

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 26.07.2023
DELIVERED ON: 02.08.2023

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAM
AND**

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

ITAT/135/2023

(IA NO: GA/1/2023)

M/S. C AND E LIMITED

VERSUS

THE PRINCIPAL COMMISSIONER OF INCOME TAX,

KOLKATA - 4, KOLKATA

Appearance:-

Mr. J.P. Khaitan, Sr. Adv.

Mr. Saurabh Bagaria, Adv.

Mr. Rites Goel, Adv.

Mr. Arindam Halder, Adv.

.....For the Appellant.

Mr. Prithu Dudheria, Adv.

.....For the Respondent.

JUDGMENT***(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)***

1. This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated December 15, 2022 passed by the Income Tax Appellate Tribunal, C Bench, Kolkata (Tribunal) in ITA No. 636/Kol/2018 for the Assessment Year 2013-14. The assessee has raised the following substantial questions of law for consideration:

- i) *Whether the Learned Tribunal failed to consider that where the deduction under Section 801C was granted for substantial expansion for an initial assessment year, the same cannot be rejected for subsequent assessment years unless the relief for the initial year was withdrawn and hence the Order dated February 06, 2018 passed under Section 263 of the Act by the Commissioner was illegal and liable to be set aside?*
- ii) *Whether the Learned Tribunal was justified in holding that the order of the Commissioner of Income Tax who held the assessment Order dated March 28, 2016 passed by the Assessing Officer under Section 143(3) of the Act is erroneous and prejudicial to the interest of revenue on the ground of lack of proper enquiry for want of submissions of Form 10CCB for the Assessment Year 2013-14 without considering the aspect that the said Assessment Year 2013-14 was the 2nd year of substantial expansion and there was no dispute with respect to the initial year of substantial expansion being Assessment Year 2012-13?*
- iii) *Whether the Learned Tribunal was justified in upholding the orders passed by the Commissioner of Income Tax under Section 263 of the Act?*
- iv) *Whether the Learned Tribunal was justified in law in ignoring that the order under Section 263 of the Act was passed beyond the scope of the notice under Section 263 of the Act?*

2. We have heard Mr. J.P. Khaitan, learned Senior Advocate assisted by Mr. Saurabh Bagaria, Mr. Rites Goel and Mr. Arindam Halder, learned Advocates for the appellant assessee and Mr. Prithu Dudheria, learned Senior Standing Counsel for the respondent revenue.
3. The appellant assessee filed its return for the Assessment Year under consideration, AY 2013-14 on September 28, 2013 declaring total income of Rs. 30,38,300/-. The case was selected for scrutiny and assessment was completed under Section 143(3) of the Act by order dated March 28, 2016 determining the total income of the assessee of Rs. 1,72,45,790/-. The assessee claimed a deduction under Section 80IC of the Act in respect of its Unit IV being the 7th year of such claim and 2nd year from the date when the assessee made substantial expansion. The date of substantial expansion as mentioned in Form 10CCB is November 13, 2012 relevant to the Financial Year 2011-12 and AY 2012-13. The assessee would state that in the year of substantial expansion they had filed Form 10CCB and other related documents relating to the substantial expansion for the Assessment Year 2012-13 being the initial year of such substantial expansion and the claim of 100% deduction under Section 80IC of the Act was allowed by the department and was never disputed thereafter. The Assessment Year under consideration is 2013-14 which is the 2nd year of substantial expansion, the Assessing Officer while completing the assessment under Section 143(3) for the 2nd year of expansion namely, AY 2013-14 granted 100% deduction under Section 80IC of the Act. It is thereafter the Principal Commissioner of Income Tax, Kolkata (PCIT) issued notice dated December 4, 2017 under Section 263 of the Act alleging that the assessee has claimed 100%

deduction under Section 80IC in respect of Unit IV being the 7th year, however they have not filed Form 10CCB in support of their claim during the course of assessment proceedings. According to the PCIT, the assessee was entitled to claim only 30% deduction under Section 80IC (3)(ii) of the Act and that the Assessing officer had allowed excess depreciation. The assessee furnished their written submissions and appeared before the PCIT in person. It was contended that proceedings under Section 263 of the Act had been initiated without considering the fact that the claim for deduction was for the 2nd year of the substantial expansion and the assessee was entitled to claim deduction of 100 %. With regard to the allegation that the assessee did not file Form 10CCB in the course of assessment proceedings, it was submitted that the said Form was not called for by the Assessing Officer, however, the assessee enclosed Form 10CCB for the Assessment Year 2013-14 along with their reply to the show-cause notice. Further, it was pointed out that the date of substantial expansion mentioned in Forms 10CCB was February 13, 2012 and the relevant Financial Year was 2011-12 and the Assessment Year 2012-13. The assessee also enclosed all relevant documents relating to the substantial expansion done during the Assessment Year 2012-13, Form 10CCB for the Assessment Year 2012-13 being the initial year of substantial expansion was also submitted along with the reply to the show-cause notice. The assessee pointed out that in the initial year of substantial expansion, AY 2012-13 the Assessing Officer had accepted the substantial expansion and completed the assessment under Section 143(3) after giving 100% deduction and the same is not in dispute. The assessee also enclosed the copy of the assessment order for the Year

2012-13. Further, the assessee pointed out that the Assessing officer had also correctly accepted the substantial expansion which had been accepted in the initial order and completed the assessment in the 3rd year of expansion, AY 2014-15, by giving 100% depreciation the copy of the assessment order for the AY 2014-15 was also enclosed along with the reply as well as Form 10CCB for the AY 2014-15. Thus, the assessee contended that the Assessing Officer had rightly given the deduction of 100% not only in the relevant assessment year but also in the initial year and in the subsequent years as it was a case of substantial expansion and prayed for dropping the proceedings initiated under Section 263 of the Act. The PCIT by order dated February 6, 2018 did not agree with the submissions made by the assessee. By holding that the Assessing Officer has not made any enquiry to ascertain the genuineness of the claim of the assessee regarding substantial expansion and therefore, the assessment order is erroneous so far as it is prejudicial to the interest of revenue. Aggrieved by such order, the assessee preferred appeal before the learned Tribunal. The Tribunal dismissed the appeal on the sole ground that the assessee had not filed Form 10CCB in support of the claim during the course of the assessment proceedings and during the course of the proceedings under Section 263 of the Act the assessee had failed to file any supporting evidence to substantiate the claim that the Assessing Officer has examined the facts while framing the Assessment order. Aggrieved by the same, the assessee has preferred the present appeal.

4. The undisputed facts are that the substantial expansion was made on 13.02.2012 which is reflected in the Form 10CCB submitted for the

Assessment Year 2012-13. The Assessing Officer accepted the claim of the assessee with regard to 100% deduction for the AY 2012-13. The said order has remained intact and had attained finality. Similarly, for the AY 2014-15 which the 3rd year of the substantial expansion the assessee's claim of 100% deduction was accepted and the assessment was completed under Section 143(3) of the Act and the said order has attained finality. As noted, the first year of substantial expansion was 2012-13, the relevant Financial Year being 2011-12. It needs to be seen as to what was the nature of exercise conducted by the Assessing Officer before accepting the claim of 100% deduction for the Assessment Year 2012-13. The Assessing Officer issued notice dated November 18, 2013 under Section 142(1) of the Act. The notice contains a questionnaire contained as many as 23 queries of which Query No. 21 directs the assessee to furnish details with supporting evidence in respect of claim under Chapter VIA of the Act. The assessee by reply dated 03.07.2014 furnished the required details and also enclosed the copy of the 80IC Certificate and copy of 80J Certificate. The certificate issued by the department of Industries, Government of Himachal Pradesh and other connected records were also enclosed along with the reply. A declaration filed by the Chartered Accountant along with the Form 10CCB was also furnished wherein paragraph in Serial No. 25 the date of substantial expansion has been mentioned as February 13, 2012, the total book value of plant and machinery (before taking depreciation in any order) as on first day of previous year in which substantial expansion took place was shown as Rs. 34,51,527.69/-. The value of increase in the plant and machinery in the year of substantial expansion was mentioned as Rs. 32,55,178.54/-. In

Serial No. 30 of the said Form the deduction claimed under Section 80IC was mentioned as Rs. 1,55,71,528.28/-. In Annexure A to the said Form it was mentioned that the claim of deduction under Section 80IC was in Unit IV at 100% being the 6th Year of substantial expansion. The Assessing Officer issued another notice dated March 10, 2015 stating that during the assessment proceedings it was observed that Unit IV was allowed to avail the benefit under Section 80IC as per the Entrepreneur's memorandum Part II dated October 21, 2008 issued by the Member Secretary, Single Window Clearance Agency, Himachal Pradesh wherein the commercial production was taken on record from July 6, 2006. It was further mentioned that in the said notification, the Member Secretary has intimated the assessee that their registration will stand deregistered if they fail to employ at least 70% bonafide Himachalis. Therefore, the Assessing Officer requested the assessee to furnish proof of identity of employees of Unit IV for verification. The assessee furnished the requisite details and the assessment was completed allowing the deduction of 100% for the 6th year.

5. As mentioned earlier, this assessment order for the assessment year 2012-2013 being the first year of substantial expansion and being the 6th year, the deduction as claimed for at 100% was granted. As also noticed for the assessment year 2014-2015 being the 8th year of substantial expansion, the claim was accepted so also for the assessment year 2015-2016, the 9th year and 2016-2017, the 10th year. The assessee in its reply to the show cause notice issued under Section 263 of the Act had not only submitted all the aforementioned details but also enclosed the copies of all relevant documents along with their reply. Unfortunately, the PCIT proceeded solely

on the basis that the assessing officer did not make proper verification before accepting the claim for deduction under Section 80IC. The assessee challenged the order before the learned tribunal and our attention has been drawn by the learned senior advocate to the written submissions filed by the assessee before the learned tribunal.

6. The assessee pointed out that the show cause notice was issued under Section 263 of the Act on the ground that Form 10CCB was not filed, the relevant assessment year being the 7th year of assessment, only 30% deduction should be allowed instead of 100% deduction and therefore observed that the assessing officer has allowed excess depreciation. It was contended that though the PCIT stated that 100% deduction could not be given as Form 10CCB was not filed agreed that 30% deduction can be given even though Form 10CCB was not filed. The assessee specifically pointed out that along with the reply to the show cause notice, they had filed Form 10CCB before the PCIT and the PCIT has not even referred to the said Form nor dealt with the submissions made by the assessee in that regard. Further the assessee submitted that before granting 100% deduction for the assessment year 2012-2013, being the first year of substantial expansion and the 6th year, the assessing officer had made detailed enquiry and thereafter accepted the claim of the assessee. Before completing the assessment, notice dated November 18, 2013 was issued under Section 142(1) of the Act to which the assessee submitted their reply dated July 03, 2014 enclosing all relevant documents, thereafter another show cause notice was issued on March 10, 2015 for which the assessee submitted their reply dated March 15, 2015 enclosing all the requisite documents and after

thorough enquiry and being satisfied that the claim of deduction was genuine, the assessing officer had granted the benefit of such deduction and the said order has attained finality.

7. It was pointed out by the assessee before the learned tribunal that during the course of the assessment for the year under consideration, A.Y. 2013-2014, the assessing officer will have no power to revisit the genuineness of the claim for the substantial expansion which was already settled in the first year of substantial expansion namely A.Y. 2012-2013. Though such detailed contention was raised by the assessee, we find that the tribunal has not dealt with the same. More importantly, the tribunal has not noted the crucial and important facts that the assessment year under consideration is the second year of substantial expansion and for the first year of substantial expansion namely for the assessment year 2012-2013, the claim made by the assessee for deduction at 100% was accepted by the assessing officer after conducting a detailed enquiry and examining all the documents which were produced by the assessee. Thus, what the learned tribunal ought to have noted is that whether the assessing officer/PCIT can revisit the claim which was accepted for the assessment year 2012-2013 while completing the assessment for the year 2013-2014 being the second year of substantial expansion. This aspect of the matter has not been dealt with by the tribunal. In **Sourashtra Cement and Chemical Industries Limited Versus Commissioner of Income Tax, Gujarat-V**¹ one of the questions was whether the relief granted to the assessee therein under

¹ (1980) 123 ITR 669 (Guj)

Section 80J of the Act for the assessment year 1968-1969 should be continued in the assessment year 1969-1970 or not.

8. The Hon'ble Division Bench while upholding the order of tribunal held that the tribunal was perfectly justified in taking the view that if the relief of tax holiday was granted to the assessee company for the assessment year 1968-1969, the assessee was entitled to continuance of that relief for the subsequent four years and the Income Tax Officer would not be justified in refusing to continue the allowance for the assessment year 1969-1970 without disturbing the relief for the initial year. Further it was held that without disturbing the relief granted in the initial year, the income tax officer cannot examine the question again and decide to withhold or withdraw the relief which has been already once granted.
9. In ***Commissioner of Income Tax Versus Paul Brothers***², it was held that either in Section 80HH or in Section 80J, there is no provision for withdrawal of special deduction for the subsequent years for breach of certain conditions unless the relief granted for the assessment year earlier was withdrawn and the income tax officer could not have withheld the relief for the subsequent years.
10. In ***Commissioner of Income Tax Versus Delhi Press Patra Prakashan Limited***³ one of the questions which fell for consideration was whether it was open for the assessing officer to deny the benefit of Section 80I of the Act to the assessee having allowed the benefit to the assessee in the preceding three years. The Hon'ble Division Bench held by virtue of

² (1995) 216 ITR 548 (Bom)

³ (2013) 355 ITR 14 (Delhi)

Section 80I (5) of the Act deduction under Section 80I of the Act is available to the 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 of things. It was further held that the such deduction is also available for the 7th assessment year immediately succeeding the initial assessment year; when 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 state of facts which enable the assessee to claim to be eligible for deduction under Section 80I of the Act occur in the previous year relevant to the initial assessment year and have to be examined in the initial assessment year. The Hon'ble Division Bench took into consideration the decision of the Hon'ble Supreme Court in **Radhasoami Satsang Saomi Bagh, Agra Versus Commissioner of Income Tax** ⁴ wherein it was 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 for several years should not be disturbed.

11. The legal position which can be culled out from the above decisions would clearly support the case of the assessee. It is not in dispute that in the first year of substantial expansion namely A.Y 2012-2013, the assessee was granted the relief. Similarly for the assessment years 2014-2015, 2015-2016 and 2016-2017 being the 3rd, 4th and 5th years of substantial expansion relief has been granted and the only solitary year for which relief had been denied in its entirety is the assessment year in 2013-2014. As long

⁴ (1992) 193 ITR 321 (SC)

as the benefit granted under Section 80IC for the first year of substantial expansion remains unaltered, the assessing officer would have no jurisdiction to revisit the same issue in the subsequent assessment years.

12. As noted above, the tribunal rejected the assessee appeal solely on the ground that the assessee had not filed Form 10CCB without taking into consideration that the assessing officer while completing the assessment did not call for the Form 10CCB for the assessment year under consideration though the same was filed considered and relief granted for the assessment year 2012-2013. Nonetheless, the assessee had filed the copy of Form 10CCB before the PCIT in response to the show cause notice issued under Section 263 of the Act. The tribunal ought to have seen that the PCIT did not advert to any of the documents produced by the assessee and proceeded to hold against the assessee on a totally different ground than on the ground on which the show cause notice under Section 263 of the Act was issued. Interestingly the PCIT accepts that the assessee would be entitled to 30% deduction even in the absence of Form 10 CCB. Therefore, it was a fit case where the tribunal should have interfered with the order passed by the PCIT on the several grounds by taking note of all the facts which were placed by the assessee before the PCIT and also the facts which were placed by the assessee before the assessing officer during the course of the assessment proceedings for the assessment year 2012-2013. Thus, in the absence of any such consideration, we are of the definite view that the order passed by the learned tribunal as well as the order passed by the PCIT calls for interference.

13. In the result, the appeal filed by the assessee is allowed and the order passed by the learned tribunal and the PCIT are set aside and the assessment order stands restored. Consequently, the substantial questions of law are answered in favour of the assessee.

(T.S. SIVAGNANAM, CJ.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A. - PRAMITA/ SACHIN)

