REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1784 OF 2019
(ARISING OUT OF SLP (C) NO. 23172 OF 2018)

PR. COMMISSIONER OF INCOME TAX SHIMLA .....APPELLANT(S)

VERSUS

M/S. AARHAM SOFTRONICS .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO(S). 1785 OF 2019
(ARISING OUT OF SLP (C) NO. 23176 OF 2018)

CIVIL APPEAL NO(S). 1786 OF 2019
(ARISING OUT OF SLP (C) NO. 23179 OF 2018)

CIVIL APPEAL NO(S). 1788 OF 2019
(ARISING OUT OF SLP (C) NO. 24678 OF 2018)

CIVIL APPEAL NO(S). 1787 OF 2019
(ARISING OUT OF SLP (C) NO. 23414 OF 2018)

CIVIL APPEAL NO(S).1789 OF 2019
(ARISING OUT OF SLP (C) NO. 24679 OF 2018)

MISC. APPLICATION NO. 2880 OF 2018
IN
CIVIL APPEAL NO. 7218 OF 2018

CIVIL APPEAL NO(S). 1790 OF 2019
(ARISING OUT OF SLP (C) NO. 5486 OF 2019)
(ARISING OUT OF DIARY NO. 34756 OF 2018)

MISC. APPLICATION NO. 2879 OF 2018
IN
CIVIL APPEAL NO. 7222 OF 2018

MISC. APPLICATION NO. 2852 OF 2018
IN
CIVIL APPEAL NO. 7236 OF 2018

MISC. APPLICATION NO. 2850 OF 2018
IN
CIVIL APPEAL NO. 7215 OF 2018

MISC. APPLICATION NO. 2841 OF 2018
IN
CIVIL APPEAL NO. 7221 OF 2018

MISC. APPLICATION NO. 2840 OF 2018
IN
CIVIL APPEAL NO. 7217 OF 2018

MISC. APPLICATION NO. 2976 OF 2018
IN
CIVIL APPEAL NO. 7223 OF 2018

CIVIL APPEAL NO(S). 1795 OF 2019
(ARISING OUT OF SLP (C) NO. 2296 OF 2019)

CIVIL APPEAL NO(S).1796 OF 2019
(ARISING OUT OF SLP (C) NO. 1983 OF 2019)

CIVIL APPEAL NO(S). 1797 OF 2019
(ARISING OUT OF SLP (C) NO. 3278 OF 2019)

AND

CIVIL APPEAL NO(S). 1798 OF 2019
(ARISING OUT OF SLP (C) NO. 4483 OF 2019)

J U D G M E N T

A.K.SIKRI, J.

SLP(C) Nos. 23172 of 2018, 23176 of 2018, 23179 of 2018, 24678 of 2018, 23414 of 2018, 24679 of 2018, 2296 of 2019, 1983 of 2019, 3278 of 2019 and 4483 of 2019 :

Leave granted.

2. Origin of these appeals can be traced to the judgment dated 28th November, 2017 rendered by High Court of Himachal Pradesh in a batch of appeals. Vide the said judgment, the High Court decided many issues. However, in these proceedings we are concerned with only one question of law which is formulated in the following terms:

> "Whether an assessee who sets up a new industry of a kind mentioned in sub-section (2) of Section 80-IC of the Act and starts availing exemption of 100 per cent tax under sub-section (3) of Section 80-IC (which is admissible for five years) can start claiming the exemption at the same rate of 100% beyond the period of five years on the ground that the assessee has now carried out substantial expansion in its manufacturing unit?"

3. The High Court has answered the aforesaid question in the affirmative thereby holding that when the assessees started availing exemption of 100% tax on the setting up of a new industry of the kind mentioned in sub-section (2) of Section 80IC, which is admissible for 5 years, and either on the expiry of 5 years or thereafter (but within 10 years) from the date when these assessees started availing exemption, they carried out substantial expansion of its industry, from that year the assessees become entitled to claim exemption @ 100% again.

4. The Income Tax Department (hereinafter referred to as the 'Revenue') had challenged the judgment of the High Court on the aforesaid issue by filing number of special leave petitions which were converted into appeals after leave was granted in those special leave petitions. Thereafter, these appeals were heard and decided by a Division Bench of this Court, which comprised one of us (A.K. Sikri, J.). By its judgment dated August 20, 2018. The judgment of the High Court was reversed on the aforesaid issue.

5. It so happened that in some of the appeals, assessees who were respondents, were not served with the notice and they remained unrepresented. Since the appeals in respect of these assessees were decided in their absence, they filed miscellaneous applications for recall of the order, with prayer to decide the appeals afresh after giving hearing to them. Since, these assessees remained unrepresented, as even the notice was not served upon them, by a separate order passed in their cases, those applications have been allowed and their appeals being C.A. No. 7218, 7222, 7236, 7215, 7221, 7217 and 7223 of 2018 have been restored. Even the Revenue has filed few SLPs against the common judgment of the High Court as these SLPs were not filed earlier when batch of appeals was decided on 20th August, 2018 by this Court. Appeals arising out of these SLPs have also been heard along with

other appeals in which the earlier judgment rendered has been recalled. All these appeals have been heard afresh and are being disposed of by the present judgment.

6. We have already taken note of the question of law that arises for determination. Factual background in which this question of law arises for consideration has been taken note of in the judgment dated 20th August, 2018 which may again be reiterated, in order to understand the niceties of this issue:

To understand the aforesaid question of law in clear terms, it may be mentioned at this stage itself that sub-section (2) of Section 80-IC applies to an undertaking or enterprise which has, inter alia, begun or begins to manufacture or produce any article or thing by setting up a new factory in the area specified therein which includes State of Himachal Pradesh as well. Sub-section (3) of Section 80-IC is in two parts: in certain cases, exemption from income is provided at the rate of 100% of such profits and gains earned from the aforesaid undertaking or enterprise for 10 assessment years commencing with the initial assessment year. The present appeals do not fall in that category. Other clause relates to another category of undertakings or enterprises (these cases belong to that category) where the exemption is at the rate Civil Appeal No. 7208 OF 2018 & Ors. Page 4 of 17 of 100% of profits and

gains for five assessment years commencing with the initial assessment year and, thereafter, 25% of profits and gains. Total exemption, thus, is for a period of 10 years, namely, @100% for 1st five years and @ 25% for remaining five years. In these cases, all the assessees started claiming exemption @ 100% on profits and gains and availed it for a period of five years. During this period these assessees carried out “substantial expansion” and they claimed that, on that basis, they should be allowed exemption from profits and gains for another five years @ 100% instead of 25% from 6th to 10th year as well. Interestingly, they admit that the total period during which they are entitled to exemption would not exceed 10 years, as per the mandate of sub-section (6). In this backdrop, the question is as to whether the assessees can again start claiming 100% exemption for the next five years from profits and gains after availing the same for first five years on the ground that they have now carried out substantial expansion. The High Court has answered the question in affirmative and for this reason, it is the department which has come up to this Court challenging the said decision by filing these appeals.

Section 80-IA was inserted by the Finance (No. 2) Act, 1991, with effect from 1st April, 1991. By virtue of said Section, the gross total income (profits and gains) of an assessee derived from any business of

an industrial undertaking, so specified therein, was entitled to certain deductions for a period commencing from 1st April, 1993. With effect from 1st April, 2000, the said provision was bifurcated with the insertion of another Section, i.e., 80-IB, dealing with “certain industrial undertakings other than infrastructure development undertakings.” Thereafter, the Legislator, in its wisdom, enacted a special provision, in respect of “units” established in certain special category States. Thus, Section 80-IC came to be inserted by virtue of Finance Act, 2003, applicable with effect from 1st April, 2004. At this point., It may only be noticed that correspondingly certain provisions of Section 80-IB were also amended/repealed. Deductions under the said Section were discontinued for the Assessment Years commencing from 1st April, 2004 (Sub-section (4) of Section 80- IB).

7. At this juncture, we would like to take note of the relevant provisions of Section 80-IC of the Act. Therefore, we extract below the relevant portion of this provision:

> "[**80-IC. Special provisions in respect of certain undertakings or enterprises in certain special category States.—**(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), 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, as specified in sub-section (3).

(2) This section applies to any undertaking or enterprise,—

(a) which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, or which manufactures or produces any article or thing, not being any article or thing specified in the Thirteenth Schedule and undertakes substantial expansion during the period beginning—

(i) on the 23rd day of December, 2002 and ending before the 2 [1st day of April, 2007], in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Sikkim; or

(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in the State of Himachal Pradesh or the State of Uttaranchal; or

(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the Central Government in this regard, in any of the North-Eastern States;

(b) which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, or which manufactures or produces any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule and undertakes substantial expansion during the period beginning—

(i) on the 23rd day of December, 2002 and ending before the 2 [1st day of April, 2007], in the State of Sikkim; or

(ii) on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or

(iii) on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North-Eastern States.

(3) The deduction referred to in sub-section (1) shall be—

xxx xxx xxx

(ii) in the case of any undertaking or enterprise referred to in sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b), of sub-section (2), one hundred per cent of such profits and gains for five assessment years commencing with the initial assessment year and thereafter, twenty-five per cent. (or thirty per cent. where the assessee is a company) of the profits and gains.

xxx xxx xxx

(6) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years.

(8) For the purposes of this section,—

xxx xxx xxx

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

xxx xxx xxx

(ix) “Substantial expansion” means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken.

8. This section makes special provisions in respect of certain undertakings or enterprises in certain special category States. Section 80-IC was

inserted by the Finance Act, 2003 w.e.f. Civil Appeal No. 7208 OF 2018 & Ors. Page 12 of 17 April 1, 2004. As per this provision, certain undertakings or enterprises in certain special category States are allowed deduction from such profits and gains, as specified in sub-section (3) of Section 80-IC. The provisions of Section 80-IC provided deduction to manufacturing units situated in the State of Sikkim, Himachal Pradesh and Uttaranchal and North-Eastern States. The deduction was provided to new units established in the aforesaid States, and also to existing units in those States if substantial expansion was carried out. The deduction was available @ 100% for ten Assessment Years for the units located in North-Eastern and in the State of Sikkim and for the units located in Himachal Pradesh, the deduction was available @ 100% for five years and @ 25% for next five years.

9. In all these cases assessees had started availing exemption under Section 80-IC on the setting up of new industrial units. All these assessees have availed 100% deduction for a period of 5 years. As noticed above, from sixth year, in normal course, deduction is admissible @ 25% of the profits and gains, for next five years (or 30% where the assessee is a company. However, all these assessees, after the expiry of five years, carried out substantial expansion of their existing units. This substantial expansion is in accordance with the provisions of

Section 80-IC and there is no dispute about the same. From the year such substantial explanations were carried out by the assessees, the assessees demanded deduction @ 100%, instead of 25%/30% for the remaining period of 10 years which is the maximum period for which deduction is admissible.

10. Sub-section (3), as noted above, mentions the period of 10 years commencing with the initial Assessment Year. Subsection (6) puts a cap of 10 years, which is the maximum period for which the deduction can be allowed to any undertaking or enterprise under this section, starting from the initial Assessment Year. Another significant feature under sub-section (3) is that the deduction allowable is 100% of such profits and gains from an undertaking or an enterprise for five Assessment Years commencing with the initial Assessment Year and thereafter the deduction is allowable at 25% (or 30% where the assessee is a company) of the profits and gains. It brings out the following aspects:

(a) Those undertakings or enterprises fulfilling the conditions mentioned in sub-section (2) of Section 80-IC become entitled to deduction under this provision.

(b) This deduction is allowable from the initial Assessment Year. 'Initial Assessment Year' is defined in Section 80-IB(14)(c) of the Act.

(c) The deduction is @ 100% of such profits and gains for first 5 Assessment Years and thereafter a deduction is permissible @ 25% (or 30% where the assessee is a company).

(d) Total period of deduction is 10 years, which means 100% deduction for first 5 years from the initial Assessment Year and 25% (or 30% where the assessee is a company) for the next 5 years.

11. In the judgment dated 20th August, 2018, while holding that deduction @ 100% cannot be allowed for more than 5 years from the 'initial assessment year', the reasoning that was given is contained in paragraph 20 of the judgment. Which reads as under:

> "When we keep in mind the aforesaid scheme and spirit behind this provision, such a situation cannot be countenanced where an Civil Appeal No. 7208 OF 2018 & Ors. Page 14 of 17 assessee is able to secure deduction @ 100% for the entire period of 10 years. If that is allowed it will amount to doing violence to the provisions of sub-section (3) read with sub-section (6) of Section 80-IC. A pragmatic and reasonable interpretation of Section 80-IC would be to hold that once the initial Assessment Year commences and an assessee, by virtue of fulfilling the conditions laid down in sub-section (2) of Section 80-IC, starts enjoying deduction, there cannot be another "Initial Assessment Year" for the purposes of Section 80-IC within the aforesaid period of 10 years, on the basis that it had carried substantial expansion in its unit."

12. As can be seen from the aforesaid passage, this Court took the view that once 'initial assessment year' starts on fulfilling the conditions laid down in sub-section (2) of Section 80-IC, there cannot be another 'initial

assessment year' for the purposes of Section 80-IC within the aforesaid period of 10 years. While doing so, the Court referred to Section 80-IB(14)(c) of the Act, on the basis of which an opinion was formed that there cannot be another 'initial assessment year' for the purpose of Section 80-IC within the aforesaid period of 10 years. As pointed out in the later part of the judgment, this is the apparent error which was committed. Section 80-IB(14) starts with the words 'for the purpose of this section'. Thus, 'initial assessment year' defined therein is relatable only to the deductions that are provided under the provisions of Section 80-IB, namely, in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. Section 80-IB is materially different from Section 80-IC of the Act. Inasmuch as Section 80-IC is a special provision in respect of certain undertakings, all enterprises mentioned in Section 80-IC are limited in contrast with Section 80-IB, the deduction under this Section is available only when such undertakings or enterprises are established in particular States, Sikkim, Himachal Pradesh, Uttaranchal or any of the North-Eastern States. Therefore, definition of 'initial assessment year' mentioned in Section 80-IB could not have been the basis of finding out the definition of 'initial assessment year' which is different from the definition contained in Section 80-IB. Further, Sub-section (3) of Section 80-IC mentions about the deduction that is permissible, namely, 100%

deduction of the profits and gains for first five years and 25% (or 30% where the assessee is a company) for the next five years. This sub-section, in any case, does not deal with the 'initial assessment year'.

13. Learned counsel appearing for the assessees pointed out before us that clause (v) of sub-section (8) of Section 80-IC is the concerned provision which provides definition of 'initial assessment year', for the purpose of this very Section, i.e., Section 80-IC, which was not noticed while pronouncing the judgment in ***Commissioner of Income Tax*** vs. ***M/s. Classic Binding Industries*** case. We find substance in this submission of the assessees. We have no hesitation to accept this mistake which occurred in the aforesaid judgment. The Court specifically dealt with 'initial assessment year' and came into conclusion that there cannot be two initial assessment years within a span of 10 years which is the maximum period for allowing deduction as per sub-section (6) of Section 80-IC. As the issue directly concerned with initial assessment year, its definition contained in that very Section was missed out. To that extent, there is an error in the judgment dated 20th August, 2018 in ***Classic Binding Industries*** case.

14. In the aforesaid conspectus, the focus has to be on the question as to whether definition of 'initial assessment year' contained in clause (v) of sub-section (8) of Section 80-IC makes any difference? We would like to

reproduce the said definition once again, hereunder, for the purpose of continuity of thought process.

> "S. 80-IC : xxx xxx xxx
> (8) xxx xxx xxx
> (v) —Initial assessment year‖ means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion"

15. On the basis of this definition, counsel for the assessees before us have argued that there can be more than one 'initial assessment year' which can be triggered by the contingency provided therein.

16. As per this definition, there can be 'initial assessment year', relevant to previous year, in any of the following contingencies:

(i) The previous year in which the undertaking or the enterprise begins to manufacture or produce article or things; or

(ii) Commences operation; or

(iii) Completes substantial expansion

First two events are relatable to new units whereas third incident would occur in respect of existing units. The benefit of Seciton 80-IC is, thus, admissible not only when an undertaking or enterprise sets up new unit and starts manufacturing or producing article or things. The advantage of this provisions is also accrued to those existing units, if they carry out "substantial expansion" of their units by investing required capital, in the assessment year relevant to the previous year.

“Substantial expansion” is defined in clause (ix) of sub-section (8) of Section 80-IC and it reads as under:

> "(ix) “Substantial expansion” means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

17. As per the aforesaid definition, an existing unit would be treated as having carried out substantial expansion when there is increase in the investment in the plant and machinery by at least 50% of the book value of the plant and machinery (before taking depreciation in any year). As already noted above, in all these cases at hand, the assessees had initially set up new industry in the State of Himachal Pradesh of the nature specified under Section 80-IC of the Act. As a result, they became entitled to avail the concession provided in the said provision. It is also an admitted fact that after five years and before the expiry of 10 years, the assessees had carried substantial expansion of their units in terms of the aforesaid definition. When we consider the definition of ‘initial assessment year’, keeping in view these factors, we find substance in the submissions made by the learned counsel for the assessees and are inclined to accept that there can be another ‘initial assessment year’ on the fulfillment of the condition mentioned in the said definition, namely, completion of substantial expansion of the existing unit.

18. The Court is supposed to give effect to the provisions of Section 80-IC

by reading various provisions conjointly. For the purpose of these cases, relevant provisions are sub-section (2)(a)(ii), sub-section 3(ii), sub-section (6) and sub-section (8)(v) and (ix). Clause (ii) of sub-section (2) provides that in case an undertaking or enterprise sets up a unit of the nature specified therein in the State of Himachal Pradesh or the State of Uttaranchal between the 7th January, 2003 and 1st April, 2015, such an undertaking or enterprise shall become eligible for the deductions from such profits and gains, as specified in sub-section (3). In respect of State of Himachal Pradesh (in respect of which these cases pertain to) sub-section (3) enumerates the extent of deduction. It is 100% of profits and gains for first five initial assessment years commencing with the initial assessment year and thereafter 25% (or 30% where the assessee is a company) of the profits and gains. The deduction @ 25% for the neat five years in on the assumption that the new unit remains static insofar as expansion thereof is concerned. However, the moment substantial expansion takes place, another 'initial assessment year' gets triggered. This new event entitles that unit to start getting deduction @ 100% of the profits and gains. At the same time, new period of 10 years does not start. It is because of the reason that total period for which deduction can be allowed is capped at 10 years, inasmuch as sub-section (6) in no uncertain terms stipulates that deduction shall be not allowed for a period exceeding 10 assessment

years. In fact, this period of 10 years relates not only in respect of deduction under Section 80-IC but under the second proviso to sub-section (4) of Section 80-IB as well. It would mean that total deduction under Section 80-IB as well as 80-IC is for a period of 10 years.

19. Having examined the scheme in the aforesaid manner, we arrive at the conclusion that the definition of 'initial assessment year' contained in clause (v) of sub-section (8) of Section 80-IC can lead to a situation where there can be more than one "initial assessment year" within the said period of 10 years. As per sub-section (6), cap is on the 10 assessment years. It is not on quantum. We have also to keep in mind the purpose for which Section 80-IC was enacted. The purpose was to establish the business of the nature specified in the said provision in the specified States. This provision was, thus, aimed at encouraging the undertakings or enterprises to establish and set up such units in the aforesaid States to make them industrially advanced States as well. Undoubtedly, these are difficult States as most of these States fall in hilly areas. Therefore, cost of production and transportation may also go up.

20. When we keep in mind these objectives for which Section 80-IC was enacted, an irresistible conclusion would be to grant 100% deduction of the profits and gains even from the year when there is substantial expansion in the existing unit. After all, this substantial expansion

involves great deal of investment which has to be, at least 50% in the plant and machinery, of the book value thereof before taking depreciation in any year. With an expansion of such a nature not only there would be increase in production but generation of more employment as well, which would benefit the local populace. It is for this reason, carrying out substantial expansion by itself is treated as 'initial assessment year'. It would mean that even when an old unit completes substantial expansion, such a unit also becomes entitled to avail the benefit of Section 80-IC. If that is the purpose of the legislature, we see no reason as to why 100% deduction of the profits and gains be not allowed to even those units who had availed this deduction on setting up of a new unit and have now invested huge amount with substantial expansion of those units. We would like to reproduce following discussions from the Constitution Bench judgment in ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and Others***[1] :

> "**20.** It is well accepted that a statute must be construed according to the intention of the legislature and the courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature. In this connection, the following observations made by this Court in *District Mining Officer* v. *TISCO* [*District Mining Officer* v. *TISCO*, (2001) 7 SCC 358] , may be noticed: (SCC pp. 382-83, para 18)

1 (2018) 9 SCC 1

"*18*. … A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

"28. The decision of this Court in *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Labour Court* [*Punjab Land Development and Reclamation Corpn. Ltd.*v. *Labour Court*, (1990) 3 SCC 682 : 1991 SCC (L&S) 71] , made the said distinction, and explained the literal rule: (SCC p. 715, para 67)

"*67*. The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning, whatever the result may be. Unless

> otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."

That strict interpretation does not encompass strict literalism into its fold. It may be relevant to note that simply juxtaposing "strict interpretation" with "literal rule" would result in ignoring an important aspect that is "apparent legislative intent". We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, "strict interpretation" does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then "strict interpretation" can be implied to accept some form of essential inferences which literal rule may not accept.

29. We are not suggesting that literal rule *dehors* the strict interpretation nor one should ignore to ascertain the interplay between "strict interpretation" and "literal interpretation". We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

30. Justice G.P. Singh, in his treatise *Principles of Statutory Interpretation* (14th Edn. 2016 p. 879) after referring to *Micklethwait, In re* [*Micklethwait, In re*, (1855) LR 11 Ex 452 : 156 ER 908] ; *Partington* v. *Attorney General* [*Partington* v. *Attorney General*, (1869) LR 4 HL 100] , *Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd.* v. *CIT* [*Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd.* v. *CIT*, (2014) 11 SCC 672] , *State Bank of Travancore* v. *CIT* [*State Bank of Travancore* v. *CIT*, (1986) 2 SCC 11 : 1986 SCC (Tax) 289] and *Cape Brandy*

Syndicate v. *IRC* [*Cape Brandy Syndicate* v. *IRC*, (1921) 1 KB 64] , summed up the law in the following manner:

> "A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury [**Ed.**: *Tennant* v. *Smith*, 1892 AC 150 at p. 154] and Lord Simonds [**Ed.**: *St Aubyn* v. *Attorney General*, 1952 AC 15 at p. 32 (HL)] , means:
>
> '"The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words."'

In a classic passage Lord Cairns stated the principle thus:

> 'If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.'

Viscount Simon quoted [**Ed.**: *Canadian Eagle Oil Co. Ltd.* v. *Selection Trust Ltd.*, 1946 AC 119 at p. 140 (HL)] with approval a passage [*Cape Brandy Syndicate* v. *IRC*, (1921) 1 KB 64] from Rowlatt, J. expressing the principle in the following words: (*Cape Brandy case* [*Cape Brandy Syndicate* v. *IRC*, (1921) 1 KB 64] , KB p. 71)

> '… in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'"

21. The High Court has interpreted these provisions in the following manner:

> "80-IC(3)(ii) [for Himachal Pradesh] stipulates that deduction shall be @ 100% for five years commencing with "initial assessment year" and thereafter @ 25%. "Initial assessment year", as per

> Section 80-IC (8)(v) means, year in which the unit begins/commences to manufacture/produce or completes "substantial expansion" [As per Section 80-IC(8)(ix)].
>
> 46. The moment "substantial expansion" is completed as per Section 80-IC(8)(ix), the statutory definition of "initial assessment year" [Section 80-IC(8)(v)] comes into play. And consequently, Section 80-IC(3)(ii) entitles the unit to 100% deduction for five years commencing with completion of "substantial expansion", subject to maximum of ten years as per Section 80-IC(6).
>
> 47. A unit that started operating/existed before 7.1.2003 was entitled to 100% deduction for first five years under Section 80-IB(4). If this unit completes substantial expansion during the window period (7.1.2003 to 31.3.2012), it would be eligible for 100% deduction again for another five years under Section 80-IC(3)(ii), subject to ceiling of ten years as stipulated under Section 80-IC(6)."

We are inclined to agree with the aforesaid interpretation.

22. It would be pertinent to point out that in Para 20 of the judgment in ***Classic Binding Industries***, this Court observed that if deduction @ 100% for the entire period of 10 years, it would be doing violence to the language of sub-section (6) of Section 80-IC. However, this observation came without noticing the definition of 'initial assessment year' contained in the same very provision.

23. Having examined the matter in the aforesaid perspective, judgment in the case of ***Mahabir Industries*** v. ***Principal Commissioner of Income Tax***[2] would, in fact, help the assessee. The fine distinction pointed out in ***Classic Binding Industries*** elopes thereby. To recapitulate, in ***Mahabir Industries***, it was held that if an assessee get 100%

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2 Civil Appeal Nos. 4765-4766 of 2018 decided on May 18, 2018

exemption under Section 80-IB of the Act for five years and thereafter carries out the substantial expansion because of which said assessee becomes entitled to exemption under the new provision i.e. Section 80-IC of the Act, the assessee would be entitled to deduction @ 100% even after five years. This ruling was predicated on the ground that there can be two initial assessment years, one for the purpose of Section 80-IB and other for the purposes of Section 80-IC of the Act. Once we find that there can be two initial assessment years, even as per the definition thereof in Section 80-IC itself, the legal position comes at par with the one which was discussed in ***Mahabir Industries.***

24. The aforesaid discussion leads us to the following conclusions:

(a) Judgment dated 20th August, 2018 in ***Classic Binding Industries*** case omitted to take note of the definition 'initial assessment year' contained in Section 80-IC itself and instead based its conclusion on the definition contained in Section 80-IB, which does not apply in these cases. The definitions of 'initial assessment year' in the two sections, viz. Sections 80-IB and 80-IC are materially different. The definition of 'initial assessment year' under Section 80-IC has made all the difference. Therefore, we are of the opinion that the aforesaid judgment does not lay down the correct law.

(b) An undertaking or an enterprise which had set up a new unit between 7th January, 2003 and 1st April, 2012 in State of Himachal

Pradesh of the nature mentioned in clause (ii) of sub-section (2) of Section 80-IC, would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the 'initial assessment year'. For the next five years, the admissible deduction would be 25% (or 30% where the assessee is a company) of the profits and gains.

(c) However, in case substantial expansion is carried out as defined in clause (ix) of sub-section (8) of Section 80-IC by such an undertaking or enterprise, within the aforesaid period of 10 years, the said previous year in which the substantial expansion is undertaken would become 'initial assessment year', and from that assessment year the assessee shall been entitled to 100% deductions of the profits and gains.

(d) Such deduction, however, would be for a total period of 10 years, as provided in sub-section (6). For example, if the expansion is carried out immediately, on the completion of first five years, the assessee would be entitled to 100% deduction again for the next five years. On the other hand, if substantial expansion is undertaken, say, in 8th year by an assessee such an assessee would be entitled to 100% deduction for the first five years, deduction @ 25% of the profits and gains for the next two years and @ 100% again from 8th year as this year becomes 'initial assessment year' once again.

However, this 100% deduction would be for remaining three years, i.e., 8th, 9th and 10th assessment years.

25. In view of the aforesaid, we affirm the judgment of the High Court on this issue and dismiss all these appeals of the Revenue. Likewise, appeals filed by the assessees are hereby allowed.

.....J.
(A.K. SIKRI)

.....J.
(S. ABDUL NAZEER)

.....J.
(M. R. SHAH)

NEW DELHI;
February 20, 2019.