



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

% **Judgment reserved on: March 14, 2024**  
**Judgment pronounced on: April 01, 2024**

+ **W.P.(C) 5081/2017**

VALLEY IRON & STEEL CO.LTD ..... Petitioner  
Through: Mr. S. Ganesh, Sr. Adv. with Mr.  
Abhimanyu Jhamba, Ms.  
Thonpinao Thangal, Ms.  
Hatneimawi, Mr. Shivam  
Prashar, Advs.

versus

PRINCIPAL COMMISSIONER FOR INCOME TAX  
(CENTRAL)-1 & ORS. .... Respondents  
Through: Mr. Puneet Rai, SSC with Mr.  
Rishabh Nangia, Mr. Ashwini  
Kumar, Mr. Nikhil Jain, Advs.

+ **W.P.(C) 7834/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX  
(CENTRAL) – 1 ..... Petitioner  
Through: Mr. Gaurav Gupta, SSC with Mr.  
Shivendra Singh, Ms. Mahima  
Garg, Advs.

versus

M/S VALLEY IRON & STEEL  
CO. LTD. & ANR. .... Respondents  
Through: Mr. S. Ganesh, Sr. Adv. with Mr.  
Abhimanyu Jhamba, Ms.  
Thonpinao Thangal, Ms.  
Hatneimawi, Mr. Shivam  
Prashar, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE YASHWANT VARMA**  
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR**  
**KAURAV**



## JUDGMENT

### YASHWANT VARMA, J.

1. The petitioner-assessee impugns the order dated 28 February 2017 passed by the **Income Tax Settlement Commission**<sup>1</sup> with the challenge being restricted to the additions made with respect to the infusion of share capital by M/s Amit Goods and Supplier Private Ltd. and the denial of benefit of deductions under Section 80IC of the **Income Tax Act, 1961**<sup>2</sup> on the income of INR 24.99 crores. The **Principal Commissioner of Income Tax**<sup>3</sup> has also assailed the aforesaid order of the ITSC and to the extent that relief was accorded to the assessee, including grant of immunity from prosecution.

2. The present writ petitions constitute the second round of litigation since the application for settlement had initially come to be disposed of by the ITSC in terms of an order dated 31 July 2013. The aforesaid order was assailed before this Court by way of W.P.(C) 929/2015 which came to be allowed by way of an order dated 06 May 2016, whereby the Court quashed and set aside the order passed by the ITSC and required it to examine the issues emanating from the infusion of unexplained share capital and the deductions liable to be accorded in terms of Section 80 IC of the Act.

3. We deem it apposite to extract the order dated 06 May 2016 which is reproduced hereinbelow:-

“1. The challenge in this petition is to an order dated 31st July, 2013 passed by the Income Tax Settlement Commission ("ITSC")

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<sup>1</sup> ITSC

<sup>2</sup> Act

<sup>3</sup> PCIT



where the income of the Petitioner for the Block Period 2004-05 to 2010-11 has been computed under Section 245D(4) of the Income Tax Act, 1961 ('Act'). *Inter alia*, in determining the taxable income for the aforementioned block period the ITSC concluded that the Petitioner cannot claim deduction under Section 80IC of the Act. The ITSC also declined to interfere with the addition proposed in the original assessment on account of introduction on unaccounted income by way of share capital.

2. It is stated by the Petitioner that subsequent to the impugned order of the ITSC, when the assessment proceedings for the subsequent assessment year ('AY') was in progress, the Petitioner came across a copy of the letter dated 18th July, 2013 written by the Commissioner of Income Tax DR Additional Bench ITSC, to the Commissioner of Income Tax Central-I. The said letter was written on the day that the last hearing of the settlement application took place before the ITSC. The ITSC proceeded to pass the impugned final order on 31st July, 2013.

3. The contents of the above letter are revealing inasmuch as it is stated therein that as far as the share capital for the introduction of money on account of share capital application amounting to Rs.34,66,19,000, it came from "busy books" which are real books and that the said sum was found in the ledger accounts of the share applicants in the regular books.

4. The other aspect which is referred to in the said letter concerns the Section 80IC deduction. The verification undertaken revealed an arithmetical error in the report dated 10th July, 2013 submitted to the ITSC where instead the figure of Rs.28,71,908/- the figure Rs. 2,87,19,008 was written.

5. In the impugned order there is no reference to the above communication at all. Neither fact mentioned in the said letter was brought to the notice of the ITSC.

6. Despite opportunities, no counter affidavit has been filed in the present petition. Therefore, there is no rebuttal of the fact that the above letter was in fact written by CIT DR, Additional Bench, ITSC to the CIT Central-I.

7. Learned counsel for the Respondent draws attention to the paragraph 15 of the order where ITSC has recorded the concession by the Petitioner during the course of hearing on 18<sup>th</sup> July, 2013 regarding treating Rs.24,91,54,640/ as additional income attributable to infusion of unexplained share capital.

8. Mr Sanjeev Sabharwal, learned Senior Advocate appearing for the Petitioner, on instructions, however, states that the above concession was given in anticipation of the deduction under Section 80IC as in that event no tax liability would be



outstanding. Although the impugned order does not record the above submission, the Court is of the view that the letter dated 18<sup>th</sup> March, 2013 referred to above was a critical document which ought to have been taken note of by the ITSC while deciding the two issues referred to therein.

9. Consequently, the impugned order dated 31<sup>st</sup> July, 2013 of the ITSC as regards the above two issues is hereby set aside and the said two issues viz., introduction of unaccounted money as share capital and claiming of deduction under Section 80IC are remanded to the ITSC for a fresh adjudication in accordance with law. In particular the ITSC shall take into account the letter dated 13<sup>th</sup> July, 2013 written by the Principal Commissioner Additional Bench ITSC to the Commissioner of Income Tax Central.

10. The matter shall be listed before the ITSC on 12<sup>th</sup> July, 2016 for further proceedings in light of the above directions.

11. The writ petition is disposed of in the above terms with no order as to costs.

12. Order *dasti* to the parties.”

4. Upon the matter being taken up afresh, the ITSC took note of the judgment rendered in the writ petition including the reliance which had been placed on a letter dated 18 July 2013 addressed by the **Commissioner of Income Tax (DR)**<sup>4</sup> asserting therein that the introduction of share capital amounting to INR 34,66,19,000/- had been found duly recorded and thus verifiable from the ledger account of the share applicants. That communication had also alluded to an arithmetical error appearing in the report dated 10 July 2013 submitted to the ITSC where the figure of INR 28,71,90,800/- came to be erroneously mentioned instead of the correct figure of INR 28,71,908/-. The PCIT also appears to have submitted a letter dated 22 July 2013 and which took a stand at variance with the earlier communication of 18 July 2013. The PCIT took the position that the entire amount of INR 34,66,56,950/- should be treated as unexplained credit and taxed in

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<sup>4</sup> CIT(DR)



accordance with Section 68 of the Act.

5. As would be evident from our order passed in the earlier round of litigation, one of the principal grounds which weighed upon the Court in interfering with the order of the ITSC was a failure on its part to confront the petitioner-assessee with the letters dated 18 and 22 July 2013. However, and notwithstanding the aforesaid developments, the ITSC framed the following two principal issues for consideration: -

a) Genuineness of claim of share capital amounting to INR 34,66,56,950/-.

b) Claim of deduction under Section 80IC of the Act.

6. In the report which was submitted pursuant to the provisions contained in Section 245D(3), the PCIT took the stand that the introduction of share capital amounting to INR 34,66,56,950/- could not be verified and that there were grave doubts with respect to the genuinity of the aforesaid transactions. The report also doubted the claim for deductions under Section 80 IC of the Act.

7. However, upon crystallization of the aforesaid two issues, the ITSC while dealing with the issue pertaining to share capital took note of the following particulars.

<b>“S.No</b>	<b>Name of subscriber of share capital</b>	<b>A.Y. 2008-09</b>	<b>A.Y.2009-10</b>	<b>TOTAL</b>
1.	M/s Himalyan Fincon Pvt. Ltd.	8,50,00,000/-	4,67,96,950/-	<b>13,22,96,950/-</b>
2.	M/s Amit Goods & Supplier Pvt. Ltd.	4,82,00,000/-	6,44,60,000/-	<b>11,26,60,000/-</b>
3.	M/s Jindal Dal Mill Pvt. Ltd.	12,00,000/-	-	<b>12,00,000/-</b>
4.	M/s Adarsh Foods	55,00,000/-	-	<b>55,00,000/-</b>



	Product Pvt. Ltd.			
5.	M/s Molu Ram Pramanand	25,00,000/-	-	<b>25,00,000/-</b>
6.	M/s Abhipra Capital Ltd.	-	55,00,000/-	<b>55,00,000/-</b>
7.	M/s Balaji Enterprises (Sh. Rajiv Kumar)	-	3,22,00,000/-	<b>3,22,00,000/-</b>
8.	M/s Sai Enterprises (Jugal Kishore Gupta)	-	3,60,00,000/-	<b>3,60,00,000/-</b>
9.	Shri Ram Bindal	-	80,00,000/-	<b>80,00,000/-</b>
10.	<b>Total</b>	<b>15,37,00,000/-</b>	<b>19,29,56,950/-</b>	<b>34,66,56,950/-</b>

8. It appears that during the course of proceedings, the petitioner-assessee in terms of its letter dated 13 February 2017 had asserted that the amount of INR 34,66,56,950/- was in respect of share capital infusion and as per the details and explanations submitted, the said amount was duly verifiable. It, however, asserted that the inclusion of share capital aggregating to INR 16,32,96,950/- and representing investments made by M/s Himalayan Fincon Pvt. Ltd., M/s Jindal Dal Mill Pvt. Ltd., M/s Adarsh Foods Products Pvt. Ltd., M/s Abhipra Capital Ltd. and Sh. Hari Ram Bindal cannot be verified since the records pertaining to **Assessment Years**<sup>5</sup> 2004-05 to 2010-11 were very old and a majority of them had been destroyed in the course of a cloud burst in Himachal Pradesh. Expressing its inability to substantiate its claim regarding genuineness of the investment amounting to INR 16,32,96,950/-, it offered the said sum as additional income liable to be taxed.

9. That left the ITSC to essentially examine the veracity of share

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<sup>5</sup> AYs



capital infusion by the following parties and the details whereof are set out hereunder:

<b>“S.No</b>	<b>Name of subscriber of share capital</b>	<b>A.Y. 2008-09</b>	<b>A.Y. 2009-10</b>	<b>TOTAL</b>
1.	M/s Amit Goods & Supplier Pvt. Ltd.	4,82,00,000/-	6,44,60,000/-	<b>11,26,60,000/-</b>
2.	M/s Molu Ram Pramanand	25,00,000/-	-	<b>25,00,000/-</b>
3.	M/s Balaji Enterprises (Sh. Rajiv Kumar)	-	3,22,00,000/-	<b>3,22,00,000/-</b>
4.	M/s Sai Enterprises (Jugal Kishore Gupta)	-	3,60,00,000/-	<b>3,60,00,000/-</b>
5.	<b>Total</b>	<b>5,07,00,000/-</b>	<b>13,26,60,000/-</b>	<b>18,33,60,000/-</b>

10. Insofar as M/s Balaji Enterprises and M/s Sai Enterprises are concerned, the ITSC took note of the verification report submitted by the PCIT and was dated 18 February 2017 to hold that the said authority had by and large found the claim of the assessee to be correct except for a few minor instances where transactions could not be fully verified.

11. On an overall consideration of the aforesaid, it came to conclude that the claim of the petitioner-assessee with respect to share capital amounting to INR 6,82,00,000/- attributable to the aforesaid two parties should be taken to be verified and thus allowed. This is evident from the following passages forming part of the order of the ITSC:-

“During the course of hearing on 17.02.2017, Shri Sanjeev Sabarwal, Sr. Advocate and AR of the applicant submitted that necessary verification from the bank statement was got done before the A.O. with reference to the bank statement of the subscriber companies. He further submitted that if given an opportunity the same exercise can be undertaken once again to prove the applicant's claim in regard to the share capital raised from the said subscribers. Accordingly, the Pr. CIT and the applicant company were directed to conduct the necessary verification with respect to the bank statement of the share capital subscribers and report the outcome of such verification on the



next date of hearing i.e. 20.02.2017. The verification report dated 18.02.2017 was filed before the Bench during the course of final hearing on 20.02.2017. As per this report, the Pr. CIT has by and large found the claim of the applicant as correct but has pointed out to few instances when no immediate cash was deposited in the bank account for issuing cheque for share capital. Shri Sanjeev Sabarwal, Sr. Advocate sought to explain the said discrepancies by stating that total cash deposited during the period is much more than the amount of cheques issued for the share capital and he urged the Bench to take a practical view of the situation in the given circumstances of the case where matching each cash entry with cheque entries was not possible. The Pr. CIT(Central)-1, New Delhi who was present during the hearing, did not raise any serious objections to the explanation given by the AR of the applicant and asked the Bench to take decision on its own wisdom.

We have considered rival submissions and contentions on this issue. It is an admitted fact that majority of the transactions in regard to share capital raised by the applicant company from the two subscribers have been verified by the Pr. CIT who has not raised any serious objections to the minor aberrations found during the verification of the claim of the applicant on this issue. In view of the aforesaid position, it is held that applicant's claim in regard to share capital amounting to Rs.6,82,00,000/- attributable to the said two parties is considered to have been verified and the same is, accordingly, allowed. No interference is, therefore, called for on this issue.”

12. Proceeding then to consider the share capital contribution pertaining to M/s Molu Ram Pramanand, the ITSC held that the aforesaid infusion of funds also stood duly verified and consequently the claim of the petitioner-assessee was liable to be accepted. This is evident from the following extracts of the order of the ITSC which are reproduced hereinbelow: -

“(iv) **M/s Molu Ram Pramanand**: During the course of hearing on 17.02.2017, the Pr. CIT and the applicant company were asked to conduct verification of the applicant's claim in regard to share capital amounting to Rs.25,00,000/- raised from the said concern. The Pr. CIT(Central)-1, New Delhi in his report dated 18.02.2017 has stated that in view of the applicant's inability to bank details





or bank statement of the said party, the verification as directed by the Bench could not be done.

During the course of final hearing on 20.02.2017, Shri Sanjeev Sabarwal, Sr. Advocate and AR of the applicant submitted that in view of the fact that considerable time has elapsed since when the transaction were made, the applicant in not in a position to furnish the necessary details to the Department for verification. He, however, submitted that transactions are very much verifiable from the seized record and therefore, genuineness of the transaction with the said party should be accepted. The Pr. CIT(Central)-1, New Delhi who was present during the hearing fairly conceded the handicap on the part of the applicant to produce bank details etc. and left the matter to the discretion of bench thus not raising any serious objections to the explanation furnished by the applicant.

We have considered the arguments and submissions made by both the sides on this issue. In view of the fact that the Pr. CIT (Central)-I has not raised any serious objections to the explanation furnished by the applicant on this issue, we hold that the claim of the applicant in regard to the share capital amounting to Rs.25,00,000/- raised from M/s Molu Ram Pramanand is in order and accordingly, no interference is considered necessary on this issue.”

13. That left the ITSC to examine the infusion of an amount of INR 11,26,60,000/- and which was claimed to be the investment in share capital made by M/s. Amit Goods and Supplier Pvt. Ltd. Dealing with the particulars pertaining to the aforementioned party, the ITSC held as follows: -

“We have considered the arguments and submissions made by both the sides. It has not been disputed that enquiry letter u/s 133(6) of the IT Act issued to the share subscriber was not complied with. Details of bank account or copies of bank statements were also not furnished to the AO for necessary verification of the claim. The applicant cannot simply get away by not furnishing the requisite details for verification of its claim to the AO. The arguments of the applicant that the amount of share capital has already been assessed as income of the subscriber i.e. M/s Amit Goods & Suppliers Pvt. Ltd. is rather tenuous. We also note that the share capital has been introduced by the said subscriber in A.Y. 2008-09 and A.Y. 2009-10 whereas



the assessment of M/s Amit Goods & Suppliers Pvt. Ltd. for A.Y.2008-09 has been completed on returned income of Rs.30,584/. Even for the sake of arguments, the said contention is accepted then the source of share capital amounting to Rs.4,82,00,000/- introduced during A.Y. 2008-09 remains unexplained. Moreover, the assessment for A.Y. 2009-10 has been completed ex-parte without considering the relevant facts in an objective manner and simply because the assessment for any assessment year has been completed by the AO at a sufficiently higher amount would not automatically explain all further investment claimed to have been made out of such income. We also take note of the fact that M/s Amit Goods & Supplier Pvt. Ltd. is a shell company having no business activity at all. It is also noted that the said company was at the relevant time acquired by the promoters of the applicant company.

In view of the facts and in the circumstances of the case brought out above, we hold that applicant's claim in regard to raising, of share capital amounting to Rs.11,26,60,000/- from M/s Amit Goods & Supplier Pvt. Ltd. remains unsubstantiated. Our decision on this issue is duly supported by the decision of Hon'ble Supreme Court as passed in the case of Jamuna Prasad Kanaihya Lal (130 ITR 244) followed by the Supreme Court in their decision in the case of Radhey Shyam Tibrewal Vs CIT(145 ITR 186). Accordingly, this amount of Rs.11,26,60,000/- shall be added to the income of the applicant company for A.Y. 2008-09 and A.Y. 2009-10 as per the amount of share capital claimed to have been received in each of the said assessment years. Our decision in this regard is further fortified by the various irregularities and discrepancies enumerated in para 9 at page 7 of order u/s 245D(4) dated 31.07.2013 passed by this Bench earlier.”

14. Based on the aforesaid conclusions, it held that the amount of INR 11,26,60,000/- is liable to be added to the income for AYs 2008-09 and 2009-10 of the assessee. While closing the chapter on the aforenoted additions, the ITSC significantly observed as under: -

“11.1 It is clarified that amount on account of addition of unproved share capital u/s 68 shall not be treated as business income of the applicant and accordingly, this income shall not qualify for the purpose of computing the claim of the applicant u/s 80IC of the IT Act in consonance with the Section 115BBE of the IT Act, 1961.”

15. Proceeding then to examine the questions flowing from Section



80IC of the Act, the ITSC in its impugned order has made the following pertinent observations: -

“15. During the course of hearing on 20.02.2017, Shri Sanjeev Sabarwal, Sr. Advocate submitted that verification of claim regarding substantial expansion was done by the Assessing Officer and in his report dated 10.07.2013 addressed to the Secretary, ITSC, Additional Bench-1, New Delhi, he had observed that the total purchases found to be bogus is Rs.45,07,88,913/- out of total purchases verified at Rs.49,69,38,519/- as against which the total cost of plant and machinery shown by the applicant is at Rs.23,14,33,683/- as on 31.03.2009 and Rs.58,13,01,563/- as on 31.03.2009. He further stated that as the purchase of material for acquisition of plant and machinery to the extent of Rs.45,07,88,913/- has remained unverified and therefore, becomes bogus and infructuous. The assessee's claim for deduction u/s 80IC becomes also invalid due to this reason as provisions of section 80IC stipulates that deduction u/s 80IC can only be claimed if substantial expansion has been made by way of addition of new plant and machinery. Shri Sanjeev Sabarwal, Sr. Advocate, pointed out that unverified purchases to the tune of Rs.45,07,88,913/- as certified by the Assessing Officer include purchases of Rs.28,71,90,800/- taken erroneously instead of correct purchase amount of Rs.28,71,908/- in respect of machinery purchased from M/s BK Iron and Steel Pvt. Ltd. The applicant has filed copies of bills of purchases made by it from the said party for the verification by the Department in support of its said claim. The AR further submitted that if the purchase amount of Rs.28,71,908/- is substituted in place of wrong figure of Rs.28,71,90,800/- erroneously taken by the Assessing Officer for calculating the amount of unverified purchases, the figure of unverified purchases shall stand drastically reduced to Rs.16,64,70,020/-. In that case more than 50% of the purchased made by the applicant for expansion of plant and machinery shall stand verified and the applicant would have qualified the condition of more than 50% addition of the value of plant and machinery to the existing plant and machinery on the opening day of the previous year corresponding to the relevant assessment year. The AR, therefore, submitted that the applicant is entitled to claim deduction u/s 80IC and the same should be allowed to it.

16. We have considered the rival submissions put forth by the Department and the applicant on this issue. We agree that there is a grave mistake on the part of the AO in working out the unverified amount of plant and machinery claimed to have been purchased by the applicant for expansion of the plant in as much



the figures of machinery purchases from M/s BK Iron & Steel Pvt. Ltd. have been taken at Rs.28,71,90,800/- in place of correct amount of purchase of Rs.28,71,908/-. We also note that assessment for A.Y.2006-07 to A.Y.2008-09 have been completed by the Department u/s 143(3) of the IT Act. We find from the perusal of the assessment orders that issue regarding applicant's claim u/s 80IC has been discussed elaborately and has been allowed by the AO in each of these assessment years. That being the position regarding the admissibility of the applicant's claim u/s 80IC, Department has not brought on record any incriminating documents found during the search which may suggest that the applicant was not eligible for claiming deduction u/s 80IC which have been allowed to it in the above noted assessment years. During the course of hearing on 20.02.2017, the applicant filed copies of certificate dated 19.04.2005 from Director of Industries, Himachal Pradesh certifying, the expansion of installed capacity of the plant from 15000 TPA as on 06.01.2003 to 84000 TPA as on 24.03.2005. As per this certificate the investment in plant and machinery is shown at Rs.319.94lakhs as on 06.01.2003 and Rs.536.70 lakhs as on 24.03.2005 which corroborate the applicant's claim that substantial expansion had taken place in the unit.

17. The Pr. CIT(Central)-1, New Delhi was permitted enquiries u/s 245D(3) of the I.T. Act vide order dated 26.07.2016. The Pr. CIT furnished his report vide letter dated 29.11.2016. We have perused the Pr. CIT's report on this issue. As per this report the Department has furnished a list of 691 bills of plant and machinery amounting to Rs.36.77 crores, out of which, an amount of Rs.36.34 crores relates to such bills where the following narration has been given:-

**"Reply not received/returned" /"reply received but not confirmed with evidence".**

Thus, the Pr. CIT has concluded that investment amounting to Rs.36.34 crores out of total investment of Rs.36.77 crores has not been verified which amounts to 99% of the total bills relating to the expansion remained unverified and therefore, the applicant is not eligible for claim of deduction u/s 80IC of the I.T. Act.

We have perused the above observation of the Pr. CIT(Central)-1, New Delhi in respect of deduction u/s 80IC. The report of the Pr. CIT lacks proper investigation as no serious efforts appear to have been made to trace the concerned parties in spite of fresh opportunity being provided u/s 245D(3) to investigate the matter. The Pr. CIT also should have borne in mind that enquiries were



being conducted by him almost after more than a decade and it cannot be ruled out that some of the suppliers of the machineries may have shifted to some other places in the meantime.

The certificate issued by the Director of Industries, Himachal Pradesh indicates that expansion to the extent of Rs.218 lakh had taken place as on 24.03.2005. As per the said certificate value of investment in plant and machinery as on 06.01.2003 and as on 24.03.2005 was Rs.319.94 lakhs and Rs.536.70 lakhs. In order to be eligible for claiming the deduction u/s 80IC of the IT Act, the applicant was required to make expansion to the extent of 50% and accordingly, he was required to make an investment of Rs.1.63 crores towards the expansion of plant and machinery as against which expansion of Rs.2.18 crores was made as per certificate dated 19.04.2005.

We also note that assessment for A.Y.2006-07 to A.Y.2008-09 have been completed by the Department u/s 143(3) of the IT Act. We find from the perusal of these assessment orders that issue regarding applicant's claim u/s 80IC has been discussed elaborately and has been allowed by the AO in each of these assessment years. That being the position regarding the admissibility of the applicant's claim u/s 80IC, Department has not brought on record any incriminating documents found during the search which may suggest that the applicant was not eligible for claiming deduction u/s 80IC which have been allowed to it in the *above* noted assessment years.

18. In view of the foregoing discussion, we are of the considered view that the applicant has successfully demonstrated that it has carried out substantial expansion to the existing unit as required under clause (ix) of sub section 8 of section 80IC which defines the term "substantial expansion". Accordingly, we hold that applicant is entitled to claim deduction u/s 80 IC of the IT Act. However, it may be clarified that since the applicant claimed deduction u/s 80IC for the first time in A.Y.2004-05, it shall be eligible to claim deduction u/s 80IC of the IT Act up to A.Y.2013-14 only."

16. While holding in favour of the petitioner-assessee insofar as the claim for deductions under Section 80IC of the Act and the investments made towards substantial expansion of an existing unit, it took into



consideration the fact that in the reports which were submitted to it, no tangible material or evidence had been gathered and which may have cast a doubt on the claim as raised. It further significantly found that the assessments for AYs' 2006-07 to 2008-09 in the case of the petitioner-assessee had been completed under Section 143(3) of the Act. The ITSC holds that a perusal of those orders would establish that its claim for Section 80IC benefits had been elaborately examined and allowed by the **Assessing Officer**<sup>6</sup> in each of those AYs'. It also took into consideration the certificate issued by the Director of Industries. On an overall conspectus of the aforesaid, it came to conclude that the petitioner-assessee would be entitled and eligible to claim deductions under Section 80 IC of the Act albeit up to AY 2013-14.

17. Insofar as the aforesaid aspect is concerned, we find that the conclusions ultimately arrived at by the ITSC are unexceptionable and clearly merit no interference. This, principally in light of the certificate issued by the Director of Industries as well as the claim in this respect having been duly verified and accepted by the respondents themselves in the course of assessment for AYs' 2006-07 to 2008-09.

18. Insofar as the additions pertaining to the share capital investment made by M/s Amit Goods and Supplier Private Ltd. is concerned, we find that the petitioner-assessee had duly drawn the attention of the respondents to the fact that an addition of INR 37.60 crores had been made in the income of that entity in the course of assessments undertaken for AYs' 2007-08, 2008-09 and 2009-10. In those assessments, an amount of INR 37.60 crores was added in the hands of M/s Amit Goods and Suppliers Private Ltd. on the allegation that it had

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<sup>6</sup> AO



invested its own funds by re-routing the same as share capital.

19. According to the petitioner-assessee, the aforesaid assessments as made in the case of M/s Amit Goods and Supplier Private Ltd. have attained finality as well. It was in the aforesaid backdrop that Mr. Ganesh, learned senior counsel submitted that those orders would establish and confirm the availability of funds with M/s Amit Goods and Suppliers Private Ltd. in AY 2007-08 and thus proving that it had adequate funds to make investments in the share capital of the petitioner-assessee in the subsequent AYs', namely, 2008-09 and 2009-10.

20. Mr. Ganesh further submitted that notwithstanding the above, since the amount shown to be invested by M/s Amit Goods and Suppliers Private Ltd. in the petitioner-assessee already stood taxed in its hands by virtue of the additions made in the course of its assessment proceedings and under Section 68 of the Act, the same amount cannot possibly be added while assessing the petitioner.

21. This submission clearly holds merit in light of the undisputed position of the additions made in the course of assessment proceedings initiated in respect of M/s Amit Goods and Suppliers Private Ltd having been subjected to tax and the source of the funds having been duly identified by the respondents themselves. In our considered opinion, therefore, the ITSC clearly erred in making the addition of INR 11.26 crores while settling the income upon the application preferred by the petitioner-assessee.

22. That only leaves us to examine the contention of Mr. Rai and Mr. Gupta, learned counsels appearing for the respondents-Department,



who vehemently contended that the amount which was surrendered by the petitioner-assessee and details whereof appear in para 11 of the impugned order would be liable to be added in terms of Section 68 of the Act, and in any case, would not constitute part of the gross total income of the assessee which could constitute subject matter of consideration under Section 80IC of the Act. According to learned counsels, since the source of the surrendered income remained unverified, the same would be liable to be treated as income derived otherwise than from the business of an undertaking or enterprise, as covered under Section 80 IC and therefore, the claim for benefits has been rightly negated.

23. It must at the outset be noted that the petitioner-assessee had before the ITSC alluded to certain insurmountable circumstances which had constrained it to surrender that part of the income. The respondents have not relied upon any material which may have tended to indicate that the share capital investments were not made in connection with the business of the undertaking of the enterprise. We also take note of the conflicting views that came to be expressed by the Department itself as would be evident from its communications dated 18 and 22 July 2013.

24. More fundamentally however, we take note of the contention of Mr. Ganesh, who drew our attention to section 115 BBE of the Act and which reads as follows: -

**“115-BBE. Tax on income referred to in Section 68 or Section 69 or Section 69-A or Section 69-B or Section 69-C or Section 69-D.—**

(1) Where the total income of an assessee includes any income referred to in Section 68, Section 69, Section 69-A, Section 69-B,





Section 69-C or Section 69-D, the income tax payable shall be the aggregate of—

(a) the amount of income tax calculated on income referred to in Section 68, Section 69, Section 69-A, Section 69-B, Section 69-C or Section 69-D, at the rate of thirty per cent; and

(b) the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).”

25. It becomes pertinent to note that the aforesaid provision relates to the total income of an assessee which may include income referable to Section 68 or income determined by the AO as liable to be included by virtue of Section 68 and the tax which is liable to be imposed thereon.

26. Of equal significance is sub-section (2) which commences with a non obstante clause and provides that no deduction in respect of any expenditure, allowance, or set off of any loss shall be allowed to the assessee while computing its income referred to in sub-clauses (a) and (b) of Section 115 BBE(1) of the Act. The aforesaid provision thus for the first time appears to have introduced a disqualifying criterion with respect to income added by virtue of Section 68 of the Act.

27. We are therefore of the considered opinion that the surrendered income would not fall within the ambit of Section 115 BBE since the said provision did not even exist for the AYs in question. Section 115 BBE came to be inserted by virtue of Finance Act, 2012 with effect from 01 April 2013. As Mr. Ganesh rightly points out, since the aforesaid provision did not even exist at the relevant point in time, the same could not have been invoked by the ITSC.



28. In light of the aforesaid findings rendered by us in the backdrop of the challenge addressed by the writ petitioner-assessee, we are of the considered opinion that the issues which stand raised at the behest of the Department in connected WP(C) 7834/2017 would have to be answered against them. Consequently, we refuse to grant the reliefs as sought by the respondents-Department to set aside the ITSC's impugned order insofar as it granted immunity from penalty and prosecution to the petitioner-assessee or for that matter its decision to allow the claim of the petitioner-assessee relating to infusion in share capital from M/s Balaji Enterprises, M/s Sai Enterprises and M/s Molu Ram Pramanand and allowing the claim of deductions under Section 80IC of the Act.

29. Accordingly, and while we dismiss WP(C) 7834/2017, we allow WP(C) 5081/2017 and set aside the order of the ITSC in part and insofar as it relates to additions made with respect to infusion of share capital by M/s Amit Goods and Supplier Private Limited to the tune of INR 11,26,60,000. We also set aside para 11.1 of the ITSC's order, which held that addition of unsubstantiated share capital into the account of the assessee under Section 68 of the Act would not qualify for the benefits of deduction under Section 80IC of the Act. The petitioner-assessee shall be entitled to consequential reliefs.

**YASHWANT VARMA, J.**

**PURUSHAINDR KUMAR KAURAV, J.**

**APRIL 01, 2024**

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