IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

I.T.A. No.141 OF 2020
C/W
I.T.A. No.151 OF 2020

IN I.T.A. NO.141 OF 2020
BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
LTU, 7TH FLOOR, BMTC BUILDING
80 FEET ROAD, KORAMANGALA
BENGALURU-560095

2. THE ADDL. COMMISSIONER OF
INCOME-TAX, LTU, 7TH FLOOR
BMTC BUILDING, 80 FEET ROAD
KORAMANGALA, BENGALURU-560095 … APPELLANTS

(BY SRI. K.V. ARAVIND,ADVOCATE-PH)

AND:

TEXAS INSTRUMENTS INDIA PVT. LTD.,
BAGMANE TECH PARK
NO.66/3, ADJACENT TO LRDE
BYRASANDRA, C.V.RAMAN NAGAR
BENGALURU-560093 … RESPONDENT

(BY SRI. PERCY PARDIWALLA, SR. COUNSEL FOR
SRI. T. SURYANARAYANA, MS. TANMAYEE RAJKUMAR AND
MS. MAHIMA GOUD, ADVOCATE OF M/S KING & PATRIDGE-PH)

THIS APPEAL IS FILED UNDER SECTION 206A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 06.03.2020 PASSED IN IT(TP)A NO.169/BANG/2014, FOR THE ASSESSMENT YEAR 2008-2009 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU IN IT(TP)A NO.169/BANG/2014 DATED 06.03.2020 FOR ASSESSMENT YEAR 2008-2009 ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ADDL. COMMISSIONER OF INCOME TAX, LTU, BENGALURU.

*****

IN I.T.A. NO.151 OF 2020
BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
   LTU, 7TH FLOOR, BMTC BUILDING
   80 FEET ROAD, KORAMANGALA
   BENGALURU-560095

2. THE JOINT COMMISSIONER OF
   INCOME-TAX, LTU, 7TH FLOOR
   BMTC BUILDING, 80 FEET ROAD
   KORAMANGALA, BENGALURU-560095 … APPELLANTS

(BY SRI. K.V. ARAVIND,ADVOCATE-PH)

AND:

TEXAS INSTRUMENTS INDIA PVT. LTD.,
BAGMANE TECH PARK
NO.66/3, ADJACENT TO LRDE
BYRASANDRA, C.V.RAMAN NAGAR
BENGALURU-560093 … RESPONDENT

(BY SRI. PERCY PARDIWALLA, SR. COUNSEL FOR
SRI. T. SURYANARAYANA, MS. TANMAYEE RAJKUMAR AND
MS. MAHIMA GOUD, ADVOCATE OF M/S KING & PATRIDGE-PH)

THIS APPEAL IS FILED UNDER SECTION 206A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 06.03.2020 PASSED IN IT(TP)A NO.149/BANG/2014, FOR THE ASSESSMENT YEAR 2008-2009 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU IN IT(TP)A NO.149/BANG/2014 DATED 06.03.2020 FOR ASSESSMENT YEAR 2008-2009 ANNEXURE-C AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRM THE ORDER PASSED BY THE ADDL. COMMISSIONER OF INCOME TAX, LTU, BENGALURU.

*****

THESE APPEALS COMING ON FOR HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 05.03.2021, THIS DAY, ***SURAJ GOVINDARAJ J.***, PRONOUNCED THE FOLLOWING:

J U D G M E N T

1. The respondent is in the business of manufacture and export of computer software. It filed returns of income for the Assessment Year 2008-09 on 30.09.2008, declaring an income of Rs.98,03,41,570/- which was processed on 8.06.2011, determining the total income of the same amount. Returns were taken up for scrutiny after issuance of statutory notice under Section 143(2) on 14.09.2009.

2. The Assessee had claimed deduction of Rs.7,57,22,069/- under Section 80JJ(AA) of Income Tax Act for the Assessment Year 2008-2009 in respect of employment of new workmen for the said year. In terms thereof, the Assessee could claim a deduction of additional amounts paid to new regular workmen employed in the previous year on the workmen satisfying the definition under Section 2(s) of the Industrial Disputes Act, 1947.

3. The Assessee had also sought for deduction in computing the income chargeable under the head "profits and gains of business or profession", as regards the amounts paid towards lease rental on lease finance of cars obtained by the Assessee and had contended that there was no tax liability to be paid thereof nor any deduction at source required to be done

thereon since the same is not covered under Section 194-C or under Section 194-I of the Income Tax Act.

4. The Assessing Officer vide final order dated 25.01.2012 had held that the Assessee was not eligible for any deduction under Section 80JJ(AA) of the Act. The Assessing Officer also held that since the Assessee had not deducted tax at source on the lease rentals for the cars/vehicles in terms of Section 194-C of the Act, the expenditure claimed in the computation of income was disallowed and added back to the total income of the Assessee under Section 40(a)(ia) on the ground that the workmen as regards whom the Assessee had sought for deduction under Section 80JJ(AA) had not completed 300 days of employment during the previous year, the incentive under Section

80JJ(AA) was only payable and/or could be claimed if the workman had worked for 300 days within the previous year and not otherwise. The continuation of the working of the workmen in the Assessment Year (AY) and calculating the employment during the previous year and Assessment year to arrive at 300 days was not permissible.

5. The other ground was since the lease rentals was being paid to the vendors under the contract, and therefore, the payment/expenses would be attracting the provisions of Section 194-C of the Act. The CIT-A, as regards the deduction under Section 80JJ(AA) held that the said provision would apply to the workmen of the Assessee but held that since the workmen had not worked for 300 days in the previous year, the Assessee was not entitled to the deduction

and hence upheld the finding of the Assessing Officer in that regard.

6. As regards the deduction of lease rentals, CIT(A) overturned the order of the Assessing Officer by holding that payments were made by the Assessee, not for the service rendered by the leasing company for the carriage of goods or passengers, in which case the running and maintenance charges would have been incurred by the contractor, in the present case, the assets are in the disposition of the Assessee and it is the Assessee which meets the running and maintenance of goods and only pays rental charges for the vehicles to the contractor.

7. Aggrieved by the said order, the Assessee preferred an appeal before the Commissioner of Income Tax Appellate Tribunal [ITAT] on

27.12.2012, Bengaluru Bench, Bengaluru in IT (TP)A No.169/Bang/2014, so did the Revenue in IT(TP)A No.149/Bang/2014.

8. The Assessee has filed an appeal as regards disallowance in respect of Section 80JJ(AA); the Revenue filed an appeal insofar as finding relating to the aspect of tax deducted at source referred to above. The Tribunal taking into account the decision rendered by it in another matter where it had held that the employees/workmen in the software industry are workmen since they render technical services and not services in the nature of supervisor or managerial character, taking into account the number of workmen added in the previous year, as also the Financial Year [FY] and coming to a conclusion that for the previous FY 2006-07 and new employees who joined FY 2006-07 and

continued in employment FY 2007-08 and completed 300 days of work in the said year, the Appellate Tribunal considering that Section 80JJ(AA) was amended by the Finance Act 2018 w.e.f. 1.4.2019 came to a conclusion that the said amendment was a curative and clarificatory amendment, and as such, the continuance of employment in the two financial years for over 300 days was sufficient enough to claim deduction under Section 80JJ(AA).

9. As regards the appeal filed by the Revenue, the Tribunal upheld the decision of the CITA and held that the provisions of Section 194-C would not apply for lease rentals of vehicles. It is aggrieved by the said order of the Tribunal that the Revenue is before this Court challenging the order of the Tribunal passed in IT(TP)A No.169/Bang/2014 dated 6.3.2020 for the

Assessment Year 2008-09 and seeking to confirm the order of the CITA confirming the order passed by the Additional Commissioner of Income-tax, LTU, Bangalore. The Revenue has also preferred ITA No. 141/2020 challenging the order of the Tribunal passed in IT(TP)A No.149/Bang/2014 for the assessment year 2008-2009 and seeking to confirm the order passed by the Joint Commissioner of Income Tax, LTU, Bangalore.

10. The above appeals were admitted on 8.10.2020 and the following substantial questions of law were formulated:

> **"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance of Rs.7,57,22,069 made under section 80JJAA of the Act by holding that the employees in software industry are covered by definition of 'Workman' in Explanation (iii) to section 80JJAA of the Act read with section 2(s) of the Industrial Dispute Act and employees who have worked for 300**

days in a previous are eligible for the purpose of deduction under section 80JJAA in the succeeding year if he completes 300 days in such succeeding year without appreciating that person working in software industry cannot be said to be 'Workman' for the purpose of section 80JJAA of the Act and conditions prescribed for claiming said deduction are not satisfied by Assessee?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance made under section 40(a)(i)/(ia) for sum of Rs.7,87,93,536/- claimed towards finance of cars by holding that assessing authority did not invoke the provisions of section 194I of the Act without observing that for making disallowance under section 40(a)(i)/(ia) of the Act does not require assessing authority to invoke specific provisions relating to TDS and it is sufficient if there is violation of any provision of chapter XVIIB of the Act by way of Non Deduction of tax or Non Payment of tax?

3. "Whether on the facts of the case, the Tribunal's order can be said as perverse in nature as Tribunal failed to appreciate that mentioning of wrong provision of law does not invalidate disallowance if the order passed in sum and substance meets the legal requirements then it is said to be a valid order and appellate authorities has power to either enhance or reduce tax liability?".

11. Sri.K.V.Aravind, learned Senior Standing Counsel for the Revenue, submits that:

11.1. The deduction under Section 80JJ(AA) would not be available if the workman was employed for a period of less than 300 days during the previous year in terms of Explanation (ii) to Section 80JJ(AA)(2). He, therefore, contends that exemption provisions under the Income Tax Act have to be strictly construed and have to be strictly complied with by the Assessee to claim any benefit.

11.2. Workmen as regards whom the deduction is sought for not having worked for 300 days during the previous year, the Assessee was not eligible to claim for any exemption and/or deduction;

11.3. The Tribunal has grossly erred in relying on the amendment of the year 2019 and has claimed said amendment is applicable to the assessment year 2008-09;

11.4. The aforesaid amendment is not a curative amendment or clarificatory amendment.

11.5. That in the interregnum between 2008-09 and 2019, there was one more amendment which had taken place in the year 2014, therefore amendment to the amendment which happened in the year 2014 cannot be said to be a curative or clarificatory amendment to a provision applicable to the present case for the assessment year 2008-2009. In this regard, he relies upon the following decisions:

11.6. He submits that a financial statute has to be strictly interpreted. Since the Assessee does not satisfy the requirement of a statute, the Assessee cannot claim any benefit therefrom. In this regard, he relies on the following decisions:

11.6.1. Ramnath & Co., vs. Commissioner of Income-tax, (2020) 116 taxmann.com 885 (SC)

> 17.3. In view of above and with reference to several other decisions, in Dilip Kumar & Co., the Constitution Bench summed up the principles as follows:-
>
> "66. To sum up, we answer the reference holding as under:
>
> 66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the Assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
>
> 66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.
>
> 66.3. The ratio in Sun Export case is not correct and all the decisions which took

> similar view as in Sun Export case stand overruled."
>
> (emphasis in bold supplied)

11.7. The Assessee having availed services of hiring cars for its employees and not having deducted tax at source, the Assessee could not claim a deduction of the expenditure on such hiring of the cars, since there is a default in deducting tax at source in terms of Section 194-I or 194-C of the Act.

11.8. Sri. K.V. Aravind learned Senior Standing Counsel, while painstakingly referring to both the said provisions, contend that once a vehicle is hired, it was but required for the Assessee to have deducted tax at source, not having done so, the Assessee cannot claim any deduction. In this regard, he relies on the following decisions:

11.8.1. Smt. J. Rama, vs. Commissioner of Income-tax, Bangalore, (2010) 194 Taxman 37 (Karnataka)

8. In order to appreciate the rival contentions, it is necessary to bear in mind the admitted facts:

The Assessee in an individual deriving income from hiring of vehicles. Under a written agreement the Assessee is providing vehicles to one of its customers, M/s Mahindra Transport Solutions Group. Clause 5 of the written agreement entered into between them stipulates that the provision of services would involve providing vehicles owned by the Assessee or associates of Assessee or agents, for transportation of the Employees of Thomson Corporation (International) Private Limited. The material on record discloses that the Assessee is owning a fleet of vehicles. That is not sufficient to meet their obligations. Therefore, the Assessee hired vehicles from the owners of the vehicles. There is no written agreement entered into between the assessee and such individual owners. It is those vehicles hired in the aforesaid manner which are utilized for performing the contract entered into between the Assessee and its customers. In the absence of any material placed by the Assessee, the only inference that can be drawn from the facts of this case is that the Assessee has utililsed the vehicles taken on lease to perform the written contract entered into between the Assessee and various customers. Out of the transportation charges received under the aforesaid written contract, a substantial portion has been paid to the various owners of the vehicles towards transportation charges. Though a ground is taken that such payment is not in excess of Rs.20,000

and, therefore, there is no obligation to deduct TDS, the material on record discioses that total amount paid towards transportation charges is roughly about Rs.79,45,225. In the absence of any particulars, it cannot be said that there was no liability to deduct tax on that score. Law does not stipulate the existence of a written contract as a condition precedent for payment of TDS. The contract may be in writing or it may be oral but the liability to pay tax arises when the recipient of the said amount receives payment in excess of Rs. 20,000. Proviso (2) to section 194C which is attracted t the facts of this case makes it very clear that when a individual or Hindu Undivided Family whose total sales from the business or profession carried on by him in excess of the monetary limit specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the sub-contractor, shall be liable to deduct income-tax under the sub-section. It is not in dispute that the turnover of the Assessee exceeds the monetary limit specified under clause (a) or Clause (b) of section 44 AB. Therefore, the liability to deduct tax arises under the said proviso to the sub-contractor form whom the vehicles are hired and the said amount payable to the sub-contractor is in excess of Rs.20,000. Therefore, the three authorities have concurrently held that the transaction in question is a transport contract. The liability to deduct out of the money paid to the sub-contractors does arise. Immediately, TDS is not deducted and the said amount is not paid to the authorities. Therefore, the claim for deduction under section 40(a)(ia) is not attracted and the authorities were justified in disallowing the said deduction and treating

the said amount as the income of the Assessee and claiming tax on that amount.

9. Insofar as the second substantial question of law is concerned, the facts are not in dispute. The TDS certificates enclosed with the return amounted to Rs.1,70,89,004 whereas the receipt disclosed in the income and expenditure account, was Rs.1,64,06,036. This discrepancy is admitted. The explanation offered is that a portion of the said TDS deductions are claimed in the subsequent year. The amount of Rs.6,82,968 was received by the asessee in the following year. As rightly pointed out by the authorities, when the Assessee is following the maintenance of books of account on mercantile basis, accounting and reflecting on receipt basis is not proper and therefore, rightly they have upheld the deductions made".

11.8.2. Shree Choudhary Transport Company vs. Income Tax Officer, (2020) 118 taxmann.com 47 (SC)

15.1. The nature of contract entered into by the appellant with the consignor company makes it clear that the appellant was to transport the goods (cement) of the consignor company; and in order to execute this contract, the appellant hired the transport vehicles, namely, the trucks from different operators/owners. The appellant received freight charges from the consignor company, who indeed deducted tax at source while making such payment to the appellant. Thereafter, the appellant paid the charges to the persons whose vehicles were hired for the purpose of the said work of transportation of goods. Thus, the goods in question were transported through the trucks employed by the appellant but, there

was no privity of contract between the truck operators/owners and the said consignor company. Indisputably, it was the responsibility of the appellant to transport the goods (cement) of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the appellant. Hence, hiring the services of truck operators/owners for this purpose could have only been under a contract between the appellant and the said truck operators/owners. Whether such a contract was reduced into writing or not carries hardly any relevance. In the given scenario and set up, the said truck operators/owners answered to the description of "sub-contractor" for carrying out the whole or part of the work undertaken by the contractor (i.e., the appellant) for the purpose of Section 194C(2) of the Act.

11.9. In the above circumstance, he submits that the appeals have to be allowed.

12. Sri. Percy Pardiwalla, Learned Senior Counsel, instructed by Smt.Tanmayee Rajkumar, for the respondent, submitted that :

12.1. The order passed by the Tribunal is proper and correct and does not require any interference. The Tribunal has followed its own decision in ***Bosh Limited –v- ACIT***

[2016] 74 taxmann.com 161 (Bang),

Paragraphs 22 and 23 are extracted hereunder for easy reference:

12.1.1. Bosch Ltd. vs. Assistant Commissioner of Income-tax, LTU, Bangalore, (2016) 74 taxmann.com 161 (Bangalore – Trib.)

> 22. In the present case, the AO held that sec.80JJAA was restricted to additional wages paid to employees who have worked for more than 300 days during the relevant period irrespective of whether they were employed on a permanent basis or otherwise. Accordingly, the AO ascertained the additional wages paid to those workers who had worked for less than 300 days of Rs.25,64,771/- and 30% of which worked out to Rs.7,69,431/- was disallowed by the AO. The claim of the Assessee is this that if the worker is employed on permanent basis then only because in the present year, working days are less than 300 days because he was employed after 66 days from the start of the previous year then no deduction will be available under this section in respect of such workers appointed or employed after that date and therefore, this approach of the AO is not correct.
>
> 23. In our considered opinion, as per provisions of section 80JJAA as reproduced above, the deduction is allowable for three years including the year in which the employment is provided. Hence, in each of such three years it has to be seen that the workmen was employed for at least 300 days during that previous year and that such

work men was not a casual workmen or workmen employed through contract labour. Therefore, if some work men were employed for a period less than 300 days in the previous year then no deduction is allowable in respect of payment of wage to such work men in the present year even if such work men was employed in the preceding year for more than 300 days but in the present year, such work men was not employed for 300 days or more. In this view of the matter, we find no infirmity in the order of the ld.CIT(A) on this issue.

12.1.2. Texas Instrument (India) P. ltd. (Asst. Year 2007-2008)

4.1 According to section 80JJAA, the deduction is available in three yearly installments, on the additional wages paid to the new regular workmen employed by the Assessee in the previous year. In other words, the deduction has to be claimed beginning form the year in which the workmen were first employed. The audit report in Form 10DA says in Note No.2 that the workmen who worked for less than 300 days in the previous year (relevant to the current assessment year) but continued with the company till the end of the year have also been considered for the purposes of deduction as per legal opinion obtained by the company. This stand taken by the Assessee is also not acceptable. Explanation (ii)(c) to the section, while defining the term' regular workmen', excludes those who are employed for a period of less than 300 days during the previous year form this definition. The deduction is available in three yearly installments. The same will therefore be available only if the employees have worked for not less than 300 days in each of the year. If in the first year, deduction is not

> admissible for the reason that the workmen have not worked for a period of 300 days, the deduction will be admissible for next two (not three) assessment years if during those years the workmen have worked for at least 300 days each.. Just because they have worked for more than 300 days in the second year of their employment, the second year of their employment cannot be considered as the first year for the purpose of allowing deduction under this section. In no case, however, deduction is admissible in respect of new workmen who have not worked for at least 300 days during the year.

12.2. If the interpretation sought to be now given by the Revenue to Section 80JJ(AA) is taken into consideration, then unless a person is employed before 5th June of that year, the employer would not be eligible for claiming any deduction in terms of Section 80JJ(AA);

12.3. That if the submissions of the Revenue were to be accepted and if an employee/workman were not to complete 300 days in that previous year, then no deduction could ever be claimed by the

Assessee either for the assessment year or thereafter, more so in terms of Section 80JJ(AA). The Assessee is entitled to claim a deduction for a period of three years from the year of employment.

12.4. The employees in a software company would come within the definition of Section 2(s) of the Industrial Disputes Act since they do not discharge any supervisory function, he relies on ***Devinder Singh v. Municipal Council, Sanaur*, (2011) 6 SCC 584,** more particularly para 13 thereof which is reproduced hereunder:

> 13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or

> a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on a regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.
>
> 14. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of "workman".

12.5. As regards tax deduction at source, there is no service that has been provided by a leasing company except for the said company having purchased the car and made available the car for use by the Assessee and/or its employees. It is the Assessee and its employees who take care of repair and maintenance of the said car;

apart from handing over possession of the vehicle in question, the lease financing company does not render any service or carry out any other function and therefore, he submits that neither Section 194-I nor 194-C are attracted, and as such, he submits that the finding of the CIT(A) in this regard is proper and correct.

12.6. That when there are beneficial legislations, they need to be interpreted in such a manner as to make the same meaningful and in such a way that the benefit is made available to the Assessee, in this regard he relies on:

12.6.1. Mavilayi Service Co-operative Bank Ltd. Vs. Commissioner of Income Tax, Calicut, (2021)123 taxmann.com 161 (SC)

> 45. To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P of the

IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

12.6.2. Commissioner of Income-tax (Central)-I, New Delhi vs. Vatika Township (P.) Ltd., (2014) 49 taxmann.com 249(SC)

30. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a

special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips vs. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

32. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the Counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Government of India & Ors. v. Indian Tobacco Association, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to

hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra & Ors. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

12.6.3. Deputy Commissioner of Income Tax, Circle 11(1), Bangalore vs. ACE Multi Axes Systems Ltd., (2017) 88 taxmann.com 69 (SC)

11. As already noted, the question for consideration is whether deduction under Clause 3 for 10 consecutive assessment years remains permissible irrespective of compliance of conditions subject to which the said deduction is permitted in the relevant assessment years. For purposes of deduction, the industrial undertakings covered by Section 80 IB are of different categories. Under the second proviso to Clause 2, disqualification applicable to industrial undertaking, other than small scale industrial undertakings, i.e., not being in 8th Schedule is not applicable. The small scale industrial undertakings eligible are only those which begin manufacture or produce, articles or things during the beginning of 1st day of April, 1995 and ending on 31st day of March, 2002 [Clause 3(ii)]. For other categories of industrial undertakings, different periods are prescribed, e.g. under sub-clause (i) of Clause (3).

12. The scheme of the statute does not in any manner indicate that the incentive provided has to continue for 10 consecutive years irrespective of continuation of eligibility conditions. Applicability of incentive is directly related to the eligibility and not de

hors the same. If an industrial undertaking does not remain small scale undertaking or if it does not earn profits, it cannot claim the incentive. No doubt, certain qualifications are required only in the initial assessment year, e.g. requirements of initial constitution of the undertaking. Clause 2 limits eligibility only to those undertakings as are not formed by splitting up of existing business, transfer to a new business of machinery or plant previously used. Certain other quaiifications have to continue to exist for claiming the incentive such as employment of particular number of workers as per sub-clause 4(i) of Clause 2 in an assessment year. For industrial undertakings other than small scale industrial undertakings, not manufacturing or producing an article or things specified in 8th Schedule is a requirement of continuing nature.

13. On examination of the scheme of the provision, there is no manner of doubt that incentive meant for small scale industrial undertakings cannot be availed by industrial undertakings which do not continue as small scale industrial undertakings during the relevant period. Needless to say, each assessment year is a different assessment year, except for block assessment

12.7. The calculation of the year would have to be made so as to give effect to the intent of the legislature, merely because the Financial Year is taken to be from 1st April of the year to 31st March of the next year,

the same cannot be imported into section 80JJAA. The requirement is for an employee to be employed for a period of 300 days or more continuously. As such, even if there is spiliover from one Financial year to the other, the Assessee is required to be given the benefit of the same. In this regard he relies on the following decision:

12.7.1 Commissioner of Income-tax vs. Alom Extrusions Ltd., (2009)185 Taxman 416 (SC)

9. We find no merit in these civil appeals filed by the Department for the following reasons: firstly, as stated above, Section 43-B [main section], which stood inserted by Finance Act, 1983, with effect from 1st April, 1984, expressly commences with a non-obstante clause, the underlying object being to disallow deductions claimed merely by making a Book entry based on Merchantile System of Accounting. At the same time, Section 43-B [main section] made it mandatory for the Department to grant deduction in computing the income under Section 28 in the year in which tax, duty, cess, etc., is actually paid. However, Parliament took cognizance of the fact that accounting year of a company did not always tally with the due dates under the Provident Fund Act, Municipal Corporation Act [octroi]

and other Tax laws. Therefore, by way of first proviso, an incentive/relaxation was sought to be given in respect of tax, duty, cess or fee by explicitly stating that if such tax, duty, cess or fee is paid before the date of filing of the Return under the Income Tax Act [due date], the Assessee (s) then would be entitled to deduction. However, this relaxation/incentive was restricted only to tax, duty, cess and fee. It did not apply to contributions to labour welfare funds. The reason appears to be that the employer(s) should not sit on the collected contributions and deprive the workmen of the rightful benefits under Social Welfare legislations by delaying payment of contributions to the welfare funds. However, as stated above, the second proviso resulted in implementation problems, which have been mentioned hereinabove, and which resulted in the enactment of Finance Act, 2003, deleting the second proviso and bringing about uniformity in the first proviso by equating tax, duty, cess and fee with contributions to welfare funds. Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by the Parliament only with effect from 1st April, 2004, would become curative in nature, hence, it would apply retrospectively with effect from 1st April, 1988. Secondly, it may be noted that, in the case of Allied Motors (P) Limited vs. Commissioner of Income Tax, reported in [1997] 224 I.T.R.677, the Scheme of Section 43-B of the Act came to be examined. In that case, the question which arose for determination was, whether sales tax collected by the Assessee and paid after the end of the relevant previous year but within the time allowed under the relevant Sales Tax law should be disallowed under Section 43-B of the Act while computing the business

income of the previous year? That was a case which related to Assessment Year 1984-1985. The relevant accounting period ended on June 30, 1983. The Income Tax Officer disallowed the deduction claimed by the Assessee which was on account of sales tax collected by the Assessee for the last quarter of the relevant accounting year. The deduction was disallowed under Section 43-B which, as stated above, was inserted with effect from 1st April, 1984. It is also relevant to note that the first proviso which came into force with effect from 1st April, 1988 was not on the statute book when the assessments were made in the case of Allied Motors (P) Limited (supra). However, the Assessee contended that even though the first proviso came to be inserted with effect from 1st April, 1988, it was entitled to the benefit of that proviso because it operated retrospectively from 1st April, 1984, when Section 43-B stood inserted. This is how the question of retrospectivity arose in Allied Motors (P) Limited (supra). This Court, in Allied Motors (P) Limited (supra) held that when a proviso is inserted to remedy unintended consequences and to make the section workable, a proviso which supplies an obvious omission in the section and which proviso is required to be read into the section to give the section a reasonable interpretation, it could be read retrospective in operation, particularly to give effect to the section as a whole. Accordingly, this Court, in Allied Motors (P) Limited (supra), held that the first proviso was curative in nature, hence, retrospective in operation with effect from 1st April, 1988. It is important to note once again that, by Finance Act, 2003, not only the second proviso is deleted but even the first proviso is sought to be amended by bringing about an uniformity in tax, duty, cess and fee on the one hand vis-a-vis

contributions to welfare funds of employee(s) on the other. This is one more reason why we hold that the Finance Act, 2003, is retrospective in operation. Moreover, the judgement in Allied Motors (P) Limited (supra) is delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that Finance Act, 2003, will operate retrospectively with effect from 1st April, 1988 [when the first proviso stood inserted]. Lastly, we may point out the hardship and the invidious discrimination which would be caused to the Assessee (s) if the contention of the Department is to be accepted that Finance Act, 2003, to the above extent, operated prospectively. Take an example - in the present case, the respondents have deposited the contributions with the R.P.F.C. after 31st March [end of accounting year] but before filing of the Returns under the Income Tax Act and the date of payment falls after the due date under the Employees' Provident Fund Act, they will be denied deduction for all times. In view of the second proviso, which stood on the statute book at the relevant time, each of such Assessee (s) would not be entitled to deduction under Section 43-B of the Act for all times. They would lose the benefit of deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right upto 1st April, 2004, and who pays the contribution after 1st April, 2004, would get the benefit of deduction under Section 43-B of the Act. In our view, therefore, Finance Act, 2003, to the extent indicated above, should be read as retrospective. It would, therefore, operate from 1st April, 1988, when the first proviso was introduced. It is true that the Parliament has explicitly stated

> *that Finance Act, 2003, will operate with effect from 1st April, 2004. However, the matter before us involves the principle of construction to be placed on the provisions of Finance Act, 2003.*

12.8. He submits that the Tribunal has rightly upheld the said finding, and therefore, the appeal in this regard by the Revenue is required to be dismissed.

13. Heard Sri. K.V. Aravind, learned Senior Panel Counsel for the Revenue and Sri.Percy Pardiwalla, learned Senior Counsel for the respondent.

14. Before answering the substantial questions, related provisions for this matter are extracted hereunder:

80JJAA- As amended by Finance Act 2008

80JJAA. (1) Where the gross total income of an assessee being an Indian Company, includes any profits and gains derived from any industrial undertaking engaged in the manufacture or production of article or thing, there shall, subject to the conditions specified in sub-section (2), be allowed a

deduction of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed by the Assessee in the previous year for three assessment years including the Assessment year relevant to the previous year in which such employment is provided.

(2) No deduction under sub-section (1) shall be allowed,—

(a) if the industrial undertaking is formed by splitting up or reconstruction of an existing undertaking or amalgamation with another industrial undertaking;

(b) unless the Assessee furnishes along with the return of income the report of the accountant, as defined in the Explanation below sub-section (2) of section 288 giving such particulars in the report as may be prescribed.

Explanation:- For the purpose of this section, the expressions,-

(i) "additional wages" means the wages paid to the new regular workmen in excess of one hundred workmen employed during the previous year:

Provided that in the case of an existing undertaking, the additional wages shall be nil if the increase in the number of regular workmen employed during the year us less than ten percent of existing number of workmen employed in such undertaking as on the last day of the preceding year,"

(ii) "regular workman", does not include-

(a) a causal workman; or

(b) a workman employed through contract labour; or

(c) any other workman employed for a period of less than thee hundred days during the previous year;

(iii) "workman" shall have the meaning assigned to it in Clause (s) of section 2 of the Industrial Dispute Act, 1947 (14 if 1947).

As amended by Finance Act, 2020 Taxation Laws (Amendment) Act, 2019

Deduction in respect of employment of new employees.

80JJAA. (1) Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the Assessment year relevant to the previous year in which such employment is provided.

(2) No deduction under sub-section (1) shall be allowed,—

(a) if the business is formed by splitting up, or the reconstruction, of an existing business:

Provided that nothing contained in this Clause shall apply in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the Assessee of the business in the circumstances and within the period specified in section 33B;

(b) if the business is acquired by the Assessee by way of transfer from any other person or as a result of any business reorganisation;

(c) unless the Assessee furnishes alongwith the return of income the report of the accountant, as defined in the Explanation BELOW SUB-SECTION (2) of section 288 giving such particulars in the report as may be prescribed.

Explanation.—For the purposes of this section,—

(i) "additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year:

Provided that in the case of an existing business, the additional employee cost shall be nil, if—

(a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account:

Provided further that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

(ii) "additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include—

(a) an employee whose total emoluments are more than twenty-five thousand rupees per month; or

(b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952); or

(c) an employee employed for a period of less than two hundred and forty days during the previous year; or

(d) an employee who does not participate in the recognised provident fund:

Provided that in the case of an assessee who is engaged in the business of manufacturing of apparel, the provisions of sub-clause () shall have effect as if for the words "two hundred and forty days", the words "one hundred and fifty days" had been substituted;

Provided further that where an employee is employed during the previous year for a periods of les than two hundred and forty days or one hundred and fifty days, as the case may be, but is employed for a period of two hundred and forty days or one hundred and fifty days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly.

(iii) "emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and

(b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

(3) The provisions of this section, as they stood immediately prior to their amendment by the Finance Act, 2016, shall apply to an assessee eligible to claim any deduction for any assessment year commencing on or before the 1st day of April, 2016.

Section 194-C:

Payment to Contractors:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent in case of advertising;

(ii) in any other case two per cent, where the payment is being made or

of such sum as income-tax on income comprised therein.

Provided that no individual or a Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(2) Any person (being a contractor and not being an individual or a Hindu undivided family) responsible for

paying any sum to any resident (hereafter in this section referred to as the sub-contractor) in pursuance of a contract with he sub-contractor for carrying out, or for the supply of labour for carrying out, the whole or any part of the work undertaken by the contractor or for supplying whether wholly or partly any labour which the contractor has undertaken to supply shall, at the time of credit of such sum to the account of the sub-contractor or at the time of payment thereof n cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax on income comprised therein:

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under Clause (a) or Clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of sub-contractor, shall be liable to deduct income-tax under this sub-section.

(3) No deduction shall be made under sub-section (1) or sub-section (2) from-

(i) the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) or, as the case may be, sub-section (2) shall be liable to deduct income-tax under this section:

Provided further that no deduction shall be made under sub-section (2), from the amount of any sum

credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year:

(i) one per cent where the payment is being made or credit is being given to an individual or a hindu undivided family;

(ii) two percent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

Of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (*e*) of Clause (*iv*) of the *Explanation,* tax shall be deducted at source—

(*i*) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(*ii*) any sum credited or paid before the 1st day of June, 1972; or

(iii) any sum credited or paid before the 1st day of June, 1973, in pursuance of a contract

between such contractor and the sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the co-operative society.

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds one lakh rupees, the person responsible for paying such sums referred to in sub section (1) shall be liable to deduct income-tax under this section.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the

person authorised by it, such particulars, in such form and within such time as may be prescribed.

Section 194-I:

Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of—

(*a*) two per cent for the use of any machinery or plant or equipment; and

(*b*) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed one hundred and eighty thousand rupees :

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section :

Provided also *that no deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset,*

*referred to in Clause (*23FCA*) of section 10, owned directly by such business trust.*

Explanation.—For the purposes of this section,—

(*i*) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

(*a*) land; or

(*b*) building (including factory building); or

(*c*) land appurtenant to a building (including factory building); or

(*d*) machinery; or

(*e*) plant; or

(*f*) equipment; or

(*g*) furniture; or

(*h*) fittings,

whether or not any or all of the above are owned by the payee;

(*ii*) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

15. We answer the substantial questions as under:

16. **Answer to Substantial Question No.1:**
Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside

the disallowance of Rs.7,57,22,069 made under section 80JJAA of the Act by holding that the employees in software industry are covered by definition of 'Workman' in Explanation (iii) to section 80JJAA of the Act read with section 2(s) of the Industrial Dispute Act and employees who have worked for 300 days in a previous are eligible for the purpose of deduction under section 80JJAA in the succeeding year if he completes 300 days in such succeeding year without appreciating that person working in software industry cannot be said to be 'Workman' for the purpose of section 80JJAA of the Act and conditions prescribed for claiming said deduction are not satisfied by Assessee?

16.1. The Assessee had claimed deduction under Section 80JJ-AA of the Act on account of the payments made to the employees hired by the Assessee in the previous year even though they had not completed 300 days of service in that year since they continued on the rolls of the Assessee in the next year totalling up to more than 300 days as required under section 80JJ-AA of the Act. The issue raised by the Revenue is that the employees of the Assessee would not come within the

purview of the definition of workman under Section 2(2) of the Industrial Disputes Act, 1947 (for short 'ID Act') and that since the employee has not completed 300 days of employment in the previous year, no deduction could be claimed by the Assessee.

16.2. As regards the first contention of the Revenue, the same does not require much examination by this Court inasmuch as at the first instance; the Assessing Officer had held that the Assessee's employees would not come within the purview of workman under Section 2(s) of the I.D. Act and disallowed the claim, on an appeal filed by the Assessee, the Commissioner, Income-tax (Appeals) CIT(A) accepted the Assessee's

contention and held that the Assessee's employee would come within the purview of Section 2(s) of the ID Act. This aspect was not challenged by the Revenue, although the Revenue had filed an appeal against the order of the CIT(A). Having accepted the said finding of the CIT(A) and not having filed any appeal, the Revenue cannot now seek to challenge the said finding in the present appeal.

16.3. Section 2(s) of the ID Act is reproduced hereunder for easy reference:

> *"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has*

led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

16.4. In terms of section 2(s) of the ID Act, the definition of a workman is very wide inasmuch as the said definition would cover any person who has the technical knowledge, self skilled in an industry. It cannot be disputed that the Assessee's business is an industry. It also cannot be disputed that the employees of the Assessee are technical persons skilled in software development and, as such,

engaged by the Assessee to render services in the industry being run by the Assessee. Thus the software engineer would also come within the purview and ambit of workman under Section 2(s) of the ID Act so long as such a person does not take a supervisory role. The software engineer *per se* would be a workman; a software engineer rendering supervisory work would not be a workman. In the present case, it is not the case of the Revenue that the persons employed by the Assessee are rendering any supervisory work or assistance. Admittedly, the said persons have been engaged for the purpose of software development, and as such, they are to be

regarded as a workman in terms of Section2 (s) of the ID Act.

16.5. The Apex Court has in the case of ***Devinder Singh's (supra)*** categorically held that when a person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work, such a person would satisfy the requirement and would fall within the definition of the 'workman'. In the present case, a software engineer is a skilled person, a technical person who is engaged by the employer for hire or reward. Therefore, all the said persons would satisfy the requirement of being a workman in terms of Section 2(s) of the I.D.Act.

16.6. In our considered view, the concept of the workman has undergone a drastic change and is no longer restricted to a blue collared person but even extends to white-collared person. A couple of decades ago, an industry would have meant only a factory, but today industry includes software and hardware industry, popularly known as the Information technology industry. Thus the undertaking of the Assessee being an industrial undertaking, the persons employed by the Assessee on this count also would satisfy the requirement of a workman under Section 2(s) of the ID Act.

16.7. Sri. Aravind, learned Senior Panel counsel of the Revenue, has strenuously argued that the period of 300 days in a year

would mean 300 days in the financial year alone, not in the calendar year or otherwise. He has submitted that if the period of 300 days is not satisfied, no such deduction could be allowed.

16.8. Admittedly, the provisions concerned, i.e. Section 80JJ-AA, comes under Chapter-VI-A of the IT Act, which deals with deductions in certain income; this deduction is issued and or permitted as an incentive to the Assessee on fulfilling certain criteria as required under the various provisions under Chapter-VI-A. The incentive of the deduction provided under Section 80JJ-AA is with an intention to encourage the Assessee to employ more and more people, provide employment and, in lieu thereof, permit

the employer/assessee to deduct certain amounts from the income when the returns are filed. It is with this object, purport and intent of section 80JJ-AA of the Act that the present facts and circumstances would have to be considered. It is also required for the Assessing Officer, CITA, Income-tax Appellate Tribunal, as also any other officer to always interpret and or apply the provisions of the Act, taking into consideration the intent and purport of the said provision.

16.9. The meaning or interpretation now sought to be given by Sri. Aravind, learned Senior Panel counsel is that only if the employee were employed for a period of 300 days in a particular financial year,

only then deductions could be claimed, if not the deductions could not be claimed even though such employee has been employed for 300 continuous days or more.

16.10. We would disagree with the said contention. What is required is for a person to be employed for a period of 300 days continuousiy. There is no such criteria made out for a person to be employed in any particular year or otherwise. If such a restrictive interpretation is given, then any person employed post 5th June of a particular year would not entitle the Assessee to claim any deduction. Thus in order to claim the benefit under Section 80JJ-AA, an employer would have to hire the

workmen before 5th June of that year. As a corollary, since the Assessee would not get any benefit if the workmen were engaged post 5th June, the employer/Assessee may not even employ anyone post 5th June, which would militate against the purpose and intent of Section 80JJ-AA, which is the encourage creation of new employment opportunities.

16.11. The Income-tax Appellate Tribunal, while considering a similar situation as in **Bosch Limited** (supra) held that so long as the workman employed for 300 days, even if the said period is split into two blocks, i.e. the assessment year or financial year, the Assessee would be entitled to the benefit of Section 80JJ-AA

in the next assessment year and so on so forthwith for a period of three years. The Income-tax Appellate Tribunal, having held to that effect, in our considered opinion, it would not be open for the Revenue to now contend otherwise, more so since the said order has attained finality on account of the Revenue not having filed an appeal.

16.12. It is sought to be contended by Sri. K V Aravind, learned Senior Panel counsel that the fact that such an interpretation could not be given is established by the curative amendment carried out in the year 2018 wherein it is clarified that an assesses whose employee completes 300 days in a second year would also be entitled to a deduction for three years therefrom. Thus

he submits that the amendment having been brought into force in the year 2018 the present matter relating to the year 2007-2008, the said curative or clarificatory amendment would not come to the rescue of the Assessee and as such, the finding of the Tribunal in this regard is required to be set aside.

16.13. We are unable to agree with such a submission- the amendment of the year 2018 though claimed curative by Sri. Aravind, we are of the considered opinion that the same is more an explanatory amendment or a clarificatory amendment which clarifies the methodology of applying Section 80JJ-AA of the Act. If the submission of Sri. K.V.Aravind is accepted, then no employer/assessee

would be able to fulfil the requirement of employing its labour/assessee prior to 5th June of that assessment year so as to claim the benefit of Section 80JJ-AA. Such a narrow and pedantic approach is impermissible. It also being on account of the fact that Section 80JJ-AA relating to deductions under Chapter is an incentive and, therefore, has to be read liberally. In this aspect, we are also supported by the decision of the Apex Court in ***Mavilayi Service co-operative Bank Ltd's*** **case** (**supra**), wherein the Apex Court has held that a benevolent provision has to be read liberally and reasonably and if there is an ambiguity in favour of the Assessee.

16.14. The Apex Court in the case ***Vatika Township (P.) Ltd. (supra)*** has also held

similarly, in that if there is a benefit conferred by legislation, the said benefit being legislative's object, there would be a presumption that such a legislation would operate with retrospective effect by giving a purposive construction. Thus the clarificatory amendrnent of the year 2018 can also be said to apply retrospectively for the benefit of the Assessee even though the Revenue contends that there was no provision in the year 2007 permitting the Assessee to avail the benefit of deduction when the employee works for a period of 300 days in consecutive years.

16.15. In view thereof, the substantial question No.1 is answered by holding that the software professional/engineer is a

workman within the meaning of Section 2(s) of ID Act, so long as such a software professional does not discharge supervisory functions, the benefit of Section 80JJ-AA can be claimed by an employer/assessee even if the employee were not to complete 300 days in a particular assessment year but in the subsequent year so long as there is continuity of employment, the Assessee could continue to claim further benefit in the next two years as provided in under Section 80JJ-AA of the Act.

16.16. Accordingly, we answer Question No.1 by holding that a software engineer in a software industry is a workman within the meaning of Section 2(s) of the Industrial Disputes Act so long as the Software

engineer does not discharge any supervisory role.

16.17. The period of 300 days as mentioned under Section 80JJAA of the Act could be taken into consideration both in the previous year and the succeeding year for the purpose of availing benefit under Section 80JJAA. It is not required that the workman works for entire 300 days in the previous year.

16.18. Hence, in the facts and circumstances of the case, the software engineer being workman having satisfied the period of 300 days, the assessee is entitled to claim deduction under Section 80JJAA.

17. **Answer to Question No.2:** **Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the disallowance made under section 40(a)(i)/(ia) for**

sum of Rs.7,87,93,536/- claimed towards finance of cars by holding that assessing authority did not invoke the provisions of section 194I of the Act without observing that for making disallowance under section 40(a)(i)/(ia) of the Act does not require assessing authority to invoke specific provisions relating to TDS and it is sufficient if there is violation of any provision of chapter XVIIB of the Act by way of Non Deduction of tax or Non Payment of tax?

Answer to Question Nos. 3: Whether on the facts of the case, the Tribunal's order can be said as perverse in nature as Tribunal failed to appreciate that mentioning of wrong provision of law does not invalidate disallowance if the order passed in sum and substance meets the legal requirements then it is said to be a valid order and appellate authorities has power to either enhance or reduce tax liability?".

17.1. Both the questions being inter-related to each other are answered together. These questions arise specifically out of ITA No.151/2020 and are not germane to ITA No.141/2020. As stated supra, the Assessee had taken on lease financing various motor vehicles, which are given to the employees of the Assessee. The Assessing Officer had disallowed the

deduction sought for by the Assessee towards the payment made to the lease financing company on the ground that there had been no tax deduction at source by the Assessee under Section 194-C or under Section 194-I of the Act. On a challenge being made by the Assessee, the CIT(A) accepted the contentions of the Assessee and held that Section 194-C was inapplicable to such a transaction and on an appeal the Revenue to the Tribunal, the Tribunal upheld the order of the CIT(A), and it is aggrieved by the said order, the present appeals have been filed.

17.2. The contention of Sri. Aravind is that the Assessee ought to have deducted tax at source under Section 194-I of the Act, and not having done the same, no deduction for

the payments could be claimed by the Assessee. At the outset, we are of the opinion that such a contention cannot be raised now by the Revenue. The contention of the Revenue before this Court is that Section 194-I of the Act was required to be invoked and deductions made at source, not having so done disallowance made by the Assessing Officer is proper and correct. In this regard, he submits that the term 'work' as used in sub-clause (c) of Clause (iv) of Section 194-C would include as per the Explanation to the said provision "carriage of goods or passengers by any mode of transport other than by railways" and as such it is contended that there ought to have been a tax deduction at source.

17.3. Sri. Percy Pardiwalla, learned Senior Counsel for the respondent, on the other hand, had contended that there is no carriage of goods or passengers in the present case, the Assessee has entered into an agreement of lease financing and obtained motor vehicles by making payment of lease rentals and provided the cars to its employees. This car is used by the concerned employees themselves, and such usage is not facilitated in any manner by the leasing company.

17.4. It is in the above conspectus of arguments, substantial questions are to be considered.

17.5. Admittedly, the Assessee had lease financed the vehicles for the use of its employees. The lease financing company

did not provide any particular service as a driver or otherwise for the purpose of usage of the car. On the car having been provided, the maintenance of the same was to be carried out by the employee of the Assessee, and the lease financing company had no role to play in the same. The only transaction entered into between the Assessee and the lease financing company was to make payment of the amounts due to the company, and the car would be handed over to the employee through the Assessee. Thus there being no work as such being carried out by the lease financing company nor any service as such being rendered by the said company, we are of the opinion neither Section 194-C, nor 194-I of the Act are applicable.

17.6. The decisions relied upon by Sri. Aravind, learned Senior Panel counsel in ***Shree Choudhary Transport Company's case*** and ***Smt. J.Rama's*** case (supra) are not applicable to the present facts and circumstances since, in these cases, the vehicles were used for transport of goods and or passengers, and the applicability of Section 194-I of the Act was in the context of the vehicles being used for transport purposes under the transport contract. The same not being the situation in the present case, those would not be of any help to the Revenue.

17.7. In view thereof, the substantial question Nos.2 and 3 are answered accordingly. Neither Section 194-C nor 194-I of the Act would be applicable to the lease financing

of motor vehicles; thus there could have been no disallowance on the ground that there is no tax deduction at source made by the Assessee.

17.8. The orders passed by the Tribunal are proper and correct and do not require to be interfered with.

17.9. Accordingly, we answer Question No.2 by holding that there is no deduction required to be made either under Section 194-C or under Section 194-I of the Act in respect of the payments made to the lease financial company on the lease financial amounts paid to such company by the assessee. Therefore, there is no violation of the said provisions and Section 40(a)(i)/(ia) is not attracted to the present case.

17.10. We answer Point No.3 by holding that the Tribunal has considered all the relevant documents. There is nothing perverse in the said order. All the relevant factors are appreciated by the Tribunal in a proper manner.

16. **Answer to Point No.4: What order?**

Accordingly, the appeals are dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

ln