REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1764 OF 2010

Commissioner of Income Tax, Udaipur ... Appellant(s)

Versus

M/s. Chetak Enterprises Pvt. Ltd. ...Respondent(s)

J U D G M E N T

A. M. KHANWILKAR, J.

1. This appeal takes exception to the judgment and order dated 5.5.2008 passed by the High Court of Judicature for Rajasthan at Jodhpur (for short, "the High Court") in Income Tax Appeal No. 71 of 2008.

2. The matter relates to Assessment Year 2002-2003, the relevant Previous/Financial year for which is 2001-2002 i.e. 1.4.2001 to 31.3.2002.

3. Briefly stated, the erstwhile partnership firm - M/s. Chetak Enterprises entered into an agreement with the Government of

Rajasthan for construction of road and collection of road/toll tax. The construction of road was completed by the said firm on 27.3.2000 and the same was inaugurated on 1.4.2000. The firm was converted into a private limited company on 28.3.2000 named as M/s. Chetak Enterprises (P) Ltd. (for short, "the assessee-Company") under Part IX of the Companies Act, 1956 (for short, "the Companies Act"). On conversion of the firm into company, an intimation was given to the Chief Engineer (Roads), P.W.D., Rajasthan, Jaipur. The said authority noted the change and cancelled the registration of the firm and granted a fresh registration code to the assessee-Company. As aforesaid, the road was inaugurated on 1.4.2000 and the assessee-Company started collecting toll tax. For the relevant assessment year, the assessee-Company claimed deduction under Section 80-IA of the Income Tax Act, 1961 (for short, "the Income Tax Act"). The assessing officer declined that claim of the assessee-Company, which decision was reversed by the Commissioner of Income-Tax (Appeals), Udaipur. The Income Tax Appellate Tribunal (for short, "the ITAT") confirmed the decision of the first appellate authority, following its decision[1] in the case of the assessee-Company for the Assessment Year 2001-2002. As a result, the Department preferred an appeal

1 Chetak Enterprises P. Ltd. vs. ACIT, (2005) 95 ITD 1 (Jodh.)

before the High Court. The High Court formulated the following question of law: -

> "Whether in the facts and in the circumstances of the case, the assessee-Company was right in finding that the assessee fulfilled the condition of sub-Section (4)(i)(b) of Section 80-IA?"

Section 80-IA, as applicable to Assessment Year 2002-03 reads thus: -

> "**80-IA** (1) Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking or an enterprise referred to in sub-section (4) (such business being hereinafter referred to as the 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 hundred per cent of profits and gains derived from such business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter, twenty-five per cent of the profits and gains for further five assessment years:
>
> **Provided** that where the assessee is a company, the provisions of this sub-section shall have effect as if for the words "twenty-five per cent", the words "thirty per cent" had been substituted.
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> (2) The deduction specified in sub-section (1) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or generates power or commences transmission or distribution of power:
>
> **Provided** that where the assessee begins operating and maintaining any infrastructure facility referred to in clause (b) of Explanation to clause (i) of sub-section (4), the

provisions of this sub-section shall have effect as if for the words "fifteen years", the words "twenty years" had been substituted.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the deduction in computing the total income of an undertaking providing telecommunication services, specified in clause (ii) of sub-section (4), shall be hundred per cent of the profits and gains of the eligible business for the first five assessment years commencing at any time during the periods as specified in sub-section (2) and thereafter, thirty per cent of such profits and gains for further five assessment years.

(3) This section applies to an industrial undertaking referred to in clause (iv) of sub-section (4) which fulfils all the following conditions, namely: -

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

Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, re-construction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

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

Explanation 1.-For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely: -

(a) Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

(b) such machinery or plant is imported into India from any country outside India; and

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

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

(4) This section applies to-

(i) Any enterprise carrying on the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating any infrastructure facility which fulfils all the following conditions, namely: -

(a) it is owned by a company registered in India or by a consortium of such companies;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating a new infrastructure facility subject to the condition that such infrastructure facility shall be transferred to the Central Government, State Government, local authority or such other statutory body, as the case may be, within the period stipulated in the agreement;

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

Explanation.- For the purposes of this clause, "infrastructure facility" means,-

(a) a road, bridge, airport, port, inland waterways and inland ports, rail system or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette;

(b) a highway project including housing or other activities being an integral part of the highway project; and

(c) a water supply project, water treatment system, irrigation project sanitation and sewerage system or solid waste management system;

(ii) any undertaking which has started or starts providing telecommunication services whether basic or cellular, including radio paging, domestic satellite service, network of turnking, broadband network and internet services on or after the 1st day of April, 1995, but on or before the 31st day of March, 2003;

(iii) any undertaking which develops, develops and operates or maintains and operates an industrial park notified by the Central Government in accordance with the scheme framed and notified by the Government for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006:

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 and transfers the operation and maintenance of such industrial park to another undertaking (hereafter in this section referred to as the transferee undertaking) the deduction under sub-section (1), shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking;

(iv) an industrial undertaking which,-

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2003;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, 2003:

Provided that the deduction under this section to an industrial undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution.

(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of

deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.

(6) Notwithstanding anything contained in sub-section (4), where housing or other activities are an integral part of the highway project and the profits of which are computed on such basis and manner as may be prescribed, such profit shall not be liable to tax where the profit has been transferred to a special reserve account and the same is actually utilised for the highway project excluding housing and other activities before the expiry of three years following the year in which such amount was transferred to the reserve account; and the amount remaining unutilised shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

(7) Where the assessee is a person other than a company or a co-operative society, the deduction under the sub-section (1) from profits and gains derived from an industrial undertaking shall not be admissible unless the accounts of the industrial undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

(8) Where any goods held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation. -For the purposes of this sub-section, "market value", in relation to any goods, means the price that such goods would ordinarily fetch on sale in the open market.

(9) Where any amount of profits and gains of an industrial undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C.-Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such eligible business of industrial undertaking or enterprise, as the case may be.

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

(11) The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertaking or enterprise with effect from such date as it may specify in the notification.

(12) Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger-

(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the

amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place."

The High Court while upholding the view taken by the first appellate authority and the ITAT, dismissed the appeal and observed thus: -

"…..In the present case, so far as the facts are concerned, it is not in dispute, that the work of construction of roads was completed on 27.3.2000, and on and with effect from 28.3.2000, the partnership firm was converted into a Company, by being registered under Part IX of the Companies Act, and became a private Limited Company. As noticed above, the relevant previous year is 1.4.2000 to 31.3.2001. Thus, right from the commencement of the relevant financial year, it cannot be disputed, that it was a Company, and was undertaking the specified business. Then, so far as the question, as has been gone into by the Assessing Officer, and the Excise Commissioner that the assessee Company has not entered into any agreement with the Government, is concerned, in that regard, the learned Tribunal has found, that the main objects of the Memorandum of Association of the assessee Company indicates, that it was mentioned as under:

> "On conversion of the partnership firm into a company limited by shares under these presents to acquire by operation of Law under Part IX of the Companies Act, 1956 as going concern and continue the partnership business now being carried on under the name & style of M/s Chetak Enterprises including all its assets, movables and immovables, rights, debts and liabilities in connection therewith."

Then, it has also been found by the learned Tribunal, at page 13 of the judgment, that the erstwhile partnership firm, in its first communication to the Chief Engineer on 23.10.1998, while replying to the notice inviting bids, made it categorically clear, that "the firm will be converted into a limited company under Chapter IX of the Companies Act. As such, you are requested to allow us change in constitution and accordingly change of name in agreement, after

converting firm into company with the existing partners as its Directors, and the Chief Engineer vide letter dt. 27.8.1999, took note of this letter, and informed, that their offer was accepted, subject to terms and conditions specified therein. It is thereafter, that agreement was entered into between the Government and the Firm, wherein the said letter of the Chief Engineer dt. 27.8.1999, was considered as part of the agreement. With this, the agreement also mentions the firm, "to mean and include its successors and assigns". Thus it has been found, that since incorporation of the Firm into a Company, has the effect of statutorily vesting of liabilities and assets in the Firm, and the agreement comprehends successors and assigns, it is clear, that the assessee fulfils all the conditions. Then the proviso, appended in this sub-section, has also been considered, which clearly provides for entitlement of the deduction to the transferee, with effect from the date of transfer, therefore also, it was found that the deduction is available.

In our view, when right from the day one, i.e. while replying to the notice inviting tenders itself, it was made clear by the Firm, that the Firm will be converting into a limited Company under Part IX of the Companies Act, and the Chief Engineer was requested to allow the change in the Constitution, and accordingly change of name in the agreement, after converting the Firm into the Company, with the existing partners as its Directors, and this request was accepted, and that acceptance letter formed part of the agreement, in our view, the Firm stands in the shoes of promoter, and the Company takes over all assets and liabilities statutorily.

In other words, by operation of law, there is statutory transformation of the Firm into the Company, obviously the rights and liabilities of the Company, and the assets, go to the Company. It is a different story that even from the agreement entered into by the promoter (predecessor in the interest of the Company), as successor of the Firm and the Company is deemed to be a party, and, therefore also, is very much entitled to the benefit of deduction on this ground. Over & above all this, the proviso is a complete answer to the contention of the Revenue, and in favour of the assessee, which rather clearly provides, that even in case of transfer, the transferee will become entitled to deduction of course with effect from the date of transfer.

In the present case, the transfer was statutory, and did come into effect since 28.3.2000, i.e. much before the commencement of the relevant financial year, and as such,

> considering from any standpoint, the assessee could not be denied benefit of deduction available to it."

4. Being aggrieved, the Department filed two separate special leave petitions before this Court. The present civil appeal emanates from SLP(C) No. 6772/2009 and pertains to Assessment Year 2002-2003. As regards Civil Appeal No. 1748/2010 (arising out of SLP(C) No. 3430/2009) pertaining to Assessment Year 2001-2002, the same has been disposed of in terms of order dated 17.10.2019 due to low tax effect leaving question of law open.

5. We have heard Mr. Rupesh Kumar, learned counsel for the appellant and Mr. S. Krishnan, learned counsel for the respondent.

6. It is not in dispute that an agreement was executed between the erstwhile partnership firm and the State Government for construction of road and collection of toll tax. Before the commencement of the assessment year in question i.e. 2002-2003, the construction of road was completed (on 27.3.2000) and it was inaugurated on 1.4.2000. Before the date of inauguration, the partnership firm was converted into a company on 28.3.2000 under Part IX of the Companies Act. The Memorandum of Association of the assessee-Company reveals the main object as follows: -

> "On conversion of the partnership firm into a company limited by shares under these presents to acquire by operation of law under Part IX of the Companies Act, 1956 as going concern and continue the partnership business now being carried on under the name and style of M/s. Chetak Enterprises including all its assets, movables and immovables, rights, debts and liabilities in connection therewith."

As a matter of fact, before the agreement was executed with the erstwhile partnership firm, it was clearly understood that the partnership firm would in due course be converted into a registered limited company. That is evident from the communication addressed to the Chief Engineer on 23.10.1998, at the time of replying to the notice inviting bids. An explicit request was made to allow the partnership firm to change its constitution and consequently change of name in the agreement after converting the firm into a company with the existing partners as its Directors. The Chief Engineer being the appropriate authority of the State, vide letter dated 27.8.1999, took note of the request made by the erstwhile partnership firm and informed the said firm that its offer was accepted subject to terms and conditions specified in that regard. It is only after this interaction, an agreement was entered into between the Government

of Rajasthan and the erstwhile partnership firm, in which the communication sent by the Chief Engineer, dated 27.8.1999, was made part of the agreement. Notably, after the conversion of the partnership firm into a company under Part IX of the Companies Act, the State authorities noted the change and provided fresh registration code to the assessee-Company.

7. The question is: what is the effect of conversion of partnership firm into a company under Part IX of the Companies Act? That can be discerned from Section 575 of the Companies Act, which reads thus: -

> "**575. Vesting of property on registration**.- All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein."

It is manifest that all properties, movable and immovable (including actionable claims) belonging to or vested in a company at the date of its registration would vest in the company as incorporated under the Act. In other words, the property acquired by a promoter can be claimed by the company after its incorporation without any need for conveyance on account of statutory vesting. On such statutory vesting, all the properties of the firm, in law, vest in the company and

the firm is succeeded by the company. The firm ceases to exist and assumes the status of a company after its registration as a company. A priori, it must follow that the business is carried on by the enterprise owned by a company registered in India and the agreement entered into between the erstwhile partnership firm and the State Government, by legal implication, assumes the character of an agreement between the company registered in India and the State Government for (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating a new infrastructure facility.

8. For the purpose of considering compliance of clause (a) of Section 80-IA(4)(i), the assessee must be an enterprise carrying on business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating any infrastructure facility, which enterprise is owned by a company registered in India. That stipulation is fulfilled in the present case, as the registered firm was converted into a company under Part IX of the Companies Act on 28.3.2000, which is before the commencement of Assessment Year 2002-2003. For the assessment year under consideration, the activity undertaken by the assessee is only maintaining and operating or developing, maintaining and operating the infrastructure facility, inasmuch as, the construction of the road was completed on

27.3.2000 and the same was inaugurated on 1.4.2000, whereafter toll tax was being collected by the assessee-Company.

9. As regards clause (b) of Section 80-IA(4)(i), the requirement predicated is that the assessee must have entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating a new infrastructure facility. As aforesaid, in the present case, the agreement was initially executed between the erstwhile partnership firm and the State Government, but with clear understanding that as and when the partnership firm is converted into a company, the name of the company in the agreement so executed be recorded recognising the change. Notably, the agreement itself mentions that M/s. Chetak Enterprises as party to the agreement was meant to include its successors and assignee. Further, the State Government had granted sanction to the company and the original agreement entered into with the firm automatically stood converted in favour of the assessee-Company, which came into existence on 28.3.2000 being the successor of the erstwhile partnership firm. Thus understood, even the stipulation in clause (b) of Section 80-IA(4)(i) is fulfilled by the assessee-Company. Since

these are the only two issues which weighed with the assessing officer to deny deduction to the assessee-Company as claimed under Section 80-IA of the Income Tax Act, the first appellate authority was justified in reversing the view taken by the assessing officer. For the same reason, the ITAT, as well as, the High Court have justly affirmed the view taken by the first appellate authority, holding that the respondent/assessee-Company qualified for the deduction under Section 80-IA being an enterprise carrying on the stated business pertaining to infrastructure facility and owned by a Company registered in India on the basis of the agreement executed with the State Government to which the respondent/assessee-Company has succeeded in law after conversion of the partnership firm into a company.

10. Learned counsel for the appellant has relied on the decision of this Court in ***Giridhar G. Yadalam vs. Commissioner of Wealth Tax & Anr***.[2]. In the said decision, the Court had delineated the contours regarding permissibility of purposive interpretation of taxing/fiscal statutes, particularly in the context of an exemption. This decision is of no avail to doubt the correctness of the view taken

2 (2015) 17 SCC 664

by the High Court vide the impugned judgment, in the facts of the present case.

11. In view of the above, the appeal stands dismissed with no order as to costs.

....., J
(A.M. Khanwilkar)

....., J
(Dinesh Maheshwari)

New Delhi;
March 05, 2020.