M/S.Cairn India Ltd vs Director Of Income Tax (International ...

Author: Rajiv Shakdher

Bench: Rajiv Shakdher, R.Suresh Kumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 11.09.2017
DELIVERED ON : 06.11.2017
Coram
The Honourable Mr.Justice RAJIV SHAKDHER
and
The Honourable Mr.Justice R.SURESH KUMAR

T.C.A.No.99 of 2013

M/s.Cairn India Ltd.,
3rd and 4th Floor, Vipul Plaza,
Suncity, Sector -54,
Gurgaon-122 002, Haryana. .. Appellant

Vs.

Director of Income Tax (International Taxation),
7th Floor, Room No.703,
Annexe Building, Aaykar Bhawan,
121, Nungambakkam High Road,
Chennai-600 034. .. Respondent
* * *
Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961, against the judgem

For appellant : Mr.C.S.Agarwal, Senior Advocate
for M/s.M.V.Swaroop

For respondent : Mr.T.Ravikumar, Senior Standing
Counsel assisted by
Mr.Vijay Kumar Funna
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J U D G E M E N T

RAJIV SHAKDHER, J.

Prefatory Facts :

1. This is an appeal preferred by the Assessee against the judgement and order of the Income Tax Appellate Tribunal (in short, the Tribunal) dated 20.12.2012,

pertaining to Assessment Year (AY) 2004-2005.

1.1. The Assessee had challenged the order dated 12.03.2009, passed by the Director of Income Tax (International Taxation) [hereafter referred to DIT], Chennai, under Section 263 of the Income Tax Act, 1961 (in short, the 1961 Act) before the Tribunal.

1.2. The DIT, vide his order dated 12.03.2009, set aside the assessment made by the Assessing Officer under Section 143(3) of the 1961 Act qua AY 2004-2005. While doing so, the DIT, directed the Assessing Officer to examine as to whether the deduction claimed by the Assessee under Section 80IB of the 1961 Act, was allowable. A further direction was also issued to the Assessing Officer to recompute the deduction under Section 80IB of the 1961 Act, albeit, as per law.

2. Before we proceed to adjudicate the substantial questions of law framed in the instant appeal at the time of admission, it would be appropriate to advert to the essential facts, which led to the institution of the present appeal :

2.1. The Assessee is a company incorporated in New South Wales, Australia, and is a subsidiary of an entity by the name Cairn Energy PLC. Cairn Energy PLC. is a company incorporated in Edinburgh, UK.

2.2. The India operations are carried out via the Assessee. The Assessee was earlier known as Cairn Energy India Pty Limited . For its India operations, it, apparently, obtained Reserve Bank of India (RBI) approval in November, 1994.

2.3. The primary business of the Assessee is to carry on exploration and production of oil and gas in India. For this purpose, it had acquired participating interest in the following oil and gas blocks. The participating interest was granted by the Government of India (GOI) :

Sl. No. Oil and Gas Field Block Location

(i) Ravva Krishna Godavari

(ii) CB-OS/2 Cambay Offshore

(iii) KG-OS/6 Krishna Godavari

(iv) RJ/OS/90/1 Rajasthan

(v) KG/DWN/98-2 Krishna Godavari 2.4. The participating interest acquired by the Assessee was taken forward by entering into Production Sharing Contract (in short, PSC) qua each block with GOI along with other Joint Venturers, who were likewise involved in the exploration and production of oil and gas. In respect of each of the oil

and gas blocks referred to above, the Assessee entered into a Joint Operating Agreement (in short, JOA), with other Joint Venturers. Furthermore, to carry on exploration and operations, qua each of the blocks, the Assessee entered into, what are known as Unincorporated Joint Venture Agreements (in short, UJV) with other joint venturers.

2.5. It appears that each PAC and/or JOA, required appointment of an operator in respect of each UJV, and accordingly, the Assessee was appointed as an operator for each of the five (5) UJVs.

3. In respect of the period under consideration, the Assessee filed its return on 28.10.2004, whereby, it declared a total income of Rs.49,16,89,883/-, after claiming deduction under Section 80IB(9) of the 1961 Act. The deduction claimed under Section 80IB(9) was an amount equivalent to Rs.68,55,77,018/-; being purported profits and gains derived by the subject undertakings from production and refining of mineral oil.

3.1. According to the Assessee, the deduction, in the sum of Rs.68,55,77,018/-, claimed by it, was attributable to two (2) gas fields. These being : the Satellite Gas Field, located in the Ravva Joint Venture Block (hereafter referred to as the SGF unit) and Laxmi Gas Field, situate in CB OS/2 Joint Venture Block (hereafter referred to as the "LGF unit"). The deduction claimed qua the SGF unit was a sum of Rs.20,16,10,345/-, while deduction in the sum of Rs.48,39,66,673/- was claimed in respect of the LGF unit.

3.2. As per the Assessee, the first commercial production vis-a-vis the SGF unit took place in September, 2001, i.e., the period relevant for AY 2002-2003, while, in the case of the LGF unit, the first commercial production took place in November, 2002, i.e., AY 2003-2004.

3.3. Evidently, upon a return being filed by the Assessee for AY 2004-2005, a notice under Section 143(2) of the 1961 Act, for scrutiny, was issued on 20.04.2005.

3.4. This was followed by a questionnaire dated 16.06.2006. Via the said questionnaire, the Assessee was called upon to justify the claim for deduction made under Section 80IB of the 1961 Act.

3.5. The Assessee submitted a reply dated 03.11.2006. In the reply, the Assessee indicated that it operated, as on 31.03.2004, two (2) eligible tax holidays undertakings, i.e., the SGF unit in the Ravva Joint Venture Block, and the LGF unit in CB-OS/2 Joint Venture Block. Furthermore, the commercial production periods, to which we have made a reference above, were also alluded to in the said reply. Along with the reply, inter alia, copies of the PSCs, of the relevant gas blocks, as also the break-up of exploration and development expenses was also provided. The Assessee made it a point to advert in the reply that the computation of the deduction claimed under Section 80IB of the 1961 Act had been made on the same basis as was done in the preceding AYs. The Chartered Accountant's (CA's) certificate dated 13.10.2004, for each of the two gas fields, i.e., SGF unit and LGF unit, the Audit Report in the prescribed form i.e., 10CCB, and the Profit and Loss Account, were also filed by the Assessee.

3.6. The Assessing Officer, thereafter, passed an Assessment Order dated 28.12.2006, albeit, under Section 143(3) of the 1961 Act. The Assessing Officer, while, passing the Assessment Order, recomputed the income of the Assessee and pegged it at Rs.109,59,99,910/-, as against declared income of Rs.49,16,89,883/-. While, recomputing the income, the Assessing Officer disallowed the claims, inter alia, worth Rs.8,66,77,608/- under the following heads : (i) provision made with respect to site restoration cost; (ii) purchase of software; and (iii) club membership fee.

3.7. In so far as deduction claimed under Section 80IB(9) of the 1961 Act was concerned, the same was sustained.

3.8. The DIT, however, took umbrage to the Assessing Officer sustaining the deduction claimed under Section 80IB(9) of the 1961 Act, by the Assessee, and accordingly, issued a Show Cause Notice dated 21.01.2009 (in short, SCN), to the Assessee under Section 263 of the 1961 Act. This notice was, apparently, issued by the DIT on the ground that the order passed by the Assessing Officer on 28.12.2006, under Section 143(3) qua AY 2004-2005, was erroneous, in so far as it was prejudicial to the interest of the Revenue. At this juncture, it would be important to set out that part of the notice, which underlined the reasons for issuing the notice :

> ..... The assessee company claimed deduction u/s 80IB for the assessment year 2004-05 in respect of two units viz. (i) Rava Satellite Gas unit and (ii) Laxmi Gas Field to the extent of Rs.20,16,10,345 and Rs.48,39,66,673 respectively. The same was allowed by the assessing officer in the assessment u/s 143(3) dated 28-12-2006. The claim of the company for deduction u/s 80IB(9) has not been computed in accordance with the provisions of section 80IB(13) read with section 80IA(5). Hence it is clear that the action of the assessing officer in computing deduction u/s 80IB in the order u/s 143(3) dated 28-12-2006 has rendered the assessment as erroneous in so far as it is prejudicial to the interest of revenue. .... (emphasis is ours) 3.9. Based on the reason set out above, the DIT indicated to the Assessee that he proposed to revise the assessment order passed by the Assessing Officer. The DIT went on to say that he would pass such an order, as circumstances warrant after making or causing to be made such enquiry, as may be deemed fit in the matter. By the very same notice, an opportunity was granted to the Assessee to put forth its objections in person. The date and time for the said purpose was also intimated.
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> 4. Accordingly, the Assessee furnished a reply dated 25.02.2009, on 05.03.2009, when, hearing in the matter was held by the DIT. It appears that, though, the SCN fixed the date of hearing as 13.02.2009, that hearing was shifted to 05.03.2009, based on the request made by the Assessee.

4.1. Thus, submissions on behalf of the Assessee were advanced on the aforementioned date, i.e., 05.03.2009, via its representative, one, Mr.P.R.Prasanna Varma, Chartered Accountant. The written submissions dated 25.02.2009, as indicated above, were placed on record on that date.

4.2. No further hearing was held, thereafter. The DIT passed the order under Section 263 of the 1961 Act on 12.03.2009, which was, as indicated above, assailed before the Tribunal by the Assessee.

4.3. The DIT, in his order dated 12.03.2009, has made observations with regard to SGF unit and LGF unit, which can be, broadly, paraphrased as follows :

SGF Unit:

(i) The Assessee had not declared as to whether or not AY 2003-2004, was the first year of commercial production. This declaration was necessary as deduction under Section 80IB of the 1961 Act, could be claimed only from the year, in which, commercial production commenced.

(ii) In terms of Section 80IB(13) read with Section 80IA(7), the undertaking claiming deduction has to get its accounts audited and file a report in that behalf in the prescribed form.

(iii) It is imperative on the part of the undertaking claiming deduction to maintain separate accounts right from the date of its inception in respect of the unit claiming deduction. The Assessee, instead, has filed a consolidated Profit & Loss Account and Balance Sheet for the Ravva block as a whole. Ravva block has been in operation, since, 1994. The SGF unit is only a part of the Ravva block and is not a separate undertaking in terms of Section 80IB(5) of the 1961 Act.

(iv) The Assessee commenced the preparation of its audited accounts only from the year in which, it claimed deduction under Section 80IB and not from the date of its inception, i.e., the year, in which, it commenced commercial production. As a result, all expenses incurred prior to the year in which commercial production commenced, had not been carried forward and set off against profits derived from the concerned undertaking, qua which, deduction under Section 80IB(9) was claimed. On the other hand, expenses of SGF unit had been merged with other blocks, and carried forward as losses of the Assessee, as a whole, and set off in the subsequent years.

(v) The Assessee had apportioned audit expenses attributable to the SGF unit and other blocks on a pro-rata basis; an aspect, which was indicative of the fact that no separate audit was undertaken qua the SGF Unit.

LGF unit :

(i) Paragraph 3 of the Note contained in Financial Statements of the Assessee for AY 2001-2002, indicated that the LGF unit was not a separate undertaking distinct from the concerned block (i.e., CB-OS/2), and that, it only formed part of the said block. Hence, the LGF unit was not entitled to deduction under Section 80IB(9) of the 1961 Act, without examination of the issue. That part of the note contained in the

Assessee's financial statements, which was extracted by the DIT, reads as follows :

..... On 20th January, 2001, the discovery of gas within the CBOS 2 Contract area called Laxmi Gas Field was declared commercial by the joint venture. The development area of Laxmi is being developed into a producing field. .... 4.4. In sum, the DIT was of the view that the Assessing Officer had allowed the Assessee's claim for deduction under Section 80IB(9) of the 1961 Act without examining the issue, as required under law. The decisions cited by the Assessee in the matter of CIT Vs. Gabriel India Ltd., 203 ITR 108 (Bom.), and of this Court in Silver Cloud Estates Private Limited V. State of Tamil Nadu 219 ITR 244, were distinguished on the ground that they had no applicability to the facts, which obtained in the instant case. The DIT, on the other hand, relied upon the decision in the matter of : Ashok Leyland V. CIT, 260 ITR 599, which according to him, applied squarely in the fact situation obtaining in the present case. The assessment made was, consequently, set aside and a direction was issued to the Assessing Officer to examine the allowability of deduction under section 80IB of the 1961 Act and to recompute the same. In other words, a direction was issued to make a fresh assessment keeping in mind the observations made by the DIT, in his order.

4.5. As indicated at the outset, the Tribunal, however, dismissed the appeal via the impugned judgement and order. It is important to note that the Assessee, during the pendency of the appeal, had moved an application, it appears, for taking on record, an additional ground, which was that the DIT could not travel beyond the SCN, and that, if, he chose to travel beyond the SCN, adequate opportunity had to be given before passing a final order. The Tribunal observed in the impugned judgement and order that it agreed with the proposition of law as conceived in the additional ground filed by the Assessee, and being a question of law, it would permit the additional ground to be taken on record.

4.6. The Tribunal, on its part, in the impugned judgement and order has returned the following findings of fact and/or made observations, which are set out hereafter :

(i) That the Assessee's claim for deduction vis-a-vis the SGF unit and the LGF unit was supported by separate audit reports, as required under Section 80IA(7), in the prescribed form, i.e., Form No.10CCB.

(ii) That along with the two audit reports concerning the SGF unit and the LGF unit, the Assessee had also filed a computation setting out the manner in which, it had arrived at the deduction claimed by it under Section 80IB(9) of the 1961 Act. In the annexures appended thereto, the Assessee had given a short narration of the basis adopted by it for allocation of expenses qua the SGF unit and LGF unit out of the total expenses incurred by it. The short reasoning with regard to allocation was given against Sl.No.5 in the annexures appended to the audit report, and also, each head of operating expense was mentioned by the Assessee.

(iii) The Assessing Officer had, obviously, sought information from the Assessee as to the basis on which, deduction was claimed by the Assessee under Section 80IB(9); a fact which emerged upon reading the Assessee's letter dated 03.11.2006, which, clearly, mentioned that the said communication was being sent, apropos, to the information sought by the Assessing Officer.

(iv) In its reply dated 03.11.2006, the Assessee had mentioned the period of commencement of commercial production qua the SGF unit as well as the LGF unit.

4.7. The Tribunal, after having recorded the aforesaid findings/observations, went on to sustain the order of the DIT, albeit, on the following grounds :

(i) That the Assessing Officer had not examined whether the SGF unit was a separate undertaking, as required under Section 80IB(5) of the 1961 Act, given the circumstances that the Ravva block was in operation since 1994.

(ii) No doubt, the SCN does not refer to Section 80IB(5), it cannot be denied that if, the deduction is not worked out, in accordance with Section 80IB(13) and Sub-section (7) to (12) of Section 80IA, then, it cannot be allowed. Viewed from any angle, the failure to mention the provisions of Section 80IB(5) could not be considered as a cardinal error, as the defect, if any, can be cured, by having recourse to Section 292B of the 1961 Act.

(iii) The conclusion reached by the DIT that the Assessing Officer had not examined as to whether the SGF unit was a separate undertaking, and that, commercial production had commenced on the date mentioned by the Assessee, was correct, as for the earlier years the Assessing Officer had no occasion to examine the Assessee's claim for deduction under Section 80IB of the 1961 Act. The year in issue was the first year, in which, the Assessee had claimed deduction under Section 80IB of the 1961 Act qua the SGF Unit.

(iv) Though, the DIT in paragraph 6 of its order had observed that the Assessee was not eligible for claiming deduction under Section 80IB, however, the final direction issued by him to the Assessing Officer was to examine the allowability of the deduction and recompute the same under Section 80IB in accordance with law. Therefore, such an observation in the DIT's order was only passing remarks, which could not bind the Assessing Officer.

(v) There was no effective variance as between the SCN and the final order passed by the DIT under Section 263 of the 1961 Act. The order passed under Section 263 was the net effect of various lacunae found in the order of the Assessing Officer vis-a-vis claim for deduction made by the Assessee under Section 80IB(9).

(vi) Since, the Assessee cited the judgement of this Court in Silver Cloud Estates Pvt. Ltd. V. State of Tamil Nadu, 219 ITR 244, for the proposition that the DIT could not travel beyond the scope of the SCN, it only meant that the DIT had put the Assessee on notice that it was not eligible to claim deduction under Section 80IB of the 1961 Act, during the course of proceedings held before him. Therefore, the Assessee's plea that DIT had not granted it adequate opportunity, could not be accepted.

(vii) The submission of the Assessee that the order passed under Section 263 of the 1961 Act could not furnish a reason different from that given in the SCN, based on the reply of the Assessee, was not sustainable. The effect of non-computation of deduction in the manner specified under Section 80IB, is that, it would result in the denial of deduction. There was, thus, no variance between the order passed under Section 263, and that which was stated in the SCN. Even if, there was a variance, it could be cured under Section 292B of the 1961 Act.

(viii) Even though, the Assessee had given to the Assessing Officer, a short description of how the expenses had been allocated, it could not supply a meaningful link between the basis adopted and the allocation of expenses made, which was necessary in order to sustain the deduction under Section 80IB.

(ix) From a perusal of the record, it could not be discerned as to how the Assessing Officer had come to a conclusion with regard to allocation of expenses, date of commencement of production, and the independent nature of the units qua which claims were preferred.

(x) Since, the Assessee had given a break-up of the expenses, the Assessing Officer ought to have probed the matter further, in order to ascertain the correctness of the allocation and, whether, the claim made was, in accordance with law. The only conclusion that can be arrived at, is that, there was a non-application of mind by the Assessing Officer with regard to the claim made. Thus, the order of the Assessing Officer was both erroneous and prejudicial to the interest of the Revenue.

(xi) It is not disputed that the claim for deduction as put forward by the Assessee was accepted without any variation in amount by the Assessing officer. The assessment order simply allowed the claim under Section 80IB, by observing as made by the Assessee . There was, thus, clearly, a failure on the part of the Assessing Officer to form an opinion. While, it may be true that whenever a claim is allowed, the Assessing Officer need not elaborately deal with it in the Assessment Order, the chain of events as they transpired in the instant case would show that there was no application of mind by the Assessing Officer vis-a-vis the veracity of the claim made by the Assessee.

(xii) Lastly, while it is true that an eligible undertaking need not maintain separate accounts for claiming deduction under Section 80IB of the 1961 Act, but the aspects,

which we understand, were raised by the DIT were not verified by the Assessing Officer, while, completing the assessment.

4.8. It is in this background, that the instant appeal has been preferred by the Assessee.

Submissions of Counsels

5. In support of the appeal, on behalf of the Assessee, arguments were addressed by Mr.C.S.Agarwal, Senior Advocate, instructed by Mr.M.V.Swaroop, while, on behalf of the Revenue, submissions were made by Mr.T.Ravikumar, assisted by Mr.Vijay Kumar Funna.

6. Submissions of Mr.Agarwal can, broadly, be paraphrased as follows :

(i) That the DIT had exceeded its jurisdiction in proposing to revise the assessment order, since, their existed no material before him nor did he put forth any material before the Assessee, which would warrant such an exercise being undertaken.

(ii) The SCN issued by the DIT only stated that the deduction claimed under Section 80IB(9) had not been computed in accordance with the provisions of Section 80IB(13) read with 80IA(5) of the 1961 Act. The impugned order, however, went into the aspects pertaining to eligibility of the Assessee to claim deduction under Section 80IB, and that too, without confronting the Assessee with that allegation. Therefore, the order of the DIT passed under Section 263 of the 1961 Act, travelled beyond the scope of SCN.

(iii) The order passed under Section 263 of the 1961 Act did not record any definitive findings, and, in fact, set aside the assessment order on facts, which are contrary to the record and based on assumptions, which did not emerge from the record.

(iv) The Assessee was given no opportunity of meeting the adverse material, if any, that was in possession of the DIT, either before or during the hearing held by the DIT on 05.03.2009. In these circumstances, the order passed by the DIT under Section 263 of the 1961 Act was a nullity in the eyes of law, as it was violative of the principles of natural justice.

(v) There was a fundamental fallacy in the approach adopted by the DIT in as much as he failed to appreciate the distinction between an error, if any, made in computing the deduction and that which pertained to the eligibility of the Assessee to claim the deduction itself. The issue pertaining to error of computation would arise only, if, otherwise, the Assessee is eligible to make a claim for deduction under Section 80IB. In the SCN, DIT did not raise an issue with regard to the Assessee's eligibility to claim deduction under Section 80IB.

(vi) Admittedly, the record would show that the Assessee had submitted the basis of computation of the claim made under Section 80IB(9), which was duly examined by the Assessing Officer. This aspect has also been reflected in the order of the Tribunal. The fact that elaborate reasons were not given in the assessment order could not be the basis for the DIT to come to the conclusion that the order is erroneous and prejudicial to the interest of the Revenue. In support of this submission reliance was placed on the judgment of the Bombay High Court in : CIT Vs. Gabriel India Ltd., 203 ITR 108 (Bom.).

(vii) There was an inherent contradiction in the order of the DIT. On one hand, DIT held that the Assessee was not eligible to claim deduction under Section 80IB, on the other hand, in the same breath, he has directed the Assessing Officer to examine the allowability of the deduction and recompute the same in accordance with the provisions of Section 80IB of the 1961 Act. This observation shows that the DIT was unsure both with regard to the eligibility, as also the computation made by the Assessee, and therefore, could not have initiated action under Section 263 of the 1961 Act. The action under Section 263 of the 1961 Act could only have been initiated, upon due consideration of the matter, and not based on a hypothetical assessment and that the assessment order was both erroneous and prejudicial to the interest of the Revenue. In support of this submission, reliance was placed on the decision of the Supreme Court in : Malabar Industrial Co. Ltd. Vs. CIT, 243 ITR 83 (SC).

(viii) The Tribunal failed to appreciate that the DIT could not have exercised revisional power, unless he had put the relevant material warranting exercise of such power, to the Assessee. Given the fact that the DIT had failed to furnish the relevant material, (and thereby, denied the opportunity to the Assessee to rebut the same), the Tribunal ought to have interfered with the order of the DIT. For this submission, reliance was placed on the judgement of this Court in Silver Cloud Estates Pvt. Ltd. V. State of Tamil Nadu, 219 ITR 244.

(ix) The Tribunal failed to appreciate that the power vested in the DIT under Section 263 of the 1961 Act, is not conferred to give a second innings to the Revenue, so as to carry on a fishing expedition. [See Judgement of the Karnataka High Court in the matter of : CIT Vs. Lf.D' Silva (Kar) 192 ITR 547; and the judgement of the Madras High Court in the matter : CIT Vs. PVP Ventures Ltd., 23 taxmann.com 286 (Mad.)].

(x) The failure to mention in the SCN that the Assessee was not eligible to claim the deduction, or, did not satisfy the requirements of Section 80IB, or, that the claim had not been examined in the light of the provisions of Section 80IB impregnated the order passed under Section 263 of the 1961 Act, with illegality. Reliance, in this behalf, was placed, once again, on the judgement of the Karnataka High Court in : CIT Vs. Lf.D'Silva, 192 ITR 547; and the judgement of the Delhi High Court in : CIT Vs. Contimeters Electricals Pvt. Ltd., 317 ITR 249.

(xi) The Tribunal's observation that in effect the finding of the DIT was that the Assessing Officer had allowed the claim without examining the issue in the manner required under the 1961 Act, was perverse, as it failed to appreciate the scope and ambit of the SCN. The Tribunal's conclusion that the Assessee had been put to notice about the aspect pertaining to the eligibility of the claim made, was perverse, as this finding was not based on any material on record, which would suggest that it had knowledge of such a objection being raised by the DIT. The observation of the Tribunal, therefore, that because the Assessee had relied upon the judgement of this Court in Silver Cloud Estates Pvt. Ltd., it had notice of the fact that its eligibility to claim deduction was in issue, was perverse. The reason being that the said judgement had been relied upon by the Assessee to emphasise the fact that the issue raised in the SCN that the computation was not in accordance with the provisions of Section 80IB(13) read with Section 80IA(5), was not correct, as there was no material put to the Assessee with regard to the same. In other words, the judgement in Silver Cloud Estates Pvt. Ltd., was not cited, at least, at that stage to advance the submission that the issue with regard to the eligibility was not put to the Assessee by the DIT via his SCN.

(xii) The observation of the Tribunal that non-computation of deduction in the manner specified under the Act could only result in denial of deduction under Section 80IB of the Act, was erroneous, as such an observation/finding read much more into what was not stated either in the SCN or, even in the order passed under Section 263 of the 1961 Act. These findings were recorded by the Tribunal in order to overcome the ratio rendered in the judgement of this Court in : CIT Vs. PVP Ventures Ltd., 23 taxmann.com, 286 (Mad).

(xiii) The Tribunal's finding/observation that it was the duty of the Assessing Officer to examine the allowability of the deduction in accordance with law is misconceived. The Tribunal, in this behalf, overlooked the fact that this was not even the assertion of the DIT. This observation also loses sight of the fact that the Assessing Officer had examined the claim, which, admittedly, even according to the Tribunal, was supported by relevant material. The Assessing Officer had examined not only the eligibility of the claim made by the Assessee, but also the computation made in that behalf. It was stated by the Assessee, in its reply dated 03.11.2006, that the computation had been made, as was done for the earlier AYs. In so far as the indirect expenses were concerned, since, the Assessee was operating five (5) blocks, the expenditure was, firstly, allocated to each block in the ratio of 1:5, and thereafter, sub-allocated on the basis of Barrel of Oil Equivalent (BOE), as per the industry norm. The computation, thus made, was in consonance with the provisions of Section 80IB(5) of the 1961 act. The DIT had not given any definitive finding that the computation made was not in accordance with law, as is evident upon a bare perusal of the order passed under Section 263 of the 1961 Act. As a matter of fact, there is not even a prima facie finding returned by the DIT that the computation was not in accordance with Section 80IA(5). The DIT, as a matter of fact, overlooked the report

filed and issued notice without examining the computation made by the Assessee, as supported by the report filed in that behalf.

(xiv) The observation of the Tribunal that there was no application of mind by the Assessing Officer is contrary to the facts and thus, tantamount to exercising jurisdiction, which is not vested in it. The reason being that this was not even the assertion of the DIT. The observation made by the Assessing Officer qua the deduction claimed by the Assessee under Section 80IB to the effect : "as admitted by the Assessee", showed that he had applied his mind to the submissions made before him during the course of the assessment proceedings. The Assessee had, in fact, not only supported its claim, by placing on record the Chartered Accountant's certificate, but had also placed on record the copies of computation in respect of the earlier years.

(xv) The provisions of Section 80IB(5) were not relevant, and therefore, the observation of the Tribunal that failure to advert to that Section was not fatal, was, clearly, erroneous.

(xvi) The further observations of the Tribunal that this defect could be cured by referring to Section 292B of the 1961 Act, was also flawed.

(xvii) The Tribunal failed to appreciate that the Assessee had commenced preparing its audited accounts in respect of its claim for deduction - from the year, when, commercial production began, in consonance with the decision rendered by this Court in : Velayudhswamy Spinning Mills (P) Ltd. Vs. CIT, 340 ITR 477 (Mad). The obligation to prepare the audited accounts fastens only, when, commercial production of a given undertaking commences. It is also for this reason that the Assessee had not carried forward its loses of earlier years to be set off against the profits of the SGF unit qua the relevant AY. This methodology was in sync with the ratio of the judgement in Velaydhswamy. These are aspects, which were lost sight of both by the DIT and the Tribunal.

(xviii) The DIT failed to appreciate that there was no requirement under the 1961 Act to maintain separate books of accounts in respect of the undertaking qua which, a deduction was claimed under Section 80IB. The Tribunal, while, recognising this aspect, still went on to sustain the order of the DIT, ignoring the fact that the audited accounts for the relevant period vis-a-vis the undertaking in respect of which, deduction was claimed, had, in fact, been placed on record.

(xix) Both the DIT and the Tribunal failed to note the ratio of the judgement of the Gujarat High Court in : Niko Resources Ltd. Vs. Union of India, 55 Taxmann.com 455 - which held that each well/cluster of wells is an undertaking for the purposes of claiming deduction under Section 80IB(9) of the 1961 Act . The DIT and the Tribunal failed to appreciate that deduction under Section 80IB(9) of the 1961 Act is

allowed to an undertaking and not to a block. The finding recorded by DIT that the Assessment Officer had not examined the claim in respect of the LGF unit is vague, when a similar plea in respect of the SGF unit had, clearly, been examined.

7. Mr.T.Ravikumar, on the other hand, relied, largely, on the impugned judgement and order of the Tribunal and the order of the DIT. It was submitted by the learned counsel for the Revenue that no interference was called for in the facts and circumstances of the case. The learned counsel emphasised the fact that the SCN was not at variance with the order passed under Section 263 of the 1961 Act, as the failure to compute the deduction in terms of Section 80IB, would also impinge, upon the eligibility of the Assessee to claim the deduction. Reliance, in this behalf, was placed on the provisions of Sub-section (5) and (7) to (12) of Section 80IA(5) as referred to in Section 80IB(13).

7.1. Learned counsel for the Revenue, in support of his submissions, relied upon the judgement of the Supreme Court in : CIT Vs. Amitabh Bachchan, (2016) 384 ITR 200 (SC).

8. We have heard the learned counsel for the parties and perused the record.

8.1. However, before we proceed further, we may summarise the broad principles of law, which are required to be kept in mind by the Commissioner, while exercising his power under Section 263 of 1961 Act:

(i) The power is supervisory in nature, whereby the Commissioner can call for and examine the assessment records.

(ii) The Commissioner can revise the assessment order if the twin conditions provided in the Act are fulfilled, that is, that the assessment order is not only erroneous but is also prejudicial to the interest of the Revenue. The fulfilment of both the conditions is an essential prerequisite. [See Malabar Industrial Co. Ltd Vs. CIT (2000) 243 ITR 83(SC)]

(iii) An order is erroneous when it is contrary to law or proceeds on an incorrect assumption of facts or is in breach of principles of natural justice or is passed without application of mind, that is, is stereo-typed, in as much as, the Assessing Officer, accepts what is stated in the return of the assessee without making any enquiry called for in the circumstances of the case, that is, proceeds with undue haste". [See Gee Vee Enterprises vs ACIT, Delhi-I & Ors. (1975) 99 ITR 375]

(iv) The expression "prejudicial to the interest of the Revenue" while not to be confused with the loss of tax will certainly include an erroneous order which results in a person not paying tax which is lawfully payable to the Revenue. [See Malabar Industrial Co. Ltd.].

(v) Every loss of tax to the Revenue cannot be treated as being "prejudicial to the interest of the Revenue". For example, when the Assessing Officer takes recourse to

one of the two legally viable courses or where there are two views possible and the Commissioner does not agree with the view taken by the Assessing Officer which has resulted in a loss.[See CIT vs Max India Ltd. (2007) 295 ITR 282 (SC)]

(vi) There is no requirement of issuance of a notice before commencing proceedings under Section 263 of the Act. What is required is adherence to the principles of natural justice by granting to the assessee an opportunity of being heard before passing an order under Section 263. [CIT Vs. Electro House (1971 82 ITR 824 (SC)].

(vii) If the Assessing Officer acts in accordance with law his order cannot be termed as erroneous by the Commissioner, simply because according to him, the order should have been written more elaborately". Recourse cannot be taken to Section 263 to substitute the view of the Assessing Officer with that of the Commissioner.[See CIT vs Gabriel India Ltd (1993) 203 ITR 108(Bom)]

(viii) The exercise of statutory power under Section 263 of the Act is dependent on existence of objective facts ascertained from prima facie material on record. The evaluation of such material should show that tax which was lawfully exigible was not imposed. [See Gabriel India Ltd].

9. Keeping in mind the aforesaid principles, what has emerged upon perusal of the record, and that, which is not in dispute, is as follows :

(i) The Assessee is in the business of oil and gas exploration. In the course of its business carried on in two (2) blocks via two (2) units, i.e., SGF unit and LGF unit, it, evidently, derived profits and, thus, claimed deduction under Section 80IB of the 1961 Act.

(ii) The two (2) units, qua which deduction was claimed are : SGF unit and LGF, unit located in Ravva Joint Venture Block and CB-OS/2 Joint Venture Block, respectively.

(iii) The deduction claimed vis-a-vis the SGF unit was a sum of Rs.20,16,10,345/-, while in respect of the LGF unit, the deduction claimed under Section 80IB was a sum of Rs.48,39,66,673/-. The total deduction, thus, claimed was a sum of Rs.68,55,77,018/-.

(iv) The Assessee had filed its return of income on 28.10.2004, whereby, it declared its total income as Rs.49,16,89,883/-. The DIT, in his order dated 12.03.2009, qua the AY in issue, has, wrongly, indicated in paragraph 2, that the total income declared by the Assessee was Rs.3,34,20,644/-. A perusal of the return for AY 2004-2005, would show that the Assessee had, in fact, declared the total income in the sum of Rs.49,16,89,883/-.

(v) The Assessee was issued a notice for scrutiny under Section 143(2) of the 1961 Act, whereupon, the hearing was held on 16.10.2006, calling upon the Assessee to give information, inter alia, with respect to the deduction claimed under Section 80IB.

(vi) This information was supplied by the Assessee vide communication dated 03.11.2006.

(vii) The said information was given, apart from the material, which the Assessee had supplied along with its return of income. The material furnished was in the form of: (a) the annual audited accounts for the year ending on 31.03.2004; (b) the audit report; and (c) the certificate of the concerned Chartered Accountant with regard to the SGF and LGF units, which, inter alia, indicated that the conditions stipulated for claiming deduction under Section 80IB stood satisfied. (See the audit report in the prescribed form, i.e., Form No.10CCB).

(viii) The audit report, which, the Assessee submitted with regard to the two (2) units, i.e., SGF unit and LGF unit, undoubtedly, gave the information with regard to the date of commencement of operations; the initial AY; the quantum of deduction claimed; and the basis for allocation of costs. In this connection, it would be important to note that in so far as the SGF unit was concerned, the date of commencement of operation was given as 19.09.2001; the initial AY qua which deduction was claimed was indicated as 2002-2003; the quantum of deduction claimed under Section 80IB was pegged at Rs.20,16,10,345/-; the fact that the Profit and Loss account under Section 80IB was for the third year was also disclosed; and lastly, the basis for allocation of costs was also given in Annexure A to the Form 10CCB.

(viii)(a) Likewise, with respect to the LGF unit, the date of commencement of operation was given as 01.11.2002; the initial AY, for which deduction was claimed, was given as 2003-2004; the deduction claimed under Section 80IB, which was pegged at Rs.48,39,66,673/- was set out in the prescribed form; and lastly, in Annexure B appended to the prescribed form, i.e., Form 10CCB, it was, clearly, stated that the Profit and Loss account under Section 80IB for the relevant AY was related to the second year. In this annexure, once again, like in the case of the SGF unit, the basis of allocation of costs was also indicated.

(ix) The SCN, which was issued by the DIT, adverted only to the fact that the deduction claimed by the Assessee under Section 80IB(9) had not been computed in accordance with the provisions of Section 80IB(13) read with Section 80IA(5) of the 1961 Act. Via this SCN, the DIT gave an opportunity to the Assessee not only to prefer objections, but also to have them heard in person. The date of hearing fixed, in that behalf, was 13.02.2009. The date of hearing was, however, shifted by the DIT to 05.03.2009, albeit, at the request of the Assessee.

(x) In response to the same, the Assessee filed a reply dated 25.02.2009. The record of the Revenue, furnished to us, is indicative of the fact that this reply was handed over to the DIT at the hearing held on 05.03.2009.

(xi) Thereafter, the DIT, passed the order under Section 263 of the 1961 Act, on 12.03.2009. This order was sustained by the Tribunal vide order dated 20.12.2012.

9.1. Given these facts, which have emerged from the record, it is clear that even according to the Tribunal, the Assessee had furnished the relevant material, which was necessary to claim the deduction under Section 80IB qua the SGF unit and LGF unit. In fact, the material furnished, which included the audit report, clearly, provides in no uncertain terms the requisite information. The information, as noted by us above, inter alia, detailed out : the date of commencement of operation; the initial assessment year; when, the deduction was claimed; the quantum of deduction claimed; whether or not the profit and loss account qua the said activity in order to claim deduction under Section 80IB had been filed, for the first time ; and, lastly, the basis, on which, common expenses had been allocated, as the said units, that is, SGF and LGF units, were part of the Ravva Joint Venture Gas Block and CB-OS/2 Joint Venture Gas Block respectively.

9.2. The Assessing Officer, thus, having been supplied with the information and the documents, allowed the deduction vis-a-vis the claim made under Section 80IB in totality, and while doing so, made a rather prosaic observation as admitted by the Assessee . The DIT seems to have taken umbrage to this approach of the Assessing Officer, without, to our minds, getting into the nitty-gritty of the case. The DIT, as indicated by us in our narration above, has adverted to several aspects, some of which are factually wrong.

9.3. For example, in case of the SGF unit, it is the DIT's observation, in its order dated 12.03.2009, that it is not indicated as to whether or not AY 2003-2004 was the first year of commercial production. This is, clearly, wrong, in view of what we have noted hereinabove. Similarly, the observation of the DIT that the concerned undertaking (i.e., SGF unit), should have maintained separate accounts right from the date of inception, is, in our view, an error of law, as Section 80IB does not mandate that for claiming deduction separate books of accounts should be maintained. This aspect, as alluded to above by us, has also been accepted by the Tribunal. As a matter of fact, as correctly pointed out on behalf of the Assessee, there is a palpable error in the DIT recording that the income declared for AY 2004-2005, prior to the conclusion of the assessment proceedings, was a sum of Rs.3,34,20,644/-, whereas, the record shows that the declared income was Rs.49,16,89,883/-. The Assessing Officer, after completing the assessment, in fact, enhanced the total income to a figure of Rs.109,59,99,910/-.

9.4. The fact of the matter is that the order of the DIT, as correctly argued by the learned counsel for the Assessee, is, in fact, impregnated with both factual and legal error.

9.5. There are other aspects, which, the DIT has found fault with, while, revising the Assessing Officer's order, can be, broadly, paraphrased as follows :

(i) That the SGF unit could not be considered as a separate undertaking on account of the fact it was only a part of the Ravva block, which had been operating, since, 1994.

(ii) That the Assessee had not carried forward all expenses incurred with respect to the SGF unit, prior to the year, in which, commercial production had commenced.

(iii) Apart from the above, the DIT has also observed in the same vain, that, though, SGF had merged with other blocks, it had its expenses and losses carried forward, to have them set off in subsequent years.

(iv) An observation was also made by the DIT with respect to the audit expenses. The DIT is of the view that, since, the audit expenses had been shared between SGF and LGF units, it demonstrated that no separate and independent exercise had been undertaken as to what expenses were, exclusively, attributable to the two units.

(v) Likewise, based on the statement made by the Assessee in paragraph 3 of the financial statement for AY 2001-2002, the DIT concluded that the LGF unit was not an undertaking separate from the gas block, in which, it resided, i.e., the gas block referred to as CB-OS/2.

9.6. On the other hand, Mr.Agrawal, placed reliance on the judgement rendered in Niko Resources Ltd. to buttress his argument that each well was to be construed as a separate undertaking. In other words, the contention was that the deduction qua the units in issue had been, correctly, claimed.

9.7. Similarly, with regard to the DIT's observation that the Assessee had not carried forward losses incurred in the period prior to the year, in which, commercial production had commenced, reliance was placed by Mr.Agrawal, on the judgement of this Court rendered in Velayuthaswamy case. The argument advanced was that the Assessee was prohibited in such like cases, from carrying forward losses incurred prior to the year, in which, commercial production had commenced.

10. In our view, all these aspects could have been answered by the Assessee, only, if, the SCN issued by the DIT had, clearly, articulated these concerns. As correctly argued by Mr.Agrawal, the only aspect, which the DIT highlighted in the SCN, was that, the claim for deduction made by the Assessee under Section 80IB(9) had not been computed in accordance with the provisions of Section 80IB(13) read with 80IA(5).

10.1. The aforementioned aspects, to which we have made a reference above, had not been, admittedly, adverted to by the DIT in the SCN.

10.2. The Tribunal's observation that there was no variance between the SCN and the order of the DIT dated 12.03.2009, to our minds, was factually not correct. The Tribunal, as a matter of fact, appears to have got over this defect, in our opinion, by observing that ... non-computation of the deduction in the manner specified in the Act, could have resulted only in denial of Section 80-IB .... .

11. No doubt, there is no requirement in law to issue a notice under Section 263 of the 1961 Act, but, once, the DIT chooses to issue, he should specify as to why the assessment order is erroneous and prejudicial to the interest of the Revenue.

11.1. We are also willing to accept and go so far as to say that even, if, the SCN does not advert to the areas of concern and/or objections that the revising authority may have vis-a-vis the assessment order, the revisionary jurisdiction would have been, rightly, exercised, as long as at the time of hearing, the DIT confronts the Assessee with the concerns, and/or, objections, he has, vis-a-vis, the assessment order, and discloses to the Assessee, the material, if any, he has in his possession, which led him to believe that the assessment order passed is both erroneous and prejudicial to the interest of the Revenue.

11.2. It is our view that, if, the Assessee is not confronted with material, which is available with the DIT, which has caused him to exercise the revisional power vested in him under Section 263, the exercise of jurisdictional would be irregular. Section 263 of the 1961 Act confers powers on the DIT to revise the assessment order, albeit, after giving the Assessee an opportunity of being heard, and after making and causing such enquiry to be made, as may be deemed necessary. In our opinion, failure to put to the Assessee areas of concern and/or objection and underlying material, if any, that the DIT may have in his possession would turn the exercise of granting an oral hearing an empty formality.

11.3. To satisfy ourselves, we had called for the Revenue's record concerning the case at hand. The record disclosed that the proposal to exercise power under Section 263 emanated from an audit objection. Based on the audit objection SCN was issued to the Assessee. The record further showed that the SCN, which is dated 21.01.2009, in the first instance, fixed the date of hearing as 13.02.2009, which was adjourned to 05.03.2009, at the request of the Assessee. The record also disclosed that the one and only time the Assessee's representative was called for hearing was on 05.03.2009. On that date, the Assessee filed, via its representative, one, Mr.P.R.Prasanna Varma, Chartered Accountant, written submissions dated 25.02.2009. There is nothing on record to suggest that the concerns and/or objections that the DIT may have had vis-a-vis the assessment order were put to the Assessee. There is nothing on record which would suggest that the DIT had confronted the Assessee with any material, in particular, with regard to the conclusion that he has reached which is that the two units, that is, SGF and LGF units, were not separate undertakings and hence, not eligible to claim deduction under Section 80IB.

11.4. Therefore, to our minds, even if, we were to accept, for the moment, the line of reasoning taken by the Tribunal that there was no effective variance between what was stated in the SCN and that, which was found mentioned in the DIT's order, we are unable to accept the stand of the Revenue that the DIT had, in fact, put his concern and/or the material, on which he relied, to the Assessee, before reaching a conclusion in the matter that the power vested in him under Section 263 of the 1961 Act was required to be exercised.

11.5. The judgement of the Supreme Court rendered in CIT Vs. Amitabh Bachchan, (2016) 384 ITR 0200 (SC), on which reliance was placed by the learned counsel for the Revenue, to our minds, does

not articulate a principle, which is any different from what is stated hereinabove by us. This is, clearly, evident, if, one were to have regard to the observations made in paragraph 11 of the judgement. For the sake of convenience, the same are extracted hereafter :

> ..... 11. It may be that in a given case and in most cases it is so done a notice proposing the revisional exercise is given to the assessee indicating therein broadly or even specifically the grounds on which the exercise is felt necessary. But there is nothing in the section (Section 263) to raise the said notice to the status of a mandatory show cause notice affecting the initiation of the exercise in the absence thereof or to require the C.I.T. to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of Section 263. Of course, there can be no dispute that while the C.I.T. is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the C.I.T. prior to the finalization of the decision..... (emphasis is ours) 11.6. A close scrutiny of the facts obtaining in the aforementioned judgement of the Supreme Court would show that the reason the appeal of the Revenue was allowed, was that, the record did not show that the revisional authority had not given an opportunity to the Assessee to controvert, the facts on the basis of which it had concluded that the order of the Assessing Officer was erroneous and prejudicial to the interest of the Revenue. As noted above by us, the departmental file produced before us did not show that the concerns raised by the DIT, in his order dated 12.03.2009, or the material, if any, that he had in his possession were put to the Assessee. Therefore, in our view, as rightly contended by Mr.Agrawal, there has been a breach of the principles of natural justice.
>
> 11.7. As noted above by us, the order of the DIT consists of several factual errors, which ignores, completely, the material placed on record by the Assessee. Aspects as to whether or not SGF and LGF units were separate undertakings and as to why SGF unit ought to have carried forward the losses of the period prior to the date of commencement of commercial production and have it set it off against profits derived from the said unit, were, evidently, not put to the Assessee. The Tribunal, in the impugned judgement and order, skirts this vital issue. In our opinion, there is no finding returned by the Tribunal that the concerns articulated in the order of the DIT were put to the Assessee with an opportunity to rebut the same.
>
> 12. Before we conclude, we must indicate that the Tribunal seems to have, clearly, erred in holding that since, the SCN did not refer to the provisions of Section 80IB(5), it could not be construed as a cardinal error rendering the proceedings void or invalid, as the lacunae could be cured, by taking recourse to Section 292B of the 1961 Act.

12.1. In our view, Section 80IB(5) has no relevance for claiming deduction under Section 80IB(9). Therefore, the observation that the defect could be cured by taking recourse to Section 292B of the 1961 Act, was, in a sense, superfluous. Thus, the submissions made on behalf of the Assessee, in this regard, are, required to be sustained.

13. Therefore, having regard to the discussion above, our answers to the questions, as framed, are as follows :

> Question No.1 :1 13.1. Our answer to question No.1 is that, while, there was, clearly, a variance between what is stated in the SCN, and that, which was noted in the order of DIT, that by itself would not render the order passed under Section 263 of the 1961 Act illegal, as long as at the stage of hearing, the Assessee was given due opportunity to rebut the concerns and/or the material that the DIT had in his possession, based on which, he had reached the conclusion that the assessment order was erroneous and prejudicial to the interest of the Revenue. Therefore, this question is answered in favour of the Revenue and against the Assessee.

Question No.2 :2 13.2. Our answer to question No.2 is similar to our answer to question No.1, which is that, though no SCN was issued with regard to the admissibility of the deduction claimed by the Assessee under Section 80IB(9), opportunity, in that behalf, ought to have been given by the DIT at the stage of conducting the hearing and prior to passing an order under Section 263 of the 1961 Act. Accordingly, question No.2 is also answered in favour of the Revenue, and against the Assessee.

Question No.3 :3 13.3. Our answer to Question No.3 will have to be in favour of the Assessee, and against the Revenue, as there was nothing on record to suggest that at any stage, which is at the show cause stage or at the time, when, hearing was held before the DIT, adequate opportunity was given to the Assessee to rebut the concerns and/or underlying material, if any, that the DIT, had in his possession.

Question No.4 :4 13.4. In so far as answer to question No.4 is concerned, the same will have to be in favour of the Assessee, and against the Revenue, as the Tribunal could not have come to a conclusion that the Assessee had not worked out the deductions in accordance with the provisions of Section 80IB(13), without the DIT giving adequate opportunity to the Assessee. As noted by the Tribunal and also by us, the relevant material required for claiming deduction under Section 80IB had been placed on record by the Assessee before the Assessing Officer. The only reason that the DIT and the Tribunal came to the conclusion that the assessment order was erroneous and prejudicial to the interest of the Revenue, was, that, according to them, the Assessing Officer had not applied his mind to the materials placed on record by the Assessee. In so far as the Assessee was concerned, it claimed that it had worked out the deduction in accordance with the provisions of Section 80IB(13) of the 1961 Act, which, in turn, referred to sub-section (7) to (12) of Section 80IA of the very same Act.

13.5. In so far as the question No.5 and 6 are concerned, the answer will, once again, have to be in favour of the Assessee, and against the Revenue. The Tribunal was, clearly, in error in making a

reference to the provisions of Section 80IB(5) of the 1961 Act, which had no relevance in the facts and circumstances obtaining in the instant case. The position was no different in respect of Section 292B of the 1961 Act.

14. For the foregoing reasons, we are of the view that the order of the Tribunal and the DIT will have to be set aside. It is ordered accordingly.

14.1. The matter is remanded to the DIT, for passing a fresh order. The DIT before passing the order will articulate his concerns/objections in writing and also confront the Assessee with the material, on which, he wishes to place reliance before passing an order under Section 263. A personal hearing will be given to the Assessee, if so demanded. A prior written intimation will be given by the DIT, in this behalf, to the Assessee. The notice will also indicate the date, time and venue of the hearing.

15. The appeal is disposed of, in the aforementioned terms. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs.

(R.S.A.,J.) (R.S.K.,J.)

Speaking Order/ 06.11.2017
Non-speaking order
Index : Yes/No
Internet : Yes
gg/kk

To

1. The Income Tax Appellate Tribunal,
Chennai Bench 'C', Chennai.

2. The Director of Income Tax (International Taxation),
7th Floor, Room No.703,
Annexe Building, Aaykar Bhawan,
121, Nungambakkam High Road,
Chennai-600 034.

RAJIV SHAKDHER, J.
AND
R.SURESH KUMAR, J.

gg/kk

Pre-Delivery Judgement

RESERVED ON : 11.09.2017
DELIVERED ON : 06.11.2017