remaining period. There is no reason not to give the benefit of this claim to the assessee if the conditions stipulated under section 80- IB of the Income-tax Act are fulfilled."

55. The above observations squarely cover the case in favour of the Assessee in the present case. The Assessee in the present case was entitled to the benefit from the initial AY i.e., AY 1997-98. It, therefore, could not have been denied this benefit for the next ten AYs. In the considered view of the Court, therefore, the decision in ***Praveen Soni v. CIT*** (*supra*) in fact is in favour of the Assessee.

56. The other decision relied upon by the Revenue is ***CIT v. Natraj Stationery Products Pvt. Ltd.*** (*supra*). The initial AY, as far this decision was concerned was AY 1994-95. The Court was interpreting Section 80-IA. The question was whether the Assessee "was entitled to deduction in respect of the profits derived from an industrial undertaking" set up in AY 1994-95. Therefore, the question involved was not that which arises in the present case, viz., whether the Assessee is required to fulfil the eligibility condition in each of the AYs for which benefit under Section 80-IA is claimed. Here, again, the ITAT gave a direction to the AO to ascertain whether the Assessee had fulfilled the condition set out in Section 80-IA(2)(iii) of the Act as applicable for the initial year i.e. AY 1994-95.

57. Mr. Manchanda referred to an observation in paragraph 9 of ***CIT v. Natraj Stationery Products Pvt. Ltd.*** (*supra*) where it was noted that the ITAT directed the AO to verify the Assessee's eligibility for

deduction "in the year under consideration" and, therefore, this meant that the ITAT had talked of the Assessee's eligibility for deduction not only in the initial AY but also in the subsequent years. The Court is unable to agree with this reading of the said decision. If one reads the whole of paragraph 9, it in fact indicates to the contrary. The immediate previous line states that:

> "The Tribunal further observed that in these circumstances, if the condition as mentioned in section 80-IA(2)(iii) of the Act, as applicable in the initial year, which is, that it produces or manufactures any article or thing not being an article or thing specified in the list in the Eleventh Schedule, is satisfied, then the assessee will be entitled to deduction for a period of ten years starting from the assessment year 1994-95 provided the other condition regarding the employment of requisite number of persons is also satisfied."

58. This has to be read along with the following observations in paragraph 20 of the decision which reads as under:

> "In these circumstances, the Tribunal, in our view, has correctly held that the assessee is entitled to deduction under section 80-IB(3)(i), in regard to other industrial undertakings, the provision of which are in *pari materia* with the provisions of section 80-IA(2)(iv) as obtaining in the initial year. The Tribunal's direction to the Assessing Officer to ascertain as to whether the respondent/assessee had fulfilled the conditions set out in section 80-IA(2)(iii) of the Act as applicable in the initial year, that is, whether the respondent/assessee produced or manufactured any article or thing not being an article or thins specified in the Eleventh Schedule to the Act, in order to be eligible for deduction under section 80-IB for a period of ten years commencing from the assessment year 1994-95, provided the other condition, such as, employment of requisite number of persons is also satisfied by the respondent/assessee cannot be faulted with."

59. This Court in ***CIT v. Natraj Stationery Products Pvt. Ltd.*** (*supra*) upheld the order of the ITAT and dismissed the appeals meaning thereby that the above decision of the ITAT interpreting Section 80-IA was in fact upheld by this Court, the net result being that the Assessee in that case could not be denied the benefit under Section 80-IA(2) as long as it satisfied the eligibility condition in the initial AY. This was notwithstanding any change that may have happened even in the provision itself as it in fact did, as already noticed, with effect from 1st April, 2000 when Section 80-IA as it then stood was bifurcated into 80-IA and 80-IB. Therefore, even this decision of this Court is of no help to the Revenue as claimed by it.

60.1 In ***CIT v. Delhi Press Patra Prakashan Ltd.*** (*supra*), this Court had to interpret the deduction available under Section 80-I (2) (i) of the Act. The question was whether the fact that more than 10 workers were permanently involved in carrying out the activities in the second and third unit of the Assessee would disentitle it from deduction under Section 80-I (2) (iv).

60.2 Here, the Assessee was engaged in printing and publishing newspapers and periodicals. It was set up in 1973 with the head office in New Delhi. It had established a unit in Sahibabad, namely, Unit No. 2 for carrying on the work of high speed printing during the period ending 30th September, 1985 relevant to AY 1986-87. Since in the first year there was a loss, no deduction under Section 80-IA was allowed to the Assessee in respect of Unit No. 2.

60.3 In the subsequent AY 1988-89, the Assessee claimed a deduction under Section 80-I of the Act. This was restricted by the AO to Rs. 12,80,044/- as against Rs. 13,50,000/- as claimed. For AY 1989-90, the Assessee claimed a deduction of Rs. 18,45,800/- in respect of Unit No. 2 as well as Unit No. 3 which were established in 1987 in the building adjacent to Unit No. 2. This was allowed by the AO. In AY 1990-91, the Assessee claimed deduction of Rs. 38,02,747/- under Section 80-I of the Act for Unit Nos. 2 and 3, and for AY 1991-92, it claimed a deduction of Rs. 44,58,681 being 25% profit from Unit Nos. 2 and 3. The AO observed that the persons engaged in the printing presses therein were not employees in Units No. 2 and 3 but one other company; they were not manufacturing any article or thing as printing on paper was not manufacturing and so on.

60.4 It was held by this Court while upholding the order of the ITAT which restored the deductions that it was not open to the AO to deny benefit under Section 80-I of the Act to an Assessee once benefit has been allowed in the earlier 3 years. It was held as follows:

> "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 80-1 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."

61. In ***CIT v. Tata Communications Internet Services Ltd.*** (*supra*), it was clarified by the Court with specific reference to Section 80-IA that "the bar as provided under section 80-IA(3) is to be considered only for the first year of claim for deduction under section 80-IA":

> "20. …The bar as provided under section 80-IA(3) is to be considered only for the first year of claim for deduction under section 80-IA. Once the assessee is able to show that it has-used new plants and machinery which has not been 'previously used for any purpose and the new-undertaking is not formed by splitting up or reconstruction of business already in existence, it is entitled to the deduction under section 80-IA for subsequent years. Since the assessee had been granted claim of deduction right from the assessment year 2004-05 under section 80-IA, consequently it cannot be denied deduction for the subsequent years inasmuch as restraint of section 80-IA(3) cannot be considered for every year of claim of deduction, but can be considered only in the year of formation of the business."

62. In ***Ace Multi Axes Systems Ltd. v. Deputy CIT*** (*supra*), the Karnataka High Court was considering whether the condition under Section 80-IB had to be fulfilled by the Assessee in all the ten years. This was answered in the negative and it was held as under:

> "5. In the entire provision, there is no indication that these conditions had to be fulfilled by the assessee all the 10 years. When once the benefit of 10 years, commencing from the initial year, is granted, if the undertaking satisfies all these conditions initially, the undertaking is entitled to the benefit of 10 consecutive years. The argument that, in the course of 10 years, if the growth of the industry is fast and it acquires machinery and the total value of the machinery exceeds Rs. 1 crore, it ceases to have the said benefit, do not follow from any of the provisions. It is true that there is no express provision indicating either way,

what would be the position if the small scale industry ceases to be a small scale industry during the said period of 10 years. Because of that ambiguity, a need for interpretation arises. If we keep in mind the object of the Legislature providing for these incentives and when a period of 10 years is prescribed, that is the period, probably, which is required for any industry to stabilize itself. During that period the industry not only manufactures products, it generates employment and it adds to the wealth of the country. Merely because an industry stabilizes early, makes profits, makes future investment in the said business, and it goes out of the definition of the small scale industry, the benefit under Sec.80IB cannot be denied. If such a literal interpretation is placed on the said provision, it would run counter to the very object of granting incentives. It would kill the industry. Therefore, keeping in mind the object with which these provisions are enacted, keeping in mind the industrial growth which is required to be achieved, if two interpretations are possible, the courts have to lean in favour of extending the benefit of deduction to an assessee who has availed the opportunity given to him under law and has grown in his business. Therefore, we are of the view, if a small-scale industry, in the course of 10 years, stabilizes early, makes further investments in the business and it results in it's going outside the purview of the definition of a small scale industry, that should not come in the way of its claiming benefit under Sec.80IB for 10 consecutive years, from the initial assessment year. Therefore, the approach of the authorities runs counter to the scheme and the intent of the Legislature..."

Conclusion on Section 80 IA

63. In view of the authoritative pronouncements of the Courts as discussed hereinbefore, the Court is unable to accept the plea of the Revenue in the present case that:

(i) The Assessee here did not fulfil the eligibility condition for the initial AY i.e., 1997-98; and

(ii) That notwithstanding that it may have fulfilled the eligibility conditions in the initial AY, it nevertheless had to fulfil the such eligibility condition for every one of the ten consecutive AYs inclusive of the initial AY in order to be eligible for the deduction.

Section 263

64. The Court now turns to the question of the invocation of Section 263 of the Act by the CIT(A) to revise the orders of the AO. This question has been raised for AY 2001-02. It has not been framed as a question in other AYs. Nevertheless, the Court has examined the question even for the other AYs.

65. The two requisite conditions that are required to be met to justify the invocation of Section 263 of the Act are:

(i) That the order of the AO must be erroneous; and

(ii) It must be prejudicial to the interest of the Revenue.

66. In ***Malabar Industrial Co. Ltd. v. CIT*** (*supra*), the Supreme Court explained it as under:

> "There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind."

67. As far as the phrase 'prejudicial to the interests of the revenue' is concerned, the Court explained as under:

> "The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as-an erroneous order prejudicial to the interests of the Revenue."

68. In the present case, the assessment was completed under Section 143(3) of the Act for AY 1998-99 onwards. There was no error as such committed by the AO in allowing the deductions under Section 80-IA since the correct interpretation of the said provision was open to debate. The twin conditions of (i) the order having to be erroneous and (ii) prejudicial to the interest of the Revenue cannot be said to have been be cumulatively satisfied in the present case. That the power under Section 263 cannot be exercised to revisit debatable issues is well settled.

69. Illustratively, reference may be made to the decision in ***Commissioner of Income-Tax v. Max India Ltd.*** (*supra*) where the Punjab and Haryana High Court reiterated the well-settled proposition following the aforementioned decisions of the Supreme Court in ***Malabar Industrial Co. Ltd. v. CIT*** (*supra*).

70. Even on merits, the order under Section 263 was not warranted. It is contrary to the principle of consistency. The deductions allowed in the

earlier AYs should not be withdrawn unless the circumstances have changed. Reference may be made to the decisions in ***Shasun Chemicals & Drugs Ltd. v. CIT*** (*supra*) and ***Rajasthan Breweries Limited v. CIT*** (*supra*).

Valuation of inventory

71. On the question of change in the method of valuation of inventory, it has been explained by the Madras High Court in ***CIT v. Carborundum Universal Ltd.*** (*supra*) that if an Assessee is called upon to apply a new method of valuation to the opening stock of the accounting year, then in consequence the value of closing stock of the year will also get altered and this would result in the modification of the assessment in the previous year. Therefore, the change in the method of valuation of closing of stocks was not a justification for the exercise of power under Section 263. Consequently, as far as AY 2001-02 is concerned, this could not have been a ground for invoking Section 263 of the Act. Again, the mere change in the method of accounting would *ipso facto* not make a difference to the Revenue and cannot be said to be prejudicial to the interest of the Revenue.

Reopening of assessment under Section 147

72. The re-opening of assessment under Section 147 of the Act was only on account of the orders passed by the CIT under Section 263 of the Act and for no other reason. This Court having held that there is no justification for the CIT to have invoked Section 263 of the Act, the re-opening of the assessments under Section 147 of the Act in AY 1998-

99, which is the only year for which the question was framed, was not justified.

Answers to the questions

73. The Court answers the questions that arise in each of the appeals as under:

Assessment Year	***ITA No.***	***Question framed***	***Answers***
1998-99	1189/2009	*Whether the ITAT was justified in invalidating the re-opening of the assessment under Section 147 of the Act?*	In the affirmative
		Whether the ITAT was correct in upholding the deductions claimed by the Assessee under Section 80-IA of the Act?	In the affirmative
2000-01	225/2009	*Whether the ITAT was correct in upholding the deductions claimed by the Assessee under Section 80-IA.*	In the affirmative

2001-02	690/2008	*Whether the ITAT was correct in upholding the deductions claimed by the Assessee under Section 80-IA of the Act.*	In the affirmative
2001-02	1082/2005	*Whether the ITAT was correct in holding that the CIT(A) was not justified in invoking Section 263 of the Act?* *Whether the ITAT was correct in upholding the deductions claimed by the Assessee under Section 80-IA of the Act.* *Whether the ITAT was correct in holding that the CIT(A) was in error in directing the AO to make an addition on account of the difference in*	In the affirmative In the affirmative In the affirmative

		valuation of closing stock? *Whether the ITAT was correct in allowing deletion of Rs.70 lacs proposed by the CIT(A) on the interests receivables on outstanding?*	In the affirmative
2002-03	251/2010	*Whether the ITAT was correct in upholding the deductions claimed by the Assessee under Section 80-IA of the Act?*	In the affirmative

74. The appeals filed by the Revenue are dismissed with costs of Rs. 10,000/- in each of the appeals which shall be paid to the Assessee within four weeks from today.

S. MURALIDHAR, J.

CHANDER SHEKHAR, J.

JULY 20, 2017
b'nesh/rd