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ITAT, Chennai

ACIT vs. Rogini Garments

ITA Nos. 963/Mad/05 and 1518/Mad/2006 Assessment Years: 1999-2000 and 2002-03

M.K. Chaturvedi, Vice President T.R. Sood, A.M. and N. Vijayakumaran J.M.

27 April 2007

Shahji P. Jacob for the Appellant

Farrokh Irani and T. Banusekhar for the Respondent

ORDER

Per : M.K. Chaturvedi (Vice President) :

The following question was referred under section 255 (3) of the Income-tax Act, 1961 for the consideration of the Special Bench.

"Whether relief under section 80-IA should be deducted from profits and gains of business before computing relief under section 80HHC."

2. We have heard the rival submissions in the light of material placed before us and precedents relied upon. The controversy posed in the question rotates around the interpretation of section 80-IA(9) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") which is as under :

"80-IA(9) Where any amount of profits and gains of an 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 undertaking or enterprise, as the case may be."

3. Shri Farrokh Irani learned counsel for the assessee submitted that the wordings of section 80-IA(9) confines in their operation to undertaking based deduction in Chapter VIA. Section 80HHC not being an undertaking based deduction cannot be prejudiced by section 80-IA(9) of the Act.

4. Learned counsel for the assessee invited our attention on CBDT circular No. 772 dated 23.12.1998. The relevant portion of the circular reads as under :

"35.2 However, it was noticed that certain assessees claimed more than 100 per cent deduction on such profits and gains of the same undertaking, when they were entitled to deductions under more than one section of Chapter VI-A. With a view to providing suitable statutory safeguards in the Income-tax Act. 1961, to prevent taxpayers from taking undue advantage of existing provisions of the Act by claiming repeated deductions in respect of the same amount of eligible income, even in cases where it exceeds such eligible profits of an undertaking or a hotel, in built restrictions in sections 80HHD and 80-IA have been provided by amending the sections, so that such unintended benefits are not passed on to the assessee."

5. It was submitted that the prescription of section 80-IA(9) is relevant where the assessee claims more than 100% deduction on such profits and gains of the same undertaking. It cannot curtail the scope of deduction under section 80-HHC as because in this section deduction is export based. The circular is binding on the department and without prejudice is constitutes contemporanea expositio.

6. It was argued that section 80-HHC is a complete code laying down a particular formula for calculating the deduction and the section nowhere provides for reduction of the deduction under section 80-IA. It was further argued that since "profit" itself has been defined under clause (baa) of section 80HHC(4C), therefore, there was no scope for curtailing the definition of "profits" in view of section 80-IA(9) as section 80HHC is itself an independent code.

7. Shri Irani submitted that at the very least section 80-IA and section 80HHC requires harmonization. One of the cardinal principal of harmonization is that both the sections must be given effect.

8. Dealing with the scheme of the Section, Shri Irani submitted that nothing debars an assessee from first claiming deduction under section 80-HHC and then under section 80-IA. If this is done, then no prejudice is caused to the assessee.

9. Lastly it was submitted that this is a matter where two views are possible and in the eventuality of doubt it should be resolved in favour of the assessee.

10. Our attention was invited on the decision of the Delhi Bench of the Tribunal rendered in the case of Dy. Commissioner of Income Tax vs. Eltek SGS (P) Ltd., (2006) 10 SOT 178 (Delhi). In this case the assessee a manufacturer sold its finished goods by way of exports. It claimed deduction under section 80-IB and section 80HHC. AO while computing the deduction under section 80HHC reduced the profits under the head "profit and gains of business or profession" by amount of deduction allowable under section 80-IB. On appeal CIT(A) upheld the impugned order. On second appeal Tribunal held that an assessee is

entitled to deduction under section 80HHC(1) in computing total income to the extent of profits referred to in sub-section (IB) of section 80HHC derived from export of such goods or merchandise. The section in Explanation (baa) below sub-section (4C) provides the manner of determination of business profits. The AO cannot determine the business profits by reducing the deduction allowable under section 80-IB as the Explanation (baa) does not provide so. Further, section 80B(5) defines gross total income as the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A. It is while computing the total income of the assessee according to the Act that the deduction is to be allowed under sections 80-IB and 80HHC to the extent of the gross total income of the assessee under Chapter VI-A. Thus, it is to be ensured that the total deduction allowed under Chapter VI-A does not exceed the gross total income of the assessee. Tribunal, therefore, directed the AO to compute the deduction under section 80HHC on the basis of export profit determined in accordance with Explanation (baa) below sub-section (4C) of section 80HHC.

11. Learned counsel for the assessee relied on the case of K.P. Varghes vs. Income tax Officer and Anr. 131 ITR 597 (SC) to buttress the point that the circulars are in the nature of contemporanea expositio, furnishing legitimate aid in the construction of statutory provisions and binding on the revenue authorities. In this case Hon'ble Supreme Court has held that a strictly literal reading of a statutory provision ignores several vital considerations which must always be borne in mind while interpreting such provisions. That task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulate because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be drafted with divine preserence and perfect clarity." Where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature, the Court may modify the language used by the Legislature or even "do some violence" to it, so as to achieve the obvious intention of the Legislature and produce a rational construction.

12. Our attention was also invited on the decision of the apex court rendered in the case of Britannia Industries Ltd. vs. CIT and Another 278 ITR 546 (SC). In this case it was held that when the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the statute. It was stated that since the provisions is interpreted by various Bench in more than one way, it proves that there is ambiguity in the statute. As such literal interpretation should not be resorted to.

13. Learned counsel for the assessee relied on the decision in the case of Navin Bharat Industries Ltd. vs. Dy. Commissioner of Income Tax (90 ITD 1) Mumbai (TM). Reliance was placed on para 21 of the order which reads as under :

"Section 10A of the Act is a code by itself. It contains the scheme of taxation formulated by the Government for taxability of units set up in the export processing zone. As such, it cannot be compared with s. 10 of the Act. Ex consequenti, the decisions rendered in the cases of Harprasad and Co. (P) Ltd. ,(supra), and S.S. Thiagarajan (supra), in the context of

s. 10 of the Act, cannot be applied over here. Coming to the applicability of s. 10A(4)(ii) of the Act, I find that it put interdict qua ss. 72 and 74. It does not preclude the operation of ss. 70 and 71. Sec. 14A of the Act is applicable in respect of expenditure. Loss is different from expenditure. As such, the assessee is entitled to setting off the loss incurred by the SEEPZ unit. In view of this finding, the question whether s. 14A of the Act is prospective or retrospective in operation has become academic. I concur with the finding of the learned AM."

14. On a conspectus of case law on harmonious construction it was pleaded that it is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appears to be in conflict with each other in such a manner as to harmonise them. The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of the efforts, finds it impossible to effect reconciliation between them. It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. Hit is the essence of the rule of harmonious construction. The courts have also to keep in mind that an interpretation which reduces one of the provisions as 'dead letter' or 'useless lamber' is not harmonious construction. To harmonise is not to destroy any statutory provision or to render it otiose.

15. Our attention was invited on the decision of the Bangalore Bench of the Tribunal rendered in the case of Mittal Clothing Co. vs. Dy. Commissioner of Income Tax 2005 4 SOT, 626 (Bang). In this case Tribunal held that provisions of section 80-IA(9) only regulate the deductions allowable under Chapter VI-A and object of said section is not to prevent claim of deduction under more than one section under Chapter VI-A where assessee satisfies conditions of these sections.

16. Shri K. Meenatehi Sundaram, counsel for intervener, Shri N. Dhandapani submitted that section 80HHC of the Act is a code by itself. Computation u/s. 80HHC should therefore be made independently without resorting to the provisions of Sec. 80-IA(9). Learned counsel submitted that section is to be interpreted liberally while granting benefit. Reference was made to the decision of the Hon'ble apex court rendered in the case of Bajaj Tempo Ltd. vs. CIT 196 ITR 188 (SC). In this case Hon'ble apex court has held that a provision in a taxing statute granting incentives for promoting growth the development should be construed liberally; and since a provision for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the provision and not to frustrate it.

17. Sri K. Ramgopal, ld. Counsel for intervener Smt. J. Mohana Sundari, submitted that the allowance of deductions under sections 80HHC and 80-IB do not amount to double benefit. Reference was made to the decision of the Tribunal rendered in the case of Future Software (Private) Ltd., vs. Dy. Commissioner of Income Tax 45 ITD 459 (Mad). In this case it was held that as a matter of Sate policy Chapter VI-A incorporates various concessions in the form of deductions etc. If a particular term of income is eligible to deduction under more than once section of Chapter VI-A, it cannot be held that the assessee is getting double or multiple benefit. What is required to be seen is whether the assessee satisfies the pre-condition prescribed under various sections of Chapter VI-A. If the assessee satisfies those conditions, then the benefit cannot be denied.

18. It was further contended that section 80-IA(9) was not in existence in the year when assessee set up the eligible unit. As such there operates the principle of estoppel against the denial of relief contemplated in the statute.

19. Reliance was placed on the decision of the Jaipur bench of the Tribunal rendered in the case of Toschica Creation vs. ITO 150 Taxman 48 (J.P.) In this case Tribunal held that deduction under section 80HHC should be allowed on income included in gross total income before making any deduction under Chapter VI-A. However, total deduction under sections 80-IB and 80HHC should be restricted upto gross total income.

20. Shri R.R. Vora, learned counsel for intervener M/s. S.M. Creations, invited our attention on the decision of the Bombay High Court rendered in the case of CIT Nima Specific Family Trust 248 ITR 29 (Bom). In this case Hon'ble High Court has held that where unit is entitled to special deduction under section 80HH and 80-I, priority is to be given to special deduction under section 80HH. Court followed the decision of the Madhya Pradesh High Court rendered in the case of J.P. Tobacco Products Pvt Ltd. vs. CIT (229 ITR 123) (MP).

21. Ld. Counsel also invited our attention on the Heyden's rule of interpretation. To Explain the objects for which section 80-1A(9) was inserted ld. Counsel made resort to the clause and Explanatory Memorandum to the Finance Bill, 1998. Relevant portion reads as under :

"Amendment in section 80-IA and section 80HHD to prevent double deduction of same profit.

Under the provisions of Chapter VI-A of the Income-tax Act, various deductions from the profits and gains are allowed to specified deductions from the profits and gains are allowed to specified assessees, subject to fulfilling certain requirements specified under the relevant sections. The total deductions under Chapter VI-A of the Income-tax Act are restricted to the gross total income in respect of the assessee as a whole.

However, in certain cases it was noticed that certain assessee claimed more than 100% deduction on such profits and gains of the same undertaking when they were entitled to deductions under more than one section of Chapter VI-A. With a view to providing suitable statutory safeguard in the Income Tax Act to prevent taxpayer from taking undue advantage of existing provisions of the Act, by claiming repeated deductions in respect of the same amount of eligible income, even in cases where it exceeds such eligible profits of an undertaking or hotel, it is proposed to provide inbuilt restrictions in sections 80HHD and 80-IA, so that such unintended benefits are not passed on to assessees.

This amendment is sought to be introduced retrospectively with effect from 1.4.1990."

22. Ld. Counsel placed reliance on the decision of the apex court rendered in the case of Padmasundara Rao vs. State of Tamil Nadu 255 ITR 154 (SC). Our attention was invited on the following passage at page 154 :

"The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature.

The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid" Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them") see Leigh Valley Coal Co. vs. Yensavage 218 FR 547. The view was reiterated in Union of India vs. Filip Tiago de Gama of Vedem Vasco de Gama. AIR 1990 SC 981."

23. It was contended that the view taken by the Bangalore Bench of the Tribunal in the case of Mittal Trading Co. (4 SOT 626) be followed in preference to the decision of the Mumbai Bench of the Tribunal rendered in the case of Laben Laboratories Ltd. in ITA No. 2850/Mum/04 dt. 29.9.2006.

24. Shri Shaji P. Jacob ld. DR vehemently argued that there exists no ambiguity in the mandate of the statute in the context of section 80-IA(9). The prescription of the section makes it very clear that where any amount of profits and gains is claimed and allowed under section 80-IA for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provision of this Chapter under the heading "C-Deduction in respect of certain incomes" and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.

25. Reference was made to the decision of the apex court rendered in the case of IPCA Laboratory Ltd vs. Dy. Commissioner of Income Tax 266 ITR 521 (SC) = (2004-TIOL-26-SC-IT). In this case Hon'ble Supreme Court has held that undoubtedly section 80HHC has been incorporated in the Income Tax Act. 1961 with a view to providing incentive for earning foreign exchange. Even though a liberal interpretation has to be given to such a provision, the interpretation has to be as per the working of the section. If the working of the section is clear then benefits which are not available cannot be conferred by ignoring or misinterpreting words in that section. According to Shri Jacob, a plain reading of section 80-IA(9) makes it clear that the conditions laid down in the section are cumulative and mandatory for availing the deduction. There is no ambiguity as to the purpose of the statute. As such no violence can be done to the language of the section in the name of mens legis.

26. Commenting on the use of the words "profits and gains of such eligible business of undertaking or enterprise" in section 80-IA(9), ld. DR stated that in the enabling section it is laid down that where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise, as such in the restrictive provision also the same phraseology is being used. From this it cannot be concluded that restriction is only undertaking-based and its scope cannot be elongated so as to include within its purview deduction under section 80HHC. The words "undertaking" in the section is constituent of person. Since section 80-IA benefit is conferred to the industrial undertakings, as such the word undertaking is used in the section. From this it cannot be inferred that the restriction

is undertaking-based only and benefit under section 80HHC is beyond the ken of section 80-IA(9).

27. Adverting to fundamental, though unwritten axiom that no Legislature could have at all intended a double deduction in regard to the same business outgoing ld. D.R. invited our attention to the decision of the apex court rendered in the case of Escorts Ltd. and Another vs. Union of India and Another 199 ITR 43 (SC) wherein Hon'ble Supreme Court has held that in the absence of clear statutory indication to the contrary statute should not be read so as to permit an assessee two deductions.

28. The theory laid down by the Special Bench in the case of International Research Park Laboratories Ltd. vs. Asst. Commissioner of Income Tax 50 ITD 37 (SB) (Delhi) that section 80HHC is a complete code by itself was explained with reference to the decision of the Hon'ble jurisdictional High Court rendered in the case of CIT vs. M/s. Sharon Vaneers P Ltd (T.C.) (A) No. 62 of 2004 dated 26.02.2007. In this case Hon'ble High Court has held that it is not correct to say that section 80HHC of the Act is a self-contained provision and section 80AB of the Act cannot be applied to section 80HHC of the Act. In other words section 80AB of the Act will prevail over any other provision in Chapter VIA of the Act and section 80HHC of the Act would thus be governed by section 80AB of the Act.

29. ld. DR read out para 35.2 of the CBDT circular being Circular No. 772 dated 23.12.1998 and stated that the circular in no way supports the case of the assessee. It is clearly laid down that the purpose of the restriction was to provide suitable statutory safeguards to prevent taxpayers from taking undue advantage by claiming repeated deductions in respect of the same amount of eligible income even in case where it exceeds such dligible profits of an undertaking etc. It is clearly land down that section 80-IA was amended so that uninfended benefits should not pass on to the assessee.

30. Ld. Dr strongly relied on the decision of the Mumbai Bench of the Tribunal rendered in the case of M.S. Leben Laboratories Ltd. in ITA N. 2850 Mumbai dated 29.09.2006. In this case Tribunal held that.

"In view of the clear language employed by the legislature the courts are not required to took into the intention of the legislature yet on going through the circular mentioned in the decision of Tribunal in the case of Mittal Clothing Co. vs. Dy. Commissioner of Income Tax (supra), we do not find anything to suggest that first limb in Section 80-IA(9) is to be ignored. Circular simply refers to the intention of the legislature in respect of the second limb. Therefore, the circular does not support the case of assessee. The apex Court in the case of IPCA Laboratory (supra) has clearly held that relief cannot be allowed by ignoring or misreading the provisions of the Act. Therefore, to the circular, in this case, is misplaced."

Revenue authorities were held to be justified in reducing the profits of the business of the undertaking by the amount of profits allowed as deduction under section 80-IA while computing the deduction under section 80HHC.

31. ld. DR read out the following passage from the judgement of the Hon'ble Supreme Court rendered in the case of CIT vs. Sun Engineering Works P. Ltd 198 ITR 297 (SC) :

"It is neither desirable nor permissible to pick out a word or a sentence from the judgement of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and, wile applying the decision to a later case, courts must carefully try to ascertain the true principle laid down by the decision.

32. On the aspect of estoppel it was alleged that there cannot be any estoppel against the statute. Reliance was placed on the decision of the hon'ble Calcutta High court rendered in the case of CIT vs. Bankam Investment Ltd 208 ITR 208 (Cal). In this case it was held that.

"The doctrine of promissory estoppel applies to taxation. But since the doctrine of promissory estoppel is an equitable doctrine, it must yield when equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the court would not raise an equity in favour of the promises and enforce the promise against the Government. The doctrine of estoppel would be displaced in such case because, on the facts, equity would not require that the Government should be held bound by the promise made by it... ."

33. Reliance was further placed on the decision of the Hon'ble Delhi High Court rendered in the case of Delight Cinema vs. Muncipal Corporation of Delhi 172 ITR 208. In this case Hon'ble High Court has held that.

"The doctrine of promissory etoppel the Government or a public authority to carry out any representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority."

34. In the context of the benefit of doubt as regards the interpretation of the provision it was submitted that the law laid down by the apex court in the case of Vegetable Products Ltd. 88 ITR 192 (SC) was in the context of penalty matter. Hon'ble Supreme Court has held that if the language is plain in the fact that the consequence of giving effect to it will lead to some absurd result is into a factor to be taken into account in interpreting a provision. It is for the Legislature to step in and remove the absurdity. Ambiguity is to be resolved in favour of the assessee.

35. According to the ld. DR in the present case there is absolutely no ambiguity. The provision is couched in a plain language. There is absolutely nothing to indicate that consequence of giving effect to the provision will lead to some absurd result. As such the ratio laid down in the case of Vegetable Products Ltd cannot be applied to the facts of the present case.

36. We have carefully considered all the submissions and examined the various aspects on the touchstone of the legal theories and precedents. Interpretation postulates the search for the true meaning of the words used in the statute. Rules of interpretation are applied only to resole the ambiguities. The object and purpose of interpretation is to ascertain the mens legis i.e. the intention of the law, as evinced in the statute. The key to the opening of every law is the reason and spirit of law. To be literal in meaning is to see the body and miss the

soul. The judicial key to interpretation is the composite perception of the DEHA (body) and the DEHI (soul) of the provision.

37. The Legislature which processes supreme power in the State, possesses, as incidental thereto, the right to change, modify and abrogate the existing law. With a view to providing suitable statutory safeguards in the Income-tax Act, 1961 and to prevent taxpayers from taking undue advantage of existing provisions of the Act by claiming repeated deductions in respect of the same amount of eligible income, inbuilt restriction in section 80-IA was provided by amending the section, so that unintended benefits may not pass on to the assessees.

38. This is a special provision and a special provision prevails over the general provision as per the doctrine, generalie specialibus non derogant (general things do not derogate, special things). The meaning and intention of the statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient. The expressed intention must guide the court. The apex court in the case of CIT vs. Shahzada Nand and Sons and Others 60 ITR 392, 400, held :

"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

But this rule of construction is not of universal application.

It is subject to the condition that there is nothing on the general provision, expressed or implied, indicating an intention to the contrary : see Maxwell on the Interpretation of Statutes. 11th edition at pages 168-169. When the words of a section are clear but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in Heydon's case (1584) 3 Rep. 7b. yields better result.

To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke : 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy."

39. Adverting to the present issue, we find that in view of the specific restriction provided under section 80-IA(9), the definition of business profit as contained in clause (baa) to section 80HHC(4C) has to be construed in the light of the restrictions. In fact, a specific query was raised by the Bench to Shri Irani that in similar situation when there was no specific restriction for disallowance of rent and repairs in sections 30 and 31 in respect of guest house, why the restriction contained in respect of expenditure incurred on guest house in sub-section (3) and (4) of section 37 was held to be operative by the Hon'ble Apex court in the case of Britannia Industries Ltd. vs. CIT (supra)? Ld counsel tried to meet this by way of a round about argument that maintenance of guest house is different from rent and repairs. We further find that though originally Hon'ble Bombay High Court in the case of CIT vs. Chase Bright Steel Ltd. (No. 1) in 177 ITR 124 (Bom) allowed the expenditure incurred in respect of rent and repairs etc. of the guest house because the same was

allowable under section 30 and 31 and it was observed that the same could not be disallowed because of the provisions of section 37(3). However, while overruling the decision, Hon'ble Supreme Court clearly observed as under :

"The only question which we are called upon to consider in the instant case is whether the expression 'premises and buildings' referred to in sections 30 and 32 and used for the purposes of the business of profession would include within its scope and ambit and expression residential accommodation including any accommodation in the nature of guest-house" used in sub-sections (30, (4) and (5) of section 37 of the Act. While the two expressions can be similarly interpreted, a distinction has been sought to be introduced for the purposes of section 37 by specifying the nature of building to be a guest-house. In our view, the intention of the Legislature appears to be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purposes of a guest-house of the nature indicated in sub-section (4) of section 37. When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statue. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodations used for the purposes of business or profession then it would not have felt the need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest-houses as defined in sub-section (5) of section 37 and the provisions of sections 31 and 32 would have been sufficient for the said purpose. The decisions cited by Dr. Pal contemplate situations where specific provisions had been made in sections 30 to 36 of the Act and it was felt that what had been specifically provided therein could not be excluded under section 37. The clarification introduced by way of sub-section (5) to section 37 was also not considered in the said case."

From the above it is clear that if restrictive clause not in the same section but in some other provision, is clearly showing the mens legis it has to be given full effect. Therefore, if restriction is placed on the claim of repetitive deduction in section 80-IA(9) and is made applicable in respect of all deductions under Chapter VIA, then this restriction is to be applied. Since the wordings used are "any other deduction under Chapter VIA" full effect is to be given to this provision and whenever an assessee wants to claim deduction under section 80-IA(9) restriction is to be read in every other provision providing for deduction under Chapter VIA.

40. Apropos the arguments that the provision is couched with ambiguities, and therefore the spirit of the Act is to be seen and justice be done we find that the freedom for the search of the spirit of the Act or the mischief at which it is aimed opens the possibility of liberal interpretation. This finer aspect cannot be narrowly watched. It is that delicate and important branch of judicial power, the concession of which is dangerous but the denial is disastrous. At one stream stands Lord Denning who said : - "We do not sit here to pull the language of the Parliament to pieces and make nonsense of it. That is an easy thing to do. We sit here to find the intention of Parliament and carry it out. We do this better by filling in the gaps and making sense of the enactment than by opening to destructive analysis. Viscount Simonds called it "a naked usurpation of the legislative function under the thin guise of interpretation".

41. In our opinion the intention of Legislature is a very slippery phrase. When the language of the statute is transparently plain, it is wrong to give it colour according to the temper of time. When the language implied by the enactment is clear, there is no question of interpreting the provisions in any manner except by giving them their plain and obvious Meaning. Nebulous concept of the legislative intent cannot be used to curtail the explicit provisions in a statute. A statute or any enacting provisions therein must be so construed so as to make it effective and operative on the principle expressed in the maxim, ut res magis valeat quam pareat. There is no scope for importing into the statute the meaning which is alien to it. A statute is the edict of the legislature and the duty of the judicature is to act upon the senteria legis. There is no estoppel against the statute.

42. We have gone through the circular relied on by the learned counsel for the assessee. It nowhere suggests that more than 100% deduction on the same profit can be granted to the assessee under various sections enumerated in Chapter VI-A. Section 80HHC is part of Chapter VI-A. Hon'ble jurisdictional High Court in the case of CIT vs. Ms. Sharon Vaneers Pvt Ltd T.C. (A) No. 62 of 2004 dt. 26.02.2007, has made it clear that it is not correct to say that section 80HHC of the Act is a self-contained provision. The deduction cant be allowed ignoring the restrictive clause contained in section 80-IA(9). The restrictive clause in section 80-IA makes it abundantly clear that wherever deduction under any other section of Chapter VI-A(C) is claimed, the computation will be subject to the restrictions laid down in section 80-IA(9). It precludes pro tento, all the deductions of such profits and gains claimed under Chapter VI-A(C) sec. 80HHC is part of Chapter VI-A(C). It is not a self-contained provision. There is absolutely no ambiguity on this aspect. We are therefore of the opinion that relief under section 80-IA should be deducted from the profits and gains of the business before computing relief under section 80HHC of the Act.

43. Since no other ground is raised in these appeals, we decide these appeals in favour of the Revenue and against the assessee.

44. As regards the case of Interveners we have not examined the facts of those case. The regular Bench while deciding those appeals may keep in view the principles laid down in the case.

45. In the result, appeals of the Revenue stand allowed.